

Humanising Justice

International report: key findings and recommendations

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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

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A blank space

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'.

Causes: physical, attitudinal, institutional, cultural and legal barriers that contribute to the decriminalisation of violence and the systematic violation of the rights to legal capacity and to testify.

Victims with disabilities face particular barriers in already flawed criminal justice systems

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Method and some conclusions

Normative assessment of the strengths and gaps in the access to justice provisions of the European Union's Victims' Rights Directive using UN Access to Justice Principles and Guidelines

Drawing on evidence from national reports we show how gaps in the Directive are manifested in national legal frameworks, policies and practices

Conclude: VRD help ensure that reporting, investigation and criminal proceedings are victim-focused **but** reorientation and amendment of the overall framework required

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

Obligations: A 'threshold' right'

VRD: doesn't sufficiently acknowledge or counter the violation of the right to legal capacity and the right to testify; 'Emotional' and 'intellectual' capacity are referred to in the Recitals as factors to be 'taken into account'

National: discriminatory legal frameworks and practices are routine; appointment of guardians and credibility assessments

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'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'. (Kapus et al, Slovenia, 2022, p.190)

'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.' (Sležková and Pastorek, Slovakia, 2022, p.29)

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'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)

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'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.' (Sležková and Pastorek ,Slovakia, 2022, p.44)

'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 conclusion by one of the doctors from the hospital who was interviewed as a witness...' Genova and Krasteva , Bulgaria, 2022, p.31)

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

Obligations: Information about the criminal justice system—including what victims' rights actually are—must be easily and publicly accessible; when inaccessible, procedural accommodations apply

VRD: Lacks a broad guarantee of accessibility; the right to sign language, augmented communication and to procedural accommodations are not mentioned anywhere

National: Strategic approach completely missing. Reasonable and procedural accommodations are not routinely available.

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'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 ...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)

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

Obligations. States shall provide gender- and age-appropriate individualized procedural accommodations for persons with disabilities

VRD: The right to understand and be understood (Article 3); needs assessment and accommodation framework (Art. 22 and 23) focuses on protection, not access and communication needs - a profound gap for disability access to justice rights.

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A closer look at Article 22 and 23 VRD

Article 22 'Individual assessment of victims to identify specific protection needs'

- 'receive a timely and individual assessment'
- 'victims with disabilities shall be duly considered'; Victims with disabilities are particularly vulnerable'

Article 23 'Right to protection of victims with specific protection needs during criminal proceedings'.

- adaptation of victim interviews (Article 23(2))
- And court proceedings (Article 23(3)).

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

'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...'. (Romania, 2022, p.5)

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*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...' (Sležková and Pastorek Slovakia, 2022, p.39)*

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Core problems

Fundamental differences in normative orientation between the CRPD and VRD frameworks

- Directive focuses on identifying and addressing specific **protection** needs without addressing communication and information rights
- Attaching the label of 'vulnerability' to people with disabilities is not consistent with a human rights model of disability
- CRPD = human rights focus

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Implementing Principle Three

Revise VRD Article 22 needs assessment to reflect a rights-based, not needs based approach to access to justice

Revise VRD Article 22 to be 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.

Expand limited list of procedural accommodations in VRD Article 23 to include all necessary procedural accommodations that are required for equal access to justice.

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'A victim with psychosocial disabilities was handed a leaflet, and not informed of support services or of legal services, '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 Victim learned that he was released from prison from the Internet media. '(Sležková and Pastorek, Czechia, 2022, p.33)

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'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.'

(Lithuania, Grigaitė and Leanaitė 2022, p.30)

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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

Obligations: UN guidelines include 10 different ways that access to information can be enabled

VRD: Article 4, Article 6 are key BUT none of these forms of communication and information provisions are mentioned. Directive recitals tell Member States to 'take into account' communication 'difficulties'.

National: legally transposed the general requirements regarding 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 tailored to the needs of people with disabilities. People in institutions particularly at risk.

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'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)

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

Obligations: 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.

VRD: Article 13 'national law must provide for the appropriate legal framework to ensure that victims have the right to legal aid'.

National: In effect, legal assistance is often completely inaccessible

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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

Obligations: People with disabilities face a range of human rights violations and crimes, requiring an effective investigation and remedy

National: specific barriers to reporting complaints and initiating proceedings; lack of clarity about the definition of 'victim'; and, a range of human rights violations, unrecognised.

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'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)

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'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)

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(re)-starting point: what are the human rights violations that are being experienced? What are corresponding remedies? Do they exist? Are they accessible? What mechanisms are needed?

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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.

Obligations: OHCHR guidelines detail how people with disabilities should be directly involved in training and the content of the training.

VRD: The Directive's training obligations do not specifically mention disability.

National: no examples of specialist training for professionals working with victims with disabilities

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'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'. (Špek and Štahan, Croatia, 2022, p.29)

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Recommendations

1. Amend the Victims' Rights Directive to explicitly guarantee the right to legal capacity in criminal proceedings.
2. Develop and implement 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. Develop guidance, training courses and curricula based on UN Access to Justice Principles for Member States in partnership with people with disabilities
4. Support and nurture innovative practices of individuals creatively supporting victims with disabilities in accessing their rights to participate.
5. Fully transpose and implement the Victims' Rights Directive in line with recommended revisions, at the national level
6. Engage in broader debates and advocacy on transforming criminal justice systems into ones that put human dignity and human rights – to an effective investigation and effective remedy – for all victims of crime (and all human rights violations)

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Voices for Justice:

Communicating with Victims of Crime with Disability
InfoComPWDs - 878604



VALIDITY



CENTRUL DE RESURSE
JURIDICE



САРУЖЕНЕ
"ШИЯС И ПОДАКРЕПА"



FORUM
Human Rights



pic
LEGAL INTERNATIONAL
CENTER FOR RESEARCH



INSTITUT RS ZA SOCIALNO VARSTVO
INSTITUTE FOR SOCIAL PROTECTION OF THE REPUBLIC OF SLOVENIA



MENTAL
HEALTH
PERSPECTIVES



UNIVERSITY OF LJUBLJANA
FACULTY OF SOCIAL SCIENCES



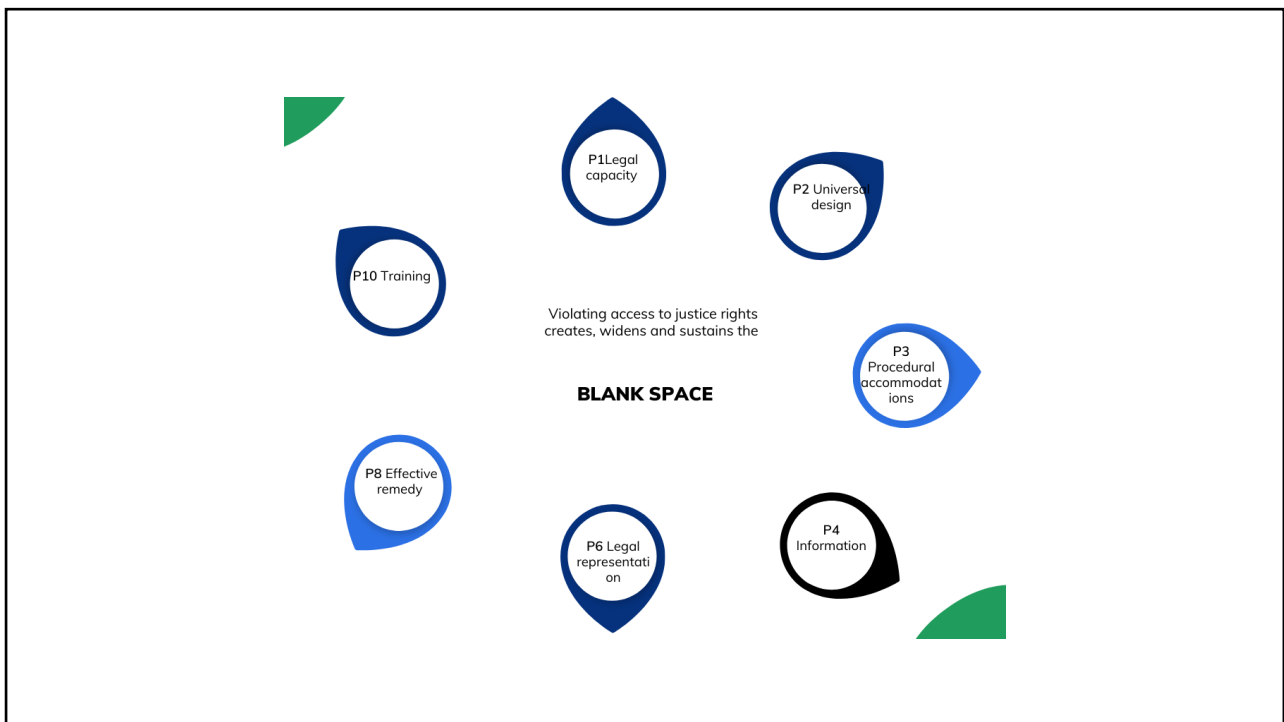
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