

DRAFT CONCLUSIONS AND RECOMMENDATIONS FOR CONSULTATION

Humanising Justice

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

Validity Foundation

2022

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.

The Draft Conclusions and Recommendations are published here to allow for consultation and feedback from policy makers, practitioners, advocates, and anyone with an interest in disability rights and victims' rights. This will be the last chapter of the Voices for Justice international report – Humanising Justice – available as a preliminary report on the Validity Foundation website.

The international report makes use of the United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities (UN Access to Justice Principles) as the framework for analysis of research findings and in this consultation document for framing the recommendations.

We ask for any comments or input to be sent to Paola Grenier, the Voices for Justice project manager, at paola@validity.ngo.

Disclaimer

The contents of this report represent the views of the project partners only and are their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.



This project is co-funded by the European Union's Justice Programme (2014-2020).

DRAFT Conclusions and Recommendations

This report has assessed the EU Victims' Rights Directive's¹ provisions against the UN International Access to Justice Principles², 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, 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

¹ 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.

² 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.

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.³ 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).
- 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.

³ 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.

- 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.

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).
- Bulgaria: Shans i Podkrepa ([Chance & Support Association](#)).
- Croatia: Udruga za podršku žrtvama i svjedocima ([Victim and Witness Support Service- VWSS](#)).
- Czechia and Slovakia: Fórum pro lidská práva ([Forum for Human Rights](#)).
- Lithuania: Psichikos Sveikatos Perspektyvus ([Mental Health Perspectives – PSP](#)).
- Romania: Centrul de Resurse Juridice ([Centre for Legal Resources](#)).
- Slovenia: Pravno-informacijski center nevladnih organizacij ([PIC - Legal Center for the Protection of Human Rights and the Environment](#)).
- Slovenia: The Inštitut Republike Slovenije za socialno varstvo ([Social Protection Institute of the Republic of Slovenia – IRRSV](#)).
- Slovenia: The Faculty of Social Work from the University of Ljubljana ([University of Ljubljana](#)).



Project contacts and resources

Webpage: validity.ngo/projects-2/voices-for-justice/
National reports: validity.ngo/projects-2/voices-for-justice/publications-and-resources/
Email: infocom@validity.ngo

Grant Information

Information and Communication: Cornerstones of justice for victims of crime with disability (878604 – InfoComPWDs) JUST-AG-2019 / JUST-JACC-AG-2019 – 878604

Disclaimer

The contents of this report represent the views of the project partners only and are their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.



This project is co-funded by the European Union's Justice Programme (2014-2020).