Ensuring access to justice for persons with disabilities in EU law, UN CRPD and beyond

EUROPEAN DISABILITY FORUM
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EDF - the European organisation of persons with disabilities

- 80 million persons with disabilities in Europe
- Organisation representing persons with disabilities
- Umbrella organisation with national platforms and European federations
- Diversity of persons with disabilities
- Promotes the human rights and interests of persons with disabilities at EU & international level
A broad view on access to justice

- For all persons with disabilities: crime victims, defendants, suspects, but also witnesses, jurors, judges and lawyers
- At all times during justice administration, including investigation
- But also in access to non-judicial mechanisms (equality bodies, ombudsman, etc.)
- Participation and inclusion in larger justice system: access to the profession of lawyer or judge, participation in training to court administrations
Outline of the presentation

- Disabling barriers in accessing justice
- Access to justice in UN CRPD
- Access to justice in EU Law
- Recommendations
- Conclusions
Disabling barriers in accessing justice

- Deprivation of legal capacity
- Stereotypes and prejudices
- Lack of accessibility and accommodations
- Lack of information and awareness of rights/remedies
- Financial reasons
- Fear-based reasons
Disabling barriers

Deprivation of legal capacity

- Substitute decision making regime and guardianship
- Deprivation of legal personhood
- No right to take legal action without guardian
Stereotypes and prejudices

- Not considered as credible or competent witnesses
- Complaints not taken seriously when reporting to the authorities
- Persons with psychosocial disabilities e.g. discredited due to their mental health history
- Persons with intellectual disabilities may be questioned on their ability to tell the truth
- Deaf, blind and deafblind persons considered unreliable because can not recount what was literally seen or heard
Lack of accessibility and reasonable accommodations

- Physical inaccessibility of police stations and court houses
- Communication barriers: lack of sign language interpretation
- Lack of information on legal rights, legal aid and procedures in Braille, plain language or alternative formats → lack of awareness about remedies
Disabling barriers

- Financial reasons
  - Free legal representation
  - Cost of legal proceedings

- Fear-based reasons: victimisation and reputation of ‘troublemaker’
Results

- Negative experiences by disabled persons
- Rights violations remain unexposed and unremedied
- Lack of data on the situation of access to justice
- Invisibility maintains disabled persons’ vulnerability
- Unable to participate in justice system
Access to justice in UN CRPD

- Article 13 Access to justice
- Article 5 Equality and non-discrimination
- Articles 6 and 7 Disabled women and children
- Articles 9 and 21 Accessibility
- Article 12 Equal recognition before the law
- Article 16 Freedom from violence, exploitation and abuse
- Articles 4, 3 and 29 Participation and involvement of persons with disabilities and their organisations
Access to justice in UN CRPD

Article 13 Access to justice

• effective access to justice on an equal basis with others
• at all phases of the administration of justice, including at preliminary stages, such as initial investigations by the police
• both direct and indirect participants, including being witnesses
• procedural and age-appropriate accommodations
• training for persons working in police and justice administration
Access to justice in UN CRPD

Article 5 Equality and non-discrimination

- on an equal basis with others
- Direct and indirect discrimination: action discriminatory in effect or purpose is forbidden
- Failure to provide reasonable accommodation is discrimination
Access to justice in UN CRPD

Articles 9 and 21 Accessibility

- **Physical accessibility** of buildings and spaces open to the public
- **Information, communications** and proceedings available in alternative formats (Braille, plain language and sign language)
- Provision of **live assistance and intermediaries**
- Provision of accommodations to ensure participation in all stages of the legal proceedings, including prosecutorial investigations
Article 12 Equality before the law

- *All persons with disabilities* enjoy legal capacity in all aspects of life on an equal basis with others.
- Deprivation of legal capacity prevents access to justice.
- Right to make one’s own decisions and to exercise their rights including taking legal action.
- Rules of procedure CRPD Committee on admissibility individual communication under the Optional Protocol access to justice guaranteed at international level.
Article 16 Freedom from violence, exploitation and abuse

• Protection within and outside the home and institutions
• Put in place effective laws and policies to ensure that these instances of violence, exploitation and abuse are identified, investigated and prosecuted
Access to justice in UN CRPD

Articles 4, 3 and 29 (b) Participation and involvement

• Participation in **conduct of public affairs**
• Participation on an equal basis with others in the **justice system**
• As a judge, lawyer, magistrate, witness, litigant or in jury service
• **Close consultation and active involvement** of persons with disabilities through representative organisations
• **All facets** of administration of and access to justice, also for providing **training** to justice administrations
Examples of case law

- ZH v Hungary (ECtHR): no reasonable accommodation for meeting applicant’s communication needs is a violation of the procedural right to liberty
- Several cases ECtHR: restrictions access to justice as a result from deprivation of legal capacity is a breach of the right to a fair hearing and to an effective remedy
- R v DAI (Supreme Court of Canada): people with intellectual disabilities can testify in criminal cases on a promise to tell the truth
Access to justice in EU Law

Access to justice in EU law

- Ratification UN CRPD by the EU
- Justice is a shared competence between EU and Member States
- EU action on access to justice an efficient mechanism for MS to fulfil CRPD obligations
- Greater consistency in human rights standards and levels of protection for all 27 EU MS
Access to justice in EU Law

Access to justice in EU law

- Charter of Fundamental rights of the EU
- Treaty on the Functioning of the EU
- EU secondary law
Article 47 Charter of fundamental rights of the EU

- The **right to an effective remedy** before a tribunal
- Everyone is **entitled to a fair and public hearing** within a reasonable time by an independent and impartial tribunal
- Everyone shall have the possibility of being **advised, defended and represented**
- **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
Access to justice in EU Law

Article 21 and 26 EU Charter of Fundamental Rights

- **Discrimination** based on disability shall be **prohibited**
- Persons with disabilities are entitled to measures designed to ensure their **participation** in the life of the community
Access to justice in EU Law

Treaty on the Functioning of the EU

- Article 67 (4) ‘the Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters’

- Article 10 ‘in defining and implementing policies and activities, the EU must aim to combat discrimination on various grounds, such as disability’
Access to justice under secondary EU law

- Proposed Anti-discrimination Directive outside employment: no discrimination based on disability in access to services open to the public, such as access to justice
- Free Movement Directive requires mechanisms for judicial redress for EU citizens when refused entry into another EU MS
- EU law and policy on criminal justice
Access to justice in EU Law

EU law and policy on criminal justice

- European Council Strategy on freedom, security and justice 2010-2014 (Stockholm Program):
  - Roadmap on protection of victims
  - Roadmap on protection of suspected and accused people

- Member States need to take into account ‘vulnerable people’ when developing laws and programmes to implement Stockholm Program

- Disability under ‘vulnerable persons’
Directive 2012/29 on minimum standards on the rights, support and protection of crime victims

- Recital (9) **no discrimination** based on disability
- Recital (15) accessibility to premises and access to information
- Recital (21) provision of information and advice taking into account a person’s intellectual capacity, hearing or speech impediments
- Article 3, 2 **communications in simple and accessible language**
- Article 22 **individual assessment of victims to identify specific protection needs** – also victims with disabilities
Access to justice in EU Law

Directive 2010/64 on the right to interpretation and translation

- Suspected or accused persons who are ‘unable to speak or understand the language of the proceedings are provided with an interpreter and with translation of the essential documents’
- Appropriate assistance for ‘persons with hearing or speech impediments’
- People with disabilities under people who are ‘in a potentially weak position, in particular because of any physical impairments which affect their ability to communicate effectively’
- Member States have to take into account ‘any potential vulnerability that affects one’s ability to follow the proceedings and to make themselves understood’
2013 Proposal on special safeguards for suspected or accused persons who are vulnerable:

- Ensures that ‘special attention is given to persons who cannot understand or follow the content or the meaning of the proceedings owing to their age, mental or physical condition’
- The Proposal so far does not address the situation of persons with disabilities who can understand and follow the proceedings but who require accommodations and accessibility for doing so

- Need for a human rights approach: persons with disabilities out of the group of ‘vulnerable’ persons
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Recommendations based on UN CRPD

- Eliminate laws which deprive persons with disabilities from their legal capacity
- Introduce into the law, policies and practices the right to access to justice, with measures of support, if requested, which respect the individual’s autonomy, will and preferences
- Adopt practices and mechanisms to facilitate the giving of evidence and participation by persons with disabilities
Recommendations based on UN CRPD

- Adopt requirements for the physical, environmental, communicational and informational accessibility of all aspects of the administration of justice
- Introduce compulsory training of all actors in the administration of justice on the rights and needs of persons with disabilities and the barriers they face
- Consult with and actively involve persons with disabilities in the formulation of these laws and in the design and conduct of training
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Conclusions

- CRPD encompasses a broad concept of justice system
- Persons with disabilities have to be seen as ‘indirect’ participants of the justice system and should be involved in the broader justice system
- Challenge to mainstream CRPD and its ideals in EU law and its work on access to justice, and in the Member States’ legislative frameworks
Thank you for your attention!

Questions? Comments? Suggestions?
Please feel free to contact us via

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