



**FREEDOM
OF MOVEMENT**

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

EUROPEAN DISABILITY FORUM

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www.edf-feph.org



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European Disability Forum

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

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

- **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

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

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

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

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

- 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

- 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

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

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

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**

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

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

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

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Thank you for your attention!

Questions? Comments? Suggestions?

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