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## ENSURING ACCESS TO JUSTICE

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# Article 6 ECHR

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
2. ...
3. Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, ...
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

# Article 47 EU FR Charter

## 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.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. 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 13 CRPD

1. States Parties shall ensure **effective access to justice** for persons with disabilities on an equal basis with others, including through the 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.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote **appropriate training** for those working in the field of administration of justice, including police and prison staff.

# Why?

(Human) rights meaningless  
if they cannot be enforced  
by persons concerned.



# Thus

- There needs to be a justice (law enforcement) system;
- The justice system should be accessible for all.

## So far

- 'effective remedy' – Art. 2 ICCPR; Art. 13 ECHR.
- 'fair trial' – Art. 6 ECHR; Art. 46 EU FR Charter (and Art. 9 ICCPR)

# Under ECHR

- 'effective remedy'
  - an effective domestic remedy to deal with the substance of an "**arguable complaint**" ... e.g. ECtHR 26 October 2000, *Kudla v. Poland* (GC) & EHRM 21 Januari 2011, *M.S.S. v. Belgium & Greece* (GC)
- 'fair trial'
  - Incl. **legal aid** e.g. ECtHR 9 oktober 1979, *Airey v. Ireland*, no. 6289/73 )



# Being able to enforce rights

Presupposes that rights are **known**;

Required that there is an **adequate justice system** that

- Is equally accessible,
- Offers equal protection to all (substantive 'fair trial' ),
- Is effective ('effective remedy').

Presupposes that person concerned has **capacity** to know and enforce his or her rights;



# Positive obligations on States

- Awareness - CRPD: General principles (Art. 3); Awareness raising (Art, 8); Education (Art. 24) Rights are known (information);
- Adequate justice system - CRPD: Access to justice (Art. 13)
- `Legal capacity on an equal basis with others in all aspects of lifecapacity (Art. 12 para. 2)

# Interim conclusion

- CRPD ('access to justice') seeks to offer more protection than ECHR (focus on 'fair trial' and 'effective remedy');
- CRPD is disability specific;
- CRPD rights mainly formulated as State obligations (**as opposed to ECtHR**);
- Ensuring accessibility through **accommodations, training and capacity**

# **CRPD: Access to justice *for all* and *always***

victims of crime, suspects, witnesses,  
defendants, appellants, or otherwise a  
party

in legal, quasi-legal (ombudsman,  
equality body etc.) or administrative  
proceedings



# **Compare Art. 6 ECHR/13 CRPD**

Art. 6(1) ECHR: 'In the determination of his civil rights and obligations or of any criminal charge against him ...'

Art. 13 CRPD: 'Arguable complaint'

# Access to justice for P(WD)

## Barriers:

- Legal language/terminology;
- Evidentiary rules > obstacles to give testimony / serve as witness;
- Legal aid (advice and representation);
- Physical barriers;
- Communication (sign language, braille etc.);
- No / Deprived of legal capacity.

# Barriers for PWD

## Communication:

- EHRM 21 December 2010, Jasinskis v. Latvia, no. 45744/08

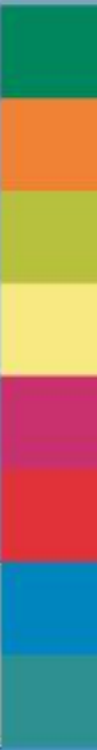
'Taking into account that the applicant's son was deaf and mute, the police had a clear obligation (arising at the least from sections 5 and 10(3) of the Law on Police and the above-mentioned international standards ... to at least provide him with a pen and a piece of paper to enable him to communicate his concerns.'

# Barriers for PWD

Legal capacity:

- EHRM 17 January 2012, Stanev v. Bulgaria (GC), no. 36760/06

'...the Government have not indicated any domestic remedy capable of affording the applicant [partial guardianship] the direct opportunity to challenge the lawfulness of his placement in ... and the continued implementation of that measure.'





# Different forms of discrimination / responses

Problems for all > indirect discrimination

- Legal language/ terminology
- Legal aid (advice and representation)

Disability specific > ind. accommodations

- Evidentiary rules > obstacles to give testimony / serve as witness;
- Physical barriers;
- Communication (sign language, braille etc.)
- Assistance / representation / autonomy

# Remaining problems (1)

'Incompetent' individuals and evidence/witness?

- Disability / gender-based violence?



## Remaining problems (2)

Individual, 'surrogate' and/or collective complaints?

- Who can represent an individual?
- Does representative represent pwd? > autonomy/shared decision-making?

# Remaining problems (3)

Attitudes of law enforcement  
personnel / members of courts

- Art. 13(2) CRPD



# Conclusions

- Art. 13 reflects need for comprehensive accessibility to justice;
- Positive obligations > individuals rights?
  - Not all barriers disability specific;
- Awareness is needed, not only pwd (their rights) but notably from law enforcement personnel etc.
  - Remaining problems.

**Questions or Comments????**

