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## ACCESS TO (what?) JUSTICE

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Universiteit Leiden. University to discover.

## 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.

## Thus

- There needs to be a justice system;
- The justice system should be accessible for all.

## So far

- \* 'fair trial' – Art. 9 ICCPR; Art. 6 ECHR,
- \* 'effective remedy' – Art. 2 ICCPR; Art. 13 ECHR.

## Under ECHR

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

## Being able to enforce rights

Presupposes that:

- Rights are **known**;
- There is an **adequate justice system**
  - Is equally accessible,
  - Offers equal protection to all (substantive 'fair trial' ),
  - Is effective ('effective remedy').

## Positive obligations on States

- CRPD: General principles (Art. 3); Awareness raising (Art, 8); Education (Art. 24) Rights are known (information);
- CRPD: Access to justice (Art. 13)

## 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;
- Ensuring accessibility through '**accommodations**' and 'training'.

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

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

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

## Compare Art. 6/13 ECHR

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

Art. 13: 'Arguable complaint'

## Access to justice for P(WD)

Problems:

- Legal language/terminology;
- Evidentiary rules > obstacles to give testimony / serve as witness;
- Legal aid (advice and representation);
- Physical barriers;
- Communication (sign language, braille etc.)

## Access to justice for P(WD)

Related problems:

- Enforcement and 'inaccessible' detention system

Examples from ECHR

- ECtHR 21 december 2010, *Jasinskis v. Latvia*, no. 45744/08
- ECtHR 10 July 2001, *Price v. the UK*, no. 33394/96

## Art 13

What is 'effective access to justice, including ... procedural and age-appropriate accommodations'???

## Barriers for P(WD)

- Legal language/ terminology;
- Evidentiary rules > obstacles to give testimony / serve as witness;
- Legal aid (advice and representation);
- Physical barriers;
- Communication (sign language, braille etc.)

## Different barriers

### Problems for all:

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

### Disability specific

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



## 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.)

## 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?

## Remaining problems (3)

Attitudes of law enforcement personnel / members 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 needs, notably from law enforcement personnel etc.
    - Remaining problems.

Questions or Comments????