

# VALIDITY

Strategies and recommendations  
to advance the rights of persons  
with intellectual and/or  
psychosocial disabilities

*25<sup>th</sup> October 2022*

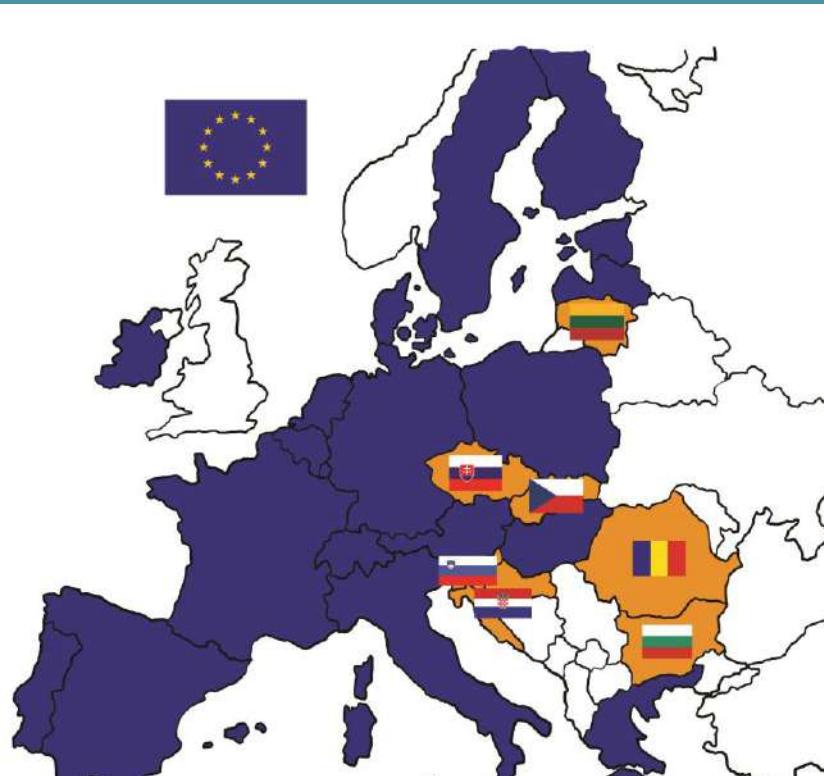
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# Our mission and role

Validity is a **legal resource** helping people with intellectual and psychosocial disabilities to achieve equality, inclusion and justice through:

- ❖ Strategic litigation
- ❖ Research and development of guidelines
- ❖ Advocacy
- ❖ Building partnerships
- ❖ I am a person
- ❖ Schools for All
- ❖ My Home, My choice

# Voices for Justice: people with disabilities who are victims of crime



- Bulgaria
- Romania
- Slovakia
- Slovenia
- Croatia
- Czechia
- Lithuania

- EU co-funded project
- 7 countries – Croatia, Bulgaria, Romania, Lithuania, Slovenia, Czechia, Slovakia
- 9 partners
- International experts



InfoComPWDs - 878604  
This project is co-funded by the European Union's Justice Programme (2014-2020)

## Disclaimer

The content of this presentation represents the views of the authors only and is his/her sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

# What did we set out to do?

Improving information and effective communications for victims with disabilities in the criminal justice system – rights focused

- National research
- International research
- Tools
- Events, collaborations
- *Change policy, change practices*
- *Listen to, involve and work with people with disabilities*

# Legal framework

European Unions' Victims' Rights Directive, 2012/29/EU

Victim-centric, rights-based, an obligation, minimum standards

In applying this Directive, Member States should ensure that victims with disabilities are able to benefit fully from the rights set out in this Directive, on an equal basis with others, including by facilitating the accessibility to premises where criminal proceedings are conducted and access to information. (para 15)

## United Nations Convention on the Rights of Persons with Disabilities

Article 13 – Access to Justice. 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.

# Analytical framework

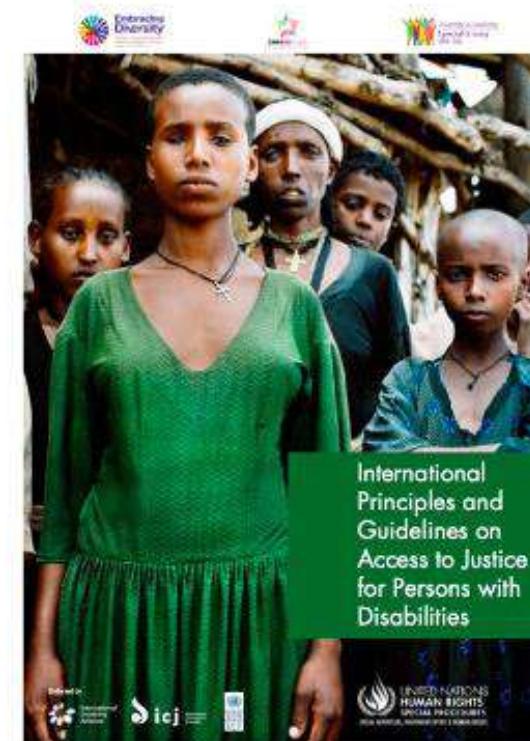
## United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities, 2020

### United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities

The United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities were published in 2020. The stated purpose is,

*States must ensure equal access to justice for all persons with disabilities by providing the necessary substantive, procedural, and age- and gender- appropriate accommodations and support. The Principles and Guidelines are intended to assist States and other actors to design, develop, modify and implement justice systems that provide equal access to justice for all persons with disabilities (p.6)*

The document sets out 10 principles with guidelines, which are intended as a basis from which 'States can and should align their laws, rules, regulations, guidelines, protocols, practices and policies' (p.8).



### International Principles and Guidelines on Access to Justice for Persons with Disabilities

#### Principle 1

All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability.

#### Principle 2

Facilities and services must be universally accessible to ensure equal access to justice without discrimination of persons with disabilities.

#### Principle 3

Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.

#### International Principles and Guidelines on Access to Justice for Persons with Disabilities

#### 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.

#### Principle 5

Persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process.

#### Principle 6

Persons with disabilities have the right to free or affordable legal assistance.

#### Principle 7

Persons with disabilities have the right to participate in the administration of justice on an equal basis with others.

#### Principle 8

Persons with disabilities have the rights to report complaints and initiate legal proceedings concerning human rights violations and crimes, have their complaints investigated and be afforded effective remedies.

#### Principle 9

Effective and robust monitoring mechanisms play a critical role in supporting access to justice for persons with disabilities.

#### Principle 10

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.

# United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities, 2020

*Barriers facing persons with disabilities:*

- restrictions on the exercise of **legal capacity**;
- lack of **physical access** to justice facilities, such as courts and police stations;
- lack of **accessible transportation** to and from these facilities;
- obstacles in accessing **legal assistance** and representation;
- lack of **information** in accessible formats;
- paternalistic or **negative attitudes** questioning the abilities of persons with disabilities to participate during all phases of the administration of justice;
- and **lack of training** for professionals working in the field of justice.

# Humanising Justice

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

## What we found

- A ‘blank space’ – the profound absence of people with disabilities exercising their participation rights as victims and witnesses.
- **Physical, attitudinal, institutional, cultural and legal barriers** – hinder access to justice for victims of crime, obscure the crimes committed against people with disabilities.
- **Secondary victimisation** rather than redress

## **PRINCIPLE #1**

All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability

# Tymoshenko v. Ukraine

## ECtHR no. 13459/15

*A woman subject to compulsory psychiatric treatment after being acquitted by a criminal court for "reasons of insanity". She was not present at the hearing. Deprived of legal capacity, she did not have standing to file an appeal. Her legal aid lawyer refused to file it.*

### VALIDITY'S INTERVENTION

- Insanity defense is highly controversial
  - Denies the right to equal legal capacity
  - Deprives people with disability of equal procedural rights and criminal justice safeguards
- State need to develop disability-neutral doctrines
  - *Mens rea*, self-defence and duress

*UN CRPD Guidelines on article 14 (2015)*

*UN CRPD Concluding observations*

Dtto: A/HRC/10/48, 26 January 2009, § 47  
A/HRC/37/25, 27 December 2017, § 36

## Tymoshenko v. Ukraine

ECtHR  
no. 13459/15

- Detention and coercive treatment resulting from insanity defense is always contrary to the UN CRPD
  - Article 14 of the UN CRPD: *the existence of a disability shall in no case justify a deprivation of liberty.*
  - Coercive treatment motivated by a person's disability: violation of personal integrity, ill-treatment, and even torture (UN SRT A/HRC/22/53, 2013, § 32)
- What role for the European Court of Human Rights?
  - Need to revisit *Winterwerp v. the Netherlands* (no. 6301/73, 15 December 1977) whose criteria are directly in conflict with the UN CRPD

*All persons with disabilities “who have been accused of crimes and... detained in jails and institutions, without trial, are allowed to defend themselves against criminal charges, and are provided with required support and accommodation to facilitate their effective participation.”*

## Tymoshenko v. Ukraine

ECtHR  
no. 13459/15

- What role for the European Court of Human Rights?
  - Strenghtening the protection of procedural rights and safeguards:
    - Right to independently initiate the review of detention
    - Right be present and heard
    - Right to supports and procedural accommodations
    - Right to file an appeal

*Shtukaturov v. Russia  
M.D. and others v. Malta*

## **PRINCIPLE #3**

Persons with disabilities,  
including children with disabilities,  
have the right to  
appropriate procedural  
accommodations

## **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

## **PRINCIPLE #6**

Persons with disabilities have the right  
to free or affordable legal assistance

**Blokhin v.  
Russia  
EctHR (GC)  
no. 47152/06**

*A 12-year old child with a psychosocial disability detained for suspicion of having committed a crime, heard without the presence of a lawyer, with no procedural and reasonable accommodations.*

**VALIDITY INTERVENTION**

- Access to justice as essential element of the right to a fair trial
  - Inaccessibility of the criminal justice system contributes to overrepresentation of people with intellectual and psychosocial disabilities in the system
  - Children with disabilities face “double disadvantage”
- Children subject to “educational measures” are deprived of criminal justice safeguards
- Age and disability-appropriate accommodations in detention as preventions of ill-treatment
  - Emphasis on the presence of a support person and a lawyer

**Blokhin v.  
Russia  
ECtHR (GC)  
no. 47152/06**

**THE JUDGMENT**

- **Violation of Article 3 of the Convention (ill-treatment)**
  - Lack of disability and age-appropriate accommodations in detention
- **Violation of Article 6 § 1 (a) (c) (right to a fair trial)**
  - Failure to ensure legal assistance and other support
  - Failure to allow witnesses
- **Violation of Article 5 § 1 (right to personal liberty )**
  - “behavioral correction” do not amount to “educational reasons”

# Blokhin v. Russia

## ECtHR (GC) no. 47152/06

### THE JUDGMENT

"the legislature's intention to protect children and ensure their care and treatment comes into conflict with reality and the principles (...) since the child is deprived of his liberty without having the procedural rights to defend himself properly against the imposition of such a harsh measure.

(...) minors, whose cognitive and emotional development in any event requires special consideration, and in particular young children under the age of criminal responsibility, deserve support and assistance to protect their rights when coercive measures, albeit in the guise of educational measures, are applied in their regard.

(...) To find otherwise would be to put children at a clear disadvantage compared with adults in the same situation.

## **PRINCIPLE #10**

All those working in the justice system  
must be provided with  
awareness-raising & training programmes  
addressing the rights of persons with  
disabilities, in particular in the context of  
access to justice

# Validity projects and future work

**Innovating Lawyers:** *promising practice and training for lawyers to ensure access to justice for children with disabilities*

<https://validity.ngo/2017/10/30/innovating-european-lawyers-to-advance-the-rights-of-children-with-disabilities/>

**Child-Friendly Justice:** *making court practices more child-friendly to child victims and children suspected or accused of committing a crime, particularly for those who are in vulnerable situations.*

<https://validity.ngo/projects-2/child-friendly-justice/>

**Voices for Justice:** *accessible information and effective communications for victims with disabilities.*

<https://validity.ngo/projects-2/voices-for-justice/>

**ENABLE:** *improve access to justice for defendants with intellectual and psychosocial disabilities, specifically procedural accommodations in courtrooms.*

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# THANK YOU

For more information please sign up to Validity's newsletter:

<https://validity.ngo/newsletter/>