



Photo: © UNICEF/NYHQ2011-1059/Holt

Access to Justice for Children with Mental Disabilities

International Standards and
Findings from Ten EU Member States



Access to Justice for Children with Mental Disabilities

**International Standards
and Findings from Ten
EU Member States**



2015



January 2015

ISBN 978-615-80205-7-2

Copyright statement:

© Mental Disability Advocacy Center (MDAC), 2015. All rights reserved.

This publication has been produced with the financial support of the Fundamental Rights and Citizenship Programme of the European Union. The contents of this publication are the sole responsibility of the Mental Disability Advocacy Center and can in no way be taken to reflect the views of the European Commission.

Contents

Foreword: Children are children are children.....	4
Executive summary	5
Introduction	7
Cluster I: Law, Monitoring and Complaints – structural indicators.....	11
Cluster II: Participation in Justices Processes – process indicators	18
Cluster III. Facilitating Access to Justice – process indicators	29
Appendix 1: Project contributors	36

Foreword:

Children are children are children...

A boy starts to scream on the street, and attacks a pedestrian. The police are called, and an officer takes the upset and agitated child to the police station, placing him in a cell, to "calm him down". The child, terror in his eyes, crouches down in a corner. He will stay there for 24, maybe 48, maybe 72 hours, without any assistance, and there is nowhere else for him to go. Even his legal representative views him as a burden.

Who will take his case to court? As child with a mental disability, he cannot achieve justice alone. Who will challenge his legal representative who fails to protect his rights?

In front of an institution for girls with intellectual disabilities, a long file of cars lines up. The drivers wait for the children to come out, and lure them into their cars with food, chocolate or a little money, for a "quickie". The drivers feel safe to sexually exploit these girls. "These idiots are not accepted as witnesses at court", they think.

Who will assist these girls when finally their case is brought to court? Who will ensure they are heard? Who will support them to express themselves? What guarantees are there that the court will accept their testimony as evidence?

A 17 year old boy with a severe learning disability is forced to testify in a car accident case at court. He doesn't understand well, his hearing is impaired, and he finds it difficult to concentrate for more than 20 minutes. He is afraid and needs to go to the loo. The judge and both lawyers start to get impatient. They admonish the boy unkindly. The situation worsens. The child stops speaking and cries. Evidence is lost, time is lost. These children shouldn't be admitted court, should they? They are not able to testify anyway, are they?

Who is going to tell the courts that children with mental disabilities need assistance and that they are able to testify if support is provided? Who is going to tell the courts that these children have a voice that must be listened to? Who will tell the judge that he must change the way the court operates in this child's best interests?

A 13 year old girl with Down syndrome has been raped and becomes pregnant. Her parents and the court don't believe her fit to testify. The prosecution drops the case. The parents decide that they will put her to sleep, conduct a caesarean and give the baby up for adoption. Nobody has bothered to ask the girl anything. No one asked her if she would recognise the perpetrator, nor if she understood that she was pregnant. No one asked her if she would like to have her baby and certainly not if it would be possible for her to care for her child. She has Down syndrome, so they think there is no need to communicate with her.

Who will bring her case to court, and see that she is heard? Who will assess what this girl is capable of doing, and what support she wants and needs? And who will protect her rights as a child and as a parent?

In many, far too many countries, children with disabilities are marginalised, side-lined and even treated as a punishment from God. These children are hidden, made invisible, not heard, and are treated as a shame on their families. In the best cases they are viewed as a burden, and in the worst cases they are labelled as "idiots", "retarded" or even "witches" which have been sent to punish families. Abandonment can seem the only option available to some families.

Who is going to defend these children against their parents, against their community, and against their teachers (if they even go to school)? Which court will accept such claims, give them back their rights, their voice? Will the courts abandon them too?

None of these cases are fictional. These are all cases which I have come into contact with as a judge, an expert in the field and as a member of the UN Committee on the Rights of the Child. And they point to much wider problems across Europe.

All States except two, have ratified the Convention of the Rights of the Child and are legally bound to protect all children living within their territory. The majority of States have also ratified the Convention on the Rights of Persons with Disabilities, guaranteeing access to justice for children with disabilities.

ALL children have the right to protection. ALL children have the right to access justice.

States have a duty to inform parents of children with disabilities of the rights of their children. And States have the duty to assist families in coping with bringing up their children.

States have to facilitate access to justice for ALL children by providing support to them. A number of support mechanisms have been developed already, such as intermediaries who facilitate communication between courts and children, and allowing persons of trust to accompany them throughout the whole legal process. Other means have also been developed, including video links to interview children in an environment familiar to them, training for court personnel and lawyers on how to deal with children, and manuals for checking the needs of children in the justice system. But none of these practices are consistently used across Europe.

Protection mechanisms must be provided for ALL children. And barriers to accessing justice for children with mental disabilities must be dismantled.

I believe that this report is an excellent tool and an absolutely necessary instrument to shed light on the multiple problems and forms of discrimination that children with mental disabilities experience in criminal, civil and administrative matters.

It is about time that Member States to the CRC and CRPD fulfil their respective duties and that justice systems learn how to correctly deal with these terribly marginalised groups of children.

In the interest of children. But as well in the interest of justice.

Justice Renate Winter

Member of the UN Committee on the Rights of the Child



Executive summary

“Access to justice” is a fundamental principle of the rule of law. In procedural terms, it encapsulates the right to be able to access the mechanisms of justice, including the courts. In more substantive terms, it flows from the right to an effective remedy for fundamental rights violations set out in Article 8 of the Universal Declaration on Human Rights. It is closely linked with the principle of equality before the law.

Children with mental disabilities have commonly been denied these rights. Only in recent years, since the adoption of the UN Convention on the Rights of the Child, and then the UN Convention on the Rights of Persons with Disabilities, have these children begun to be recognised as bearers of rights, and not just as passive recipients of care. This shift in attitudes, however, has yet to translate into systemic change within national justice systems.

Across Europe, children with mental disabilities disproportionately experience a variety of human rights violations, including the denial of education, placement in institutions which segregate from their communities, and are at a higher risk of becoming a victim of ill-treatment, exploitation and other forms of abuse. They also are also overrepresented in, and underserved by, criminal justice systems, as alleged offenders and victims. Their testimonies are often ignored by justice systems which remain inflexible and paternalistic. Often they are not even consulted about issues which are likely to have a fundamental impact on their lives.

The present report has two core objectives. The first is to synthesise international law and standards on access to justice and apply these specifically to children with mental disabilities within the European context. Important European developments are also considered, including the Council of Europe’s Child-Friendly Justice Guidelines, the Charter of Fundamental Rights of the European Union, and the European Convention on Human Rights. From these standards, eleven indicators have been developed for the purpose of assessing the extent to which governments are taking steps to improve access to justice for children with mental disabilities in their national contexts. They

include both structural indicators relating to national law, policy and monitoring frameworks, and process indicators relating to the participation of children in justice processes and facilitating access to justice.

The second objective of the report is to set out findings from research on this theme in ten European Member States, namely Bulgaria, Czech Republic, Ireland, Latvia, Lithuania, Hungary, Romania, Slovenia, Spain and the United Kingdom. It is, to our knowledge, the first time that such a transnational study has been undertaken on the access to justice rights of children with mental disabilities in Europe.

One of the most striking findings is that there is a complete lack of data available about how many children with mental disabilities come into contact with justice systems, the nature of their impairments, or the outcomes of proceedings. Whilst all countries have national systems for monitoring human rights, researchers across the ten countries in Europe found that they rarely considered the position of this particularly marginalised group of children.

To deal with this gap, researchers interviewed lawyers, judges, parents and other professionals about their perspectives and experiences of children with mental disabilities in justice systems. Despite an obligation on governments to assess the needs of children to participate in proceedings that affect them, this rarely happened. In most cases, the purpose of assessments were to consider the cognitive capacities of children and the potential for them to give valid testimonies in compliance with rules of evidence, rather than to assess their communication or other needs. The result was that, in many cases, these children were excluded from judicial proceedings, or were made to endure processes that were formal, inflexible and ultimately denied them the right to be heard.

The report sets out a number of recommendations to governments and the European Union to address these concerns. Crucially, few governments have undertaken assessments of their national legislative and policy frameworks

to identify barriers to accessing justice for children with mental disabilities. The European Union can and should play an important role in providing the technical assistance to governments to do this effectively. In doing so, the Child-Friendly Justice Guidelines of the Council of Europe are an invaluable resource. Further, the EU should take a lead on conducting a systematic study on extent to which European justice systems are responsive to the rights and needs of children with mental disabilities.

At the domestic level, it is clear that the biggest barriers to be overcome are the limited knowledge and exclusionary attitudes of those involved with the administration of justice, including judges, lawyers, police, social workers and psychologists. While a few examples of promising practices were found by researchers – such as the establishment of child-friendly interview rooms, and the use of intermediaries – these tended to be one-offs. It is now essential that governments take steps to develop the awareness of these professionals about the rights of children, of persons with disabilities, and the importance of a multidisciplinary approach to dismantling barriers and improving the quantity and quality of justice for children with mental disabilities.

These changes will take time, but governments can and should also take some immediate steps. For example, legal aid and legal representative should always be granted to children who come into contact with justice systems in their own right,

particularly where there is a likely conflict of interest between them and their parents or legal guardians. Many children, of course, are unlikely to be able to initiate proceedings in their own right where their rights have been violated. In these cases, it is vital that other independent bodies – such as national human rights institutions and NGOs – can initiate complaints on their behalf and on their instruction.

The indicators and findings set out in this report show that there is now a need to place a much higher priority on these issues. In order to contribute to this process, this project has also developed a set of other tools which governments and other should use, including a training guide and syllabus for professionals involved in justice systems, guidelines and standards on data collection, and factsheets for each project country which identify the most important issues at the domestic level.

Addressing the rights of children with mental disabilities to gain justice will not just be beneficial for them. The process of reform requires that the courts become more open, flexible and responsive to persons with disabilities, as well as other marginalised groups. It means improving the quality of lawyering, encouraging the development of more accessible information about rights and remedies, and ultimately about improving the quality of justice itself.



Introduction

Across Europe, children with mental disabilities are subjected to systematic human rights violations. They are taken from their parents and put in institutions. They are denied education or placed in segregated environments. And they are disproportionately represented as defendants in juvenile justice systems. Many are denied the opportunity to challenge injustice, and those that come into contact with justice systems are met by untrained professionals working within inflexible procedures that fail to accommodate their needs as children, and as children with mental disabilities.

Access to justice for people with mental disabilities in Europe has been highlighted as an area for further research and action. A growing body of research and evidence also exists showing that children with disabilities experience higher levels of violence,¹ and the European Union (EU) has called for specific

attention to tackle human rights violations against children with disabilities.² To date, no specific emphasis has been placed on ensuring access to justice for children with mental disabilities as a distinct group, a gap which this report directly addresses.

This report sets out international standards on access to justice for children with mental disabilities, and uses those standards to analyse the lived reality for children in ten Member States of the European Union.³ The report draws on international law and standards relating to the rights of children, the rights of persons with disabilities, and builds on existing guidance on improving access to justice from the Council of Europe.⁴ It draws out commonalities as well as variances across the ten jurisdictions, and offers recommendations for action by governments and the EU.



Concepts and definitions

What is access to justice?

In international law, “access to justice” is an evolving concept. It has been described as enabling the “effective access to systems, procedures, information and locations used in the administration of justice.”⁵ It is related to the rule of law, and can be traced back to the advent of the modern human rights era. Article 8 of the Universal Declaration of Human Rights (“UDHR”) states that:

“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights guaranteed to him by the constitution or by law.”

Similarly, Article 13 of the European Convention on Human Rights (“ECHR”) establishes the right to an effective remedy at the domestic level. Access to remedies must be guaranteed on an equal basis to everyone without discrimination (Article 14 of the ECHR).

As international human rights law has developed, so too has the guarantee of an effective remedy to various marginalised sections of society. In 1989 the UN Convention on the Rights of the Child (“CRC”) began to promote an international shift away from treating children purely as objects of care and protection towards recognising them as bearers of human rights with “evolving capacities” (Article 5) and increasing levels of autonomy. Article 12 of the CRC recognises that children themselves have a stake in all matters that affect them, including in relation to legal processes:

“...the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body.”

1 Hilary Brown, *Safeguarding adults and children with disabilities against abuse* (Strasbourg: Council of Europe, 2003).

2 “An EU Agenda for the Rights of the Child. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions”, 15 February 2011, COM (2011) 60 final, available online at http://ec.europa.eu/justice/policies/children/docs/com_2011_60_en.pdf (last accessed: 27 March 2015).

3 The research took place in Bulgaria, Czech Republic, Hungary, Ireland, Latvia, Lithuania, Romania, Slovenia, Spain and the United Kingdom.

4 “Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice”, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies, available online at: www.coe.int/childjustice (last accessed: 27 March 2015).

5 Janet E. Lord et al., *Human Rights Yes! Action and Advocacy on the Rights of Persons with Disabilities*, 2nd edition, (Minneapolis: University of Minnesota Human Rights Center, 2012).

For the first time in international law, the UN Convention on the Rights of Persons with Disabilities (“CRPD”), adopted in 2006, included “access to justice” as a right in itself, ostensibly to target the multitude of barriers faced by people with disabilities when seeking redress for rights violations. Promoting the shift towards a social model of disability,⁶ Article 13(1) of the CRPD sets out that that governments must:

“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” [emphasis added].

Some of the most significant barriers to accessing justice for people with disabilities flow from the attitudes of those involved in the administration of justice.⁷ Particularly in relation to people with intellectual disabilities or people with psycho-social disabilities, exclusionary attitudes are often the norm amongst lawyers, judges, clerks, court experts and others.⁸ Governments must therefore promote training of professionals working in justice systems to ensure that people with disabilities can access justice on an equal basis with others (Article 13(2)). These obligations must also be read in conjunction the obligation to ensure the full inclusion of persons with disabilities in society through “identifying and eliminating barriers” to justice (Article 9) – including those which are attitudinal.

In Europe, the right to access justice has been further developed through the adoption of the Charter of Fundamental Rights of the European Union (“the Charter”), particularly Articles 47 and 48. These articles include the right to a hearing within a reasonable time, the opportunity to receive legal advice, defence and representation, and a restatement of the presumption of innocence.

Finally, access to justice for children specifically has gained increasing importance at the Council of Europe (“CoE”). In 2010, the Committee of Ministers of the CoE adopted guidelines on child-friendly justice⁹ which provide a “practical tool member states can use in adapting their judicial and non-judicial systems to the specific rights, needs and interests of children” (hereafter referred to as “the Child-Friendly Justice Guidelines”). The Child-Friendly Justice Guidelines include the child’s right to participate in legal processes affecting them, to have their best interests given paramount consideration and to be protected from discrimination when they come into contact with all competent bodies and services involved in the administration of criminal, civil or administrative law.

This report draws applies these standards to the specific needs of children with mental disabilities. Recognising that each of the three domains of law (criminal, civil and administrative) cover wide slices of human experience, the present study focuses of access to justice in relation to particularly widespread human rights violations against children with mental disabilities, specifically the right to live in the community and protection from exploitation, violence and abuse; children as victims, witnesses and defendants in criminal proceedings; and decisions relating to education.

Who are children?

This report uses the words “child” and “children” to refer to people under eighteen years of age, in conformity with Article 1 of the CRC and the common international norm. This is often referred to as the age of majority at which point a person claims autonomy and is allowed to do various kinds of things, depending on the jurisdiction (voting, driving, serving in the army, buying alcohol). It is important to note that many 18 year olds with disabilities continue to be denied many of these rights through the operation of guardianship systems.¹⁰

Who are people with disabilities?

The term “disability” is not defined in international law, however Article 1 of the CRPD states that “persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.” This definition shifts the focus away from a clinical label of an impairment towards recognising that people are ‘disabled’ from accessing the world through environmental, attitudinal, financial, social and legal barriers.

The report uses the term “children with mental disabilities” to refer to children with intellectual, developmental, cognitive and/ or psycho-social disabilities.¹¹ These terms are not exclusive, and it is recognised every child has multiple aspects to their identity. One of the most common barriers which children with mental disabilities face when they come into contact with justice systems is discriminatory procedures. In this report, “disability discrimination” is used with reference to Article 2 of the CRPD, which defines it as “any distinction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.”

6 Rannveig Trausdóttir, “Disability Studies, the Social Model and Legal Developments” in Oddný Mjöll and Gerard Quinn (eds.), *The UN Convention on the Rights of Persons with Disabilities* (Leiden: Martinus Nijhoff Publishers, 2009), 3-16.

7 See, for example, Clare Edwards et al., *Access to Justice for People with Disabilities as Victims of Crime in Ireland*, (University of Cork, February 2012), 127.

8 Eilíonóir Flynn, *Disabled Justice? Access to Justice and the UN Convention on the Rights of Persons with Disabilities* (Farnham: Ashgate, 2015), Chapter 3.

9 “Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice”, Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies, available online at: www.coe.int/t/childjustice (last accessed: 27 March 2015).

10 See, for example: Mental Disability Advocacy Center, *Legal Capacity in Europe* (Budapest: MDAC, 2013), 12-13.

11 A detailed definition of these terms is provided below.

“Reasonable accommodations” are those forms of individualised supports and adjustments necessary to ensure that people with disabilities, including children, can enjoy and exercise their fundamental rights, without imposing an undue burden on the organisation providing the adjustments (Article 2, CRPD).

Who are people with mental disabilities?

This term is used to refer to people with intellectual, developmental, cognitive or psycho-social disabilities.

People with intellectual disabilities generally have greater difficulty than most people with intellectual and adaptive functioning due to a long-term condition that is present at birth or before the age of eighteen. Developmental disability includes intellectual disability, and also people identified as

having developmental challenges including cerebral palsy, autism spectrum disorder and fetal alcohol spectrum disorder. Cognitive disability refers to difficulties with learning and processing information and can be associated with acquired brain injury, stroke and dementias including Alzheimer’s disease.

People with psycho-social disabilities are those who experience mental health issues or mental illness, and/or who identify as mental health consumers, users of mental health services, survivors of psychiatry or mad.

These are not mutually exclusive groups. Many people with intellectual, developmental or cognitive disabilities also identify or are identified as having psycho-social disabilities.



Structure and Methodology

This report is in two parts. The first synthesises relevant UN and European legal standards on access to justice and applies these to the particular position of children with mental disabilities. In doing so, the report proposes a set of human rights indicators to assess the extent to which access to justice for these children is implemented. This approach draws on analytical guidance developed by the Office of the UN High Commissioner for Human Rights (OHCHR) on measuring the implementation of human rights.¹²

Three clusters of indicators are presented:

1. **Cluster I - ‘Law, Monitoring and Complaints’** provides four structural indicators relating to ratification of international law, national policies on accessibility, independent monitoring bodies and complaints mechanisms.
2. **Cluster II – ‘Participation in Justice Processes’** sets out process indicators to assess the extent to which children can meaningfully and safely engage with justice systems, including whether legal systems address their best interests, accessibility measures taken to improve overall access to legal systems, the availability and provision of individualised reasonable accommodations, and measures to protect personal data.
3. **Cluster III – ‘Facilitating Access to Justice’** sets out process indicators on legal representation, legal aid, and training for justice professionals.

The report does not examine outcome indicators, which OHCHR guidance define as “indicators [that] capture individual and collective attainments that reflect the state of enjoyment of human rights in a given context.”¹³ The variety of legal systems and lack of a common approach to ensuring access to justice for people with disabilities more generally rendered it unfeasible within the remit of this report to develop outcome indicators: that is a task for the future. Analysis of the structural and process indicators will enable governments and EU bodies to develop a common approach which then results in the collection of comparative outcome data. An essential aspect to this will be the creation of a common methodology for collating qualitative data on the experiences of children with mental disabilities themselves when they come into contact with justice systems.

The second element of this report is the presentation of findings per indicator. This draws on primary and secondary research in ten EU Member States. Data collection took place over three phases between September 2013 and March 2014. Researchers came from a variety of academic and practice domains, each collecting information via standardised methodologies.

The first stage comprised of secondary data collection, beginning with a desk-based review of information in the public domain on law, policy and media reports. The second stage involved researchers conducting a more detailed investigation including contacting regulatory bodies for information unavailable publically.

12 United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation*, HR/PUB/12/5, (New York and Geneva: OHCHR, 2012).

13 Ibid., 10.

The third stage consisted of primary empirical research including interviews and focus groups with parents of children with mental disabilities and justice professionals who come into contact with such children. Interviewees shared their experiences of children with mental disabilities coming into contact with justice systems across Europe, and provided invaluable real-life information showing the gap between policy and practice.¹⁴

The research generated a large volume qualitative research information. Thematic analysis was conducted, through which patterns and commonalities were identified across jurisdictions. These findings fed into further refining the structure and process indicators (outlined above).

The report has several limitations. One is the paucity of publicly-available data on children with disabilities, the lack of information about their contact with justice systems and limited existing research on access to justice for children with or without disabilities. The lack of statistical data relating to the experience of children in justice systems was particularly startling, and even where some data existed it was not disaggregated to include disability or different categories of disability.

As a consequence of this, the findings in this report rely significantly on qualitative data by way of testimonies of

children, parents and professionals. To protect the identity of children and participants their personal identities have been anonymised.

A number of other outputs have also been developed in the course of the project,¹⁵ including:

- Two data gathering reports setting out the international and European standards on data collection, why collecting data (especially disaggregated data) is important for informing policy development for children with mental disabilities and where data was lacking in the participating countries;
- An online training and education tool for justice professionals who come into contact with children with mental disabilities. This provides an overview of the human rights standards such professionals should know about (including a suggested syllabus), a collection of promising practices and training programmes across Europe and a bibliography on training and education materials; and
- Factsheets, per each participating country, on the key barriers to justice for children with mental disabilities reported in each of the participating countries.



Acknowledgements

This report has been written as part of the project “Access to Justice for Children with Mental Disabilities” (“the Project”) and has been co-funded by the Fundamental Rights and Citizenship Programme of the European Union.

The Project was led by the Mental Disability Advocacy Center (MDAC) and a project management team. The report is based on research compiled by the project partners in the ten project countries with input from members of an expert panel members and consultant Vanessa Sedletzki.¹⁶ We are also grateful to Justice Winter for her foreword to this report.

This report was compiled by Katherine Morley (previously MDAC Project Manager), Steven Allen (MDAC Advocacy and Communications Director), Ann Campbell (MDAC Litigation Director) and Oliver Lewis (MDAC Executive Director). Anna Zeller (MDAC Project Assistant) provided assistance, and Ádám Szklenár (MDAC Digital Media and Communications Assistant) organised design and production.

14 More information about the methodological techniques used during this research can be found in the sister report: Anna Lawson, *Access to Justice for Children with Mental Disabilities, The Collection and Dissemination of Data: Guidance Report* (Budapest and Leeds: MDAC, 2014).

15 The full set of materials can be found online at www.mdac.org.

16 A list of contributors to the project can be found in Appendix 1.

Cluster I: Law, Monitoring and Complaints – structural indicators

To ensure access to justice for children with mental disabilities, governments must reform judicial institutions to ensure that they are sensitive to the rights of the child. The four indicators presented in this cluster show the path by which national legislation, policy and monitoring systems must be put in place or changed to ensure that children with mental disabilities have an equal claim in national justice systems.

Justice professionals have tended to treat people with mental disabilities as passive recipients of services who are incapable of forming and expressing their own will and preferences. This perspective has begun to shift through the development of international human rights laws through the 1990s, culminating in the adoption of the UN Convention of the Rights of Persons with Disabilities (“CRPD”) in 2006.

With regard to children, the adoption of the UN Convention on the Rights of the Child (“CRC”) in 1989 is significant not least because it has become the most widely ratified international human rights treaty. In many ways it has changed the way societies around the world treat children by encouraging their recognition as subjects with rights rather than objects of care. Similarly, the CRPD represents a change from objectifying people with disabilities towards recognising them as bearers of rights who are entitled to make decisions about their lives and to be active participants in society on an equal basis with others.

The rights set out in the CRPD address many areas of life and law: justice, education, healthcare, transportation, independent living in the community, protection from violence and abuse, respect for privacy, liberty, freedom of expression and access to information. The Convention underlines that children with disabilities are entitled to the full enjoyment of human rights on an equal basis with others,¹⁷ and points out that societies should respect the evolving capacities of children with disabilities.¹⁸

Likewise, the CRC sets out fundamental rights guaranteed to all children without discrimination, including on the basis of disability.¹⁹ In its interpretation of the CRC, the UN Committee on the Rights of the Child (“CRC Committee”) has explained that “effective remedies must be available to redress violations”. It goes on to explain that:

“Children’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration.”²⁰

Throughout Europe and beyond, justice systems are frequently inaccessible, inflexible and fail to uphold the rights of children with disabilities. To address these recurrent problems governments must ensure their justice systems are accessible to children with mental disabilities and they must ensure that justice professionals are fully trained to facilitate access to justice.

Building on these standards, the Committee of Ministers of the Council of Europe adopted the Child-friendly Justice Guidelines for use by professionals working in the criminal, civil or administrative justice systems.²¹

These guidelines detail operational advice on the rights of children to information, representation and participation. They also set out obligations including the protection of the child’s privacy, the protection of the child’s safety, the adoption of a multidisciplinary approach to juvenile justice and the training of all professionals involved in the administration of justice on the rights of the child. They push for justice systems to become more accessible and accommodating for particular groups of children such as the girl child, children with disabilities and children from ethnic minorities who may require further adjustments to enable them to obtain justice on an equal basis with other children.

Children with mental disabilities may be non-verbal, meaning that they may not be able to communicate in ways which people can easily understand. They may not be able to access information which other children can understand and they may behave in ways with which justice professionals may be unfamiliar. Barriers exist where adjustments and supports are not provided to accommodate these characteristics.

17 Convention on the Rights of Persons with Disabilities (CRPD), Article 7.

18 CRPD, Article 3(h).

19 CRC, Article 2(1)

20 United Nations Committee of the Rights of the Child, General Comment No. 5: General Measures for Implementation of the Convention on the Rights of the Child, 3 October 2003, CRC/GC/2003/5, available online at <http://tb.ohchr.org/default.aspx?Symbol=CRC/GC/2003/5> (last accessed: 27 March 2015), para. 24.

21 “Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice”, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies, available online at www.coe.int/t/childjustice (last accessed: 27 March 2015).

Children with mental disabilities are at a greater risk than other children to particular types of human rights violations including long-term institutionalisation, educational segregation, exploitation, violence and abuse in institutions and the denial of supports to allow them to live in the community.

Analysis of global research conducted in 2012 showed that children with disabilities are three to four times more likely to be victims of violence than children without disabilities.²² The CRC Committee has explained that a variety of factors increase the vulnerability of children with disabilities to abuse, include needing assistance with eating, dressing and washing; living in institutional care; and being ignored if they have communication differences.²³

The following four indicators set out how governments should dismantle barriers to access to justice for children with mental disabilities, specifically at a minimum by ratifying international human rights law; putting in place policies and programmes to operationalise those international laws in their countries and adopting national plans to increase access to justice; establishing a national inspectorate to monitor human rights inside institutions; and establishing complaints systems accessible to all.



Indicator I.1 The Government has ratified and domesticated international human rights law on the rights of the child and the rights of persons with disabilities

The UN Convention on the Rights of the Child (“CRC”) and the UN Convention on the Rights of Persons with Disabilities (“CRPD”) are the two most important international treaties which set out the right to access justice and related rights for children with mental disabilities.

Ratifying international treaties does not in and of itself help people who the treaty is supposed to help. It is only when governments and parliaments act to domesticate (that is, by adopting laws, policies and programmes at the national level) that international human rights law has any meaning for actual people, because they have legal rights which they can claim, and mechanisms to seek justice when things go wrong. The binding nature of international law requires that governments bring their domestic legal systems into compliance with their international legal obligations. Article 4 of both the CRC and CRPD set out general obligations on States Parties to implement their obligations through undertaking legislative and administrative measures (CRC and CRPD) and through modifying or abolishing discriminatory laws, regulations, customs and practices (CRPD).

Both Conventions are overseen by committees of international experts that monitor implementation and provide recommendations to States Parties. Recognising the problem that some groups of society are subjected to multiple and intersectional forms of discrimination,²⁴ these bodies have increasingly emphasised the need for joined up implementation of international human rights law by States. In this vein, the UN Committee on the Rights of Persons with Disabilities (“CRPD Committee”) has told governments to, “examine their laws to ensure that the will and preferences of children with disabilities are respected on an equal basis with other children.”²⁵ It has also told them to, “undertake a comprehensive review of all domestic laws and related regulations in order to ensure that all provisions of the Convention are applicable to all children, *including children with disabilities who should be mentioned explicitly, where appropriate.* National laws and regulations should contain clear and explicit provisions for the protection and exercise of the specific rights of children with disabilities”²⁶ (emphasis added).

22 Lisa Jones et al., “Prevalence and risk of violence against children with disabilities: a systematic review and meta-analysis of observational studies”, *Lancet* 379: 9826 (2012), 1621-1629, available online at <http://press.thelancet.com/childrendisabilities.pdf> (last accessed: 27 March 2015).

23 United Nations Committee on the Rights of the Child, General Comment No. 9: The rights of children with disabilities, 27 February 2007, CRC/C/GC/9, available online at <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/GC/9> (last accessed: 27 March 2015), para. 43.

24 See, for example: Office of the High Commissioner for Human Rights, *Minority Rights: International Standards and Guidance for Implementation*, HR/PUB/10/3 (New York and Geneva: United Nations, 2010), available online at: http://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf (last accessed: 27 March 2015).

25 United Nations Committee on the Rights of Persons with Disabilities, General Comment No.1: Article 12. Equal recognition before the law, 11 April 2014, CRPD/C/GC.1, available online at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/1 (last accessed: 27 March 2015), para. 36.

26 CRC Committee, General Comment No. 9, para. 17.

Indicator I.2. The Government has adopted national policies which include an objective to increase access to justice for children with mental disabilities

Beyond legislation, Governments should have national plans (these may be called policies, strategies, frameworks or other things) in place that show how the rights of children and persons with disabilities will be implemented in practice. It is important that these plans are guided by core principles, including:

- non-discrimination (Article 2 CRC, Articles 3(b) and 5 CRPD);
- the best interests of the child (Article 3 CRC, Article 7(2) CRPD);
- recognition of the evolving capacities of the child (Article 5 CRC, Article 3(h) CRPD);
- equal protection and equal benefit of the law (Article 5 CRPD);
- participation and inclusion in society (Article 12 CRC, Article 3(c) CRPD); and
- accessibility, universal design and the provision of reasonable accommodations (Articles 3(f), 4(f), 5(3) and 9 CRPD).

The CRC Committee has said that States must, “develop and effectively implement a comprehensive policy by means of a plan of action which not only aims at the full enjoyment of the rights enshrined in the Convention [on the Rights of the Child] without discrimination but which also ensures that a child with disability and her or his parents and/or others caring for the child do receive the special care and assistance they are entitled to under the Convention.”²⁷ Similarly the CRPD Committee has specified that, “States parties should adopt action plans and strategies to identify existing barriers to accessibility, set time frames with specific deadlines and provide both the human and material resources necessary to remove the barriers. Once adopted, such action plans and strategies should be strictly implemented.”²⁸



Indicator I.3. An independent national body is established in law to monitor, protect and promote the rights of children with mental disabilities, including monitoring institutional settings

The United Nations has established a patchwork of provisions which tell States to establish and fund independent organisations to monitor rights. National Human Rights Institutions (NHRIs) are supposed to promote and protect human rights in each country. Guided by a universally-accepted document called “the Paris Principles”,²⁹ NHRIs should be independent of government, and mandated to provide advice on law and policy reform and harmonisation, identification of human rights violations, and undertaking a variety of monitoring functions. They also have a crucial role in responding to multiple and intersectional discrimination, such as those faced by children with mental disabilities on account of their age and impairments.

Article 33 of the CRPD further requires governments to establish or designate national independent human rights monitoring mechanisms to promote, protect and monitor the implementation of the CRPD. Article 16(3) of the CRPD requires governments to ensure that “all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities to prevent the occurrence of all forms of exploitation, violence and abuse.”

27 CRC Committee, General Comment No.9, para. 13.

28 United Nations Committee on the Rights of Persons with Disabilities, General Comment No. 2: Article 9. Accessibility, 11 April 2014, CRPD/C/GC/2, available online at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/2 (last accessed: 27 March 2015), para. 33.

29 UN General Assembly, Resolution 48/34: Principles relating to the Status of National Institutions (The Paris Principles), 20 December 1993, A/RES/48/134.

Over one million children in Europe reside in residential institutions, a problem which is particularly pronounced in Central and Eastern Europe.³⁰ Many of these institutions are closed to the public and deprive children with mental disabilities of their liberty (and often other rights too). As such, they come within the definition of “places of detention” under the Optional Protocol to the UN Convention against Torture (OPCAT). This piece of international law requires governments to establish a national preventive mechanism (NPM) to carry out visits to all places where people may be detained.³¹

These national monitoring bodies are supplemented by a number of international bodies which governments have an obligation to cooperate with. OPCAT establishes the Subcommittee for the Prevention of Torture (SPT) which carries out visits to places of detention in countries which have ratified OPCAT. The SPT has the authority to meet with anyone in private and look at all documentation.³² The SPT’s European sister is the Committee for the Prevention of Torture, established by the CoE to visit places of detention in order to prevent torture, inhuman and degrading treatment across the 47 Member States of the Council of Europe.³³



Indicator I.4. Effective complaints procedures exist in all facilities which serve children with mental disabilities

The institutionalisation of children with disabilities is a widespread phenomenon which places them at a higher risk of being denied their dignity, their education and their development.³⁴ In addition, people with intellectual disabilities or psycho-social disabilities are more likely to become vulnerable to abuse in such settings.³⁵ Children with mental disabilities living in institutions are more likely to be denied inclusive education than children living in the community,³⁶ are more likely to be isolated from family and friends, and may experience other violations including forced medical treatment, chemical or physical restraint and seclusion.³⁷

Children with mental disabilities, just like all children, have the right to live in the community with their families (Article 19 CRPD). The UN Guidelines for the Alternative Care of Children provide that “children in care should have access to a known, effective and impartial mechanism whereby they can notify complaints or concerns regarding their treatment or conditions of placement”.³⁸ For complaints procedures to be meaningful they must provide a clear process for investigation and resolution and provide clear lines of accountability, reporting, monitoring and increase shared learning.³⁹

30 Paulo Sergio Pinheiro, *World Report On Violence Against Children – Secretary General’s Study on Violence Against Children* (Geneva: OHCHR, UNICEF, WHO, 2006), 183.

31 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), Article 3.

32 OPCAT, Article 14.

33 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Article 17.

34 World Health Organization and World Bank, *World Report on Disability* (Geneva: WHO, 2011), 147.

35 Karen Hughes et al., “Prevalence and risk of violence against adults with disabilities: a systematic review and meta-analysis of observational studies”, *Lancet* 379: 9826 (2012), 1621-1629.

36 See, for example: European Committee of Social Rights, Decision on the Merits: Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision 3 June 2008.

37 Professor Hilary Brown, *Safeguarding adults and children with disabilities against abuse* (Strasbourg: Council of Europe, 2003).

38 United Nations General Assembly, Resolution No 64/142: Guidelines for the Alternative Care of Children, 24 February 2010, A/RES/64/142, available online at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/142 (last accessed: 27 March 2015), para 99.

39 Department of Health, Social Services and Public Safety, UK, “Complaints in Health and Social Care, Standards & Guidelines for Resolution & Learning” (London: HMSO, 2009), introduction and para. 1.6.

Research findings

Indicators 1.1 and 1.2: International law and national plans

All of the countries covered in the research have ratified the CRC. Of the ten countries, only Ireland, has not yet ratified the CRPD, despite committing to do so “as quickly as possible.”⁴⁰

Apart from Slovenia, all countries have a national disability policy framework.⁴¹ The Bulgarian, Czech and Romanian frameworks, however, expired in 2014 and have not been replaced.⁴² All countries except Hungary and the UK have a children’s policy framework, however, the Romanian framework expired in 2014 and the government is developing a new one.⁴³

Researchers did not find any specific references to children with mental disabilities in their national children’s or disability frameworks, suggesting a lack of joined up work to strengthen the rights of these children at national levels.

Our research also shows that national plans have not resulted in a significant decrease in the segregation of children with mental disabilities in residential institutions.⁴⁴ Researchers in Bulgaria, Czech Republic, Hungary, Latvia, Lithuania and Romania all reported deeply embedded cultures in favour of institutionalising children with mental disabilities. Researchers found that their placement in social care institutions was commonly the first solution proposed to parents, rather than as a temporary last resort where the child’s health or welfare is in imminent and serious danger.

The lack of focus on the rights of children with mental disabilities at the domestic level is exacerbated by the fact that a number of the countries have also failed to ratify the international complaints mechanisms established by the third Optional

Protocol to the Convention on the Rights of the Child (“OP3-CRC”)⁴⁵ and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (“OP-CRPD”).⁴⁶ Only Spain and Ireland have ratified OP3-CRC (Romania and Slovenia have signed but not ratified).⁴⁷ Six of the ten countries have ratified OP-CRPD, the exceptions being Bulgaria, Czech Republic, Ireland and Romania.⁴⁸

Indicator 1.3: Monitoring

Researchers found a significant variance in standards and forms of human rights monitoring across project countries, and a lack of common approaches and methodologies. One of the issues was a lack of coordination of mandates between national human rights institutions (NHRIs), independent monitoring mechanisms where they existed, and other equality bodies. Researchers were unable to find any national authorities with a specific mandate or focus on protecting and promoting the rights of children with mental disabilities.

In Romania and Lithuania, no independent state authority has a specific mandate to monitor the rights of children living in institutions.

In the Czech Republic, the rights and welfare of some children with mental disabilities living in institutional care are monitored and others not. Children with mental disabilities in the Czech Republic can be placed in institutions either through a court procedure⁴⁹ or through a private placement arrangement between the parents and the institution.⁵⁰ The Czech Social and Legal Protection Authority takes the view that children placed into institutions by their parents fall outside their monitoring mandate.⁵¹ On the other hand, a child who is placed in an institution through a court order is visited every three months.⁵²

40 Statement of Minister of State at the Department of Justice and Equality in the Dáil Éireann, 27 February 2014, available online at: [http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/\(indexlookupdaily\)/20140227~H?opendocument#H00700](http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/(indexlookupdaily)/20140227~H?opendocument#H00700) (last accessed: 27 March 2015).

41 See: Academic Network of Disability, “DOTCOM: the Disability Online Tool of the Commission”, table B5. ‘National disability strategy and action plan’, available online at http://www.disability-europe.net/dotcom?term%5B%5D=194&term%5B%5D=196&term%5B%5D=203&term%5B%5D=205&term%5B%5D=207&term%5B%5D=208&term%5B%5D=215&term%5B%5D=217&term%5B%5D=218&term%5B%5D=220&term%5B%5D=231&view_type=matrix (last accessed: 27 March 2015).

42 Ibid.

43 European Union Agency for Fundamental Rights, “Mapping child protection systems in the EU: National policy framework (action plan or strategy)”, available online at <http://fra.europa.eu/en/publications-and-resources/data-and-maps/comparative-data/child-protection/national-policy/> (last accessed: 23 March 2015).

44 See also: UNICEF, Division of Data Research and Policy, *Hidden in Plain Sight: A statistical analysis of violence against children* (New York: UNICEF, 2014), available online at http://files.unicef.org/publications/files/Hidden_in_plain_sight_statistical_analysis_EN_3_Sept_2014.pdf (last accessed: 27 March 2015), 58.

45 Optional Protocol to the Convention on the Rights of the Child on a communications procedure, entered into force 14 April 2014.

46 Optional Protocol to the Convention on the Rights of Persons with Disabilities, entered into force 3 May 2008.

47 United Nations Treaty Collection, Optional Protocol to the Convention on the Rights of the Child on a communications procedure, status of ratifications, Chapter IV.11.d., available online at: <https://treaties.un.org/pages/viewdetails.aspx?src=treaty&msgid=no=iv-11-d&chapter=4&lang=en> (last accessed: 27 March 2015).

48 United Nations Treaty Collection, Optional Protocol to the Convention on the Rights of Persons with Disabilities, status of ratifications, Chapter IV.15.a., available online at <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&msgid=no=IV-15-a&chapter=4&lang=en> (last accessed: 27 March 2015).

49 Civil Code, Act no. 89/2012 Coll., section 971.

50 Social and Legal Protection of the Child, Act no. 359/1999 Coll., section 42; and Social Services, Act no. 108/2006 Coll., section 91.

51 Social and Legal Protection of the Child, Act No. 359/1999 Coll., section 29(2)(a), which states that the visiting of children in institutional care is only obligatory with respect to children placed into an institution by order of the court or by a protective upbringing decision. At seminar organised by Quip in November 2014 on the Participatory Rights of Children with Mental Disabilities it was reported that workers of the Social and Legal Protection Authority only visit children placed under such mandatory orders. You can see more detail here: <http://www.kvalitavpraxi.cz/res/data/026/002973.pdf> (last accessed: 27 March 2015).

52 Social and Legal Protection of Children, Act No. 359/1999 Coll., section 29(2).

In Hungary, only twenty Children's Rights Representatives are mandated to monitor the rights of 22,000 children in the country placed into protective care (including institutions, foster parent homes and children's homes)⁵³. This has been criticised by UNICEF and other NGOs⁵⁴, and the Ombudsman.⁵⁵

The Children's Rights Inspectorate in Latvia has a broad mandate to visit all institutions, community settings and other places where children live to monitor their rights.⁵⁶ As a result the inspectorate has investigated several allegations of abuse of children with mental disabilities which have resulted in successful criminal convictions. In 2012, for example, the inspectorate monitored seven child care institutions.⁵⁷ It found violations of the rights of 11 children who had suffered ill-treatment. Four children had suffered emotional abuse from peers, three children has experienced physical violence and four children had been victims of sexual abuse.⁵⁸ In a further 29 cases it was found that managers and staff of the institutions had failed to ensure that children received appropriate healthcare.⁵⁹

In order to promote protection of the rights of a child a programme was introduced in 2013-14 called "Sexual Violence Risk Assessment and Preparation of Recommendations to Prevent Sexual Violence in Institutions for Children with Mental Disabilities."⁶⁰ This government-funded programme was implemented in 5 of 40 institutions. Other methods are applied to monitor protection of the rights of a child in institutions where resides children with severe mental disabilities who do not verbally communicate. Inspectors spend 48 hours at each institution to assess the rights and welfare of the children living in them. However introduced programme to assess sexual violence risks is an exception and not yet implemented as targeted monitoring method for all institutions in Latvia.

In Romania there is no official independent monitoring of institutions where children with mental disabilities reside. Following protracted litigation, the Romanian Centre for Legal Resources (CLR) was provided access to institutions that provide service for persons with disabilities. CLR publishes its monitoring findings in annual reports but the Romanian Government largely ignores its recommendations.

Indicator 1.4: Complaints systems

Researchers found that complaints mechanisms, where they existed, were often inaccessible to children with mental disabilities. Where such mechanisms did exist, researchers noted that children were not always provided with information about them in a way that they could understand. Additionally, no disaggregated data was found which showed the take-up of complaints by children with mental disabilities related to their human rights.

Children with mental disabilities in a social care institution in the Czech Republic told a researcher that they did not know who they should contact if they felt unhappy or if they were being hurt. When asked what they would do, the children said they would hide or run away.⁶¹

In Bulgaria, Hungary, Latvia and Romania researchers reported the failure of police to properly investigate criminal complaints where children with mental disabilities were victims. For example, in Latvia, a parent recounted her experience of the police investigating the abuse of her son with a severe mental disability who was non-verbal. Her son sustained injuries which a doctor said indicated sexual abuse and each time her son had to interact with the school nurse he became agitated. The mother asked the police to investigate whether the school nurse had abused her son. The police launched an investigation but dismissed it because the police concluded they could not properly investigate the matter if her son could not verbally tell them what happened. The mother told a researcher: "My child is absolutely unprotected."⁶²

Researchers in Bulgaria, Latvia and Romania also reported that, on admission to an institution, staff members are appointed to be responsible for each child's welfare. However, the same staff person may also be appointed as the child's legal guardian. In Romania,⁶³ Bulgaria⁶⁴ and Latvia⁶⁵ legal representatives can include the institution director or staff members. This represents a clear conflict of interest and a lack of access to independent complaints mechanisms.

The situation was similar in Hungary, however a recent change in legislation requires independent state appointed Child Protection Guardians to be appointed as a child's guardian, not the head of an institution or other staff members, when they are institutionalised.⁶⁶

53 Child Protection Act (Act XXXI of 1997), section 11(a).

54 *Alternative - NGO - Report on the Implementation of the UN CRC In Hungary 2006 - 2012* (Budapest: Csálad, Gyermek, Ifjúság Egyesület, 2012), available online at http://www.csagy.hu/images/stories/kutatas/civiljelentes/civil_angol.pdf (last accessed: 27 March 2015).

55 Commissioner for Fundamental Rights, Report No. AJB-5863/2012.

56 Cabinet of Ministers Regulation No. 898, 29 November 2005. By-law of the State Inspectorate for Protection of Children's Rights, Articles 3 and 5.

57 *Report: The State Inspectorate for Protection of Children's Rights Public Report 2012* ["Pārskats: Valsts bērnu tiesību aizsardzības inspekcijas 2012. gada publiskais pārskats"], available in Latvian online at http://www.bti.gov.lv/lat/zinas_par_iestadi/parskati_un_atskaites/?doc=3317&page (last accessed: 27 March 2015), 1.

58 Protection of the Rights of the Child, Article 9(2) states: "a child shall not be treated cruelly, tortured or physically punished, and his or her dignity and honour shall not be violated."

59 In accordance with the Protection of the Rights of the Child Law, Article 72, Part 1.

60 Available online in Latvian at: http://www.lm.gov.lv/upload/berns_gimene/vp_2013.pdf (last accessed: 27 March 2015).

61 Interview with children in a residential institution in Hradec Králové region, Czech Republic: 11 March 2014.

62 Account of a parent during a focus group discussion with parents who have children with mental disabilities, Riga, Latvia: 27 February 2014.

63 Law No. 272/2004 on the Rights of the Child, Articles 66(3) and 68(5). See also: Center for Legal Resources, *Summary Report. Monitoring Visits. October 2013-March 2014*, (Bucharest: CLR, 2014), available online at <http://www.crl.ro/userfiles/editor/files/summary-report%20-%20eng.pdf> (last accessed: 27 March 2015), 6.

64 Family Code 2009, Article 173(1).

65 Law on Orphan's Court 2011, section 35: Placement of a Child in an Institution of Long-Term Social Care and Social Rehabilitation.

66 Child Protection Act (Act XXXI. of 1997), as amended, section 75(c).

Recommendations

- A.** Ireland should ratify the CRPD without any further delay.
- B.** Bulgaria, Czech Republic, Hungary, Latvia, Lithuania, Romania, Slovenia and the UK should ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.
- C.** Bulgaria, Czech Republic, Ireland and Romania should ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities.
- D.** Bulgaria, Czech Republic and Romania should update their national disability policies and action plans. All governments should review their national disability policies and action plans, and place a specific focus on dismantling barriers to access to justice for children with mental disabilities.
- E.** Hungary, Romania and the UK should immediately take steps to develop national children's rights policies and action plans. All governments should update their national frameworks to take into account the rights of children with mental disabilities, and specifically increasing their access to justice.
- F.** All governments should review national deinstitutionalisation policies relating to children, and should firm up political commitments for each child to transition into community-based living settings. Deinstitutionalisation programmes must develop comprehensive and accessible community-based services to ensure that children with mental disabilities can live independently in the community, and that they can claim this right through the courts.
- G.** All governments should conduct an analysis of domestic law, policy and justice systems to identify barriers to accessing justice for children with mental disabilities, and undertake legislative and policy amendments where necessary to eliminate those barriers found.
- H.** To assist with the development a common European approach, the European Union (in collaboration with the Council of Europe) should commission research and provide technical assistance to governments in amending their national legal and policy frameworks.
- I.** Governments of all countries should:
 - a.** assess the mandates of relevant human rights monitoring bodies (including national human rights institutions, national preventive mechanisms, and independent monitoring mechanisms, to ensure that the bodies are working in collaboration to promote, protect and fulfil each child's rights;
 - b.** ensure independent inspectorates are mandated and resourced to regularly visit all children with mental disabilities living in institutional care and/or receiving public services. Such visits should be for the purpose of monitoring their human rights, including their right to education and freedom from ill-treatment;
 - c.** ensure all children living in institutions are appointed with a representative who is independent from the institution and from the government. The representative must also ensure the child is assisted to complain and promotes the child's rights and best interests, and facilitates access to legal representation. Their core role should be to assist in getting the child out of the institution and into the community with an individualised support package;
 - d.** ensure all children living in institutions are informed of their right to complain, how to complain and who can help them to complain;
 - e.** ensure that all complaints procedures in institutions are accessible to children with mental disabilities;
 - f.** ensure that all complaints procedures provide a clear process of investigation that is independent, transparent, respectful and ensure rights violations result in proper investigation and redress; and
 - g.** ensure that a child who complains is protected from retaliatory actions by those responsible for his/her care and wellbeing.
- J.** Governments of all countries must ensure all professionals that come into contact with children with mental disabilities have a legal duty of care to promote that child's best interests which includes reporting any rights violations the child suffers to the relevant authorities. The failure of professionals working with children with mental disabilities to report rights violations at the earliest opportunity should attract disciplinary penalties. Whistle-blower protection should also be in place.



Cluster II:

Participation in Justices Processes

– process indicators

Children with mental disabilities – like all children – can interact with justice systems in various ways. They can be victims, witnesses, defendants, alleged offenders, convicted offenders or have a stake in civil and administrative proceedings.

Civil judicial proceedings often result in significant decisions in the lives of children, including about where and with whom they should live. Children with mental disabilities could therefore encounter these proceedings at a number of points, such as following a breakdown of their parents and decisions about which parent should have custody rights, or decisions about where the child should live if parents are not able to bring up the child.

Children with mental disabilities may encounter administrative proceedings where decisions are being made about their education. This might include decisions to provide learning supports and classroom assistance, and decisions about whether a child is educated in a mainstream or segregated educational environment (notwithstanding each child's right to an inclusive education).⁶⁷

While all children experience barriers to participating in judicial procedures, children with mental disabilities are likely to experience some barriers more acutely. These include structural barriers arising from how the different systems relate to each other and who takes responsibility for supporting children with mental disabilities through these systems; procedural barriers arising from the complexity of legal systems and the rigidity of many formal court processes; and attitudinal barriers where justice professionals have negative assumptions about the capacity of children with mental disabilities.⁶⁸

Breaking down such barriers requires general measures including the development and implementation of accessibility standards and universal design,⁶⁹ along with a flexible and sensitive approach to identifying and addressing the individual support and communications needs of each child.⁷⁰

Inclusion and participation should be the goal. A purely welfare-based approach to justice (where well-meaning decisions are made on behalf of the child without any reference to the child's wishes or feelings) is insufficient. Article 12 of the CRC obliges countries to establish systems in which children's views are heard and considered:

“...the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

The European Union has called on Member States to take steps to ensure that all children are “genuinely heard” in all matters that affect them, and that children in vulnerable situations “should receive special attention”.⁷¹ The CRC Committee has also explained that children must be provided support which assists them to “form an autonomous opinion to the greatest extent possible”⁷² (emphasis added) in matters that affect them. The CRPD also requires that governments provide “disability and age-appropriate assistance” to ensure that children with disabilities can access and enjoy their rights on an equal basis with other children,⁷³ including in the administration of justice.

General obligations

The CRPD Committee has consistently expressed the need for governments to adopt “suitable legal frameworks” to ensure that persons with disabilities can access “services open to the public”.⁷⁴ In the context of judicial systems, suitability means that governments should “either directly guarantee this right, or adopt or revise laws so that this right can be fully enjoyed by the child.”⁷⁵ The CRPD Committee advises governments to “examine their laws to ensure that the will and preferences of children with disabilities are respected on an equal basis with other children.”⁷⁶

67 CRPD, Article 24.

68 Claire Edwards, Gillian Harold and Shane Kilcommins, *Access to Justice for People with Disabilities as Victims of Crime in Ireland* (University College Cork, School of Applied Social Studies and Centre for Criminal Justice and Human Rights, Faculty of Law, February 2012), available online at http://nda.ie/ndasitefiles/NDA_Access_to_Justice.pdf (last accessed: 27 March 2015), 140.

69 CRPD Committee, General Comment No. 2, paras. 14-15.

70 CRPD, Article 5(3).

71 European Council, *The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens*, 4 May 2010, C 115/2, available online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF> (last accessed: 27 March 2015), para. 2.3.2.

72 CRC Committee, General Comment No. 12, para. 20. Emphasis added.

73 CRPD, Article 7(3).

74 CRPD Committee, General Comment No. 2, paras. 27-8.

75 CRC Committee, General Comment No. 12, para. 15.

76 CRPD Committee, General Comment No. 1, para 36.

In addition, governments should remove barriers which discriminate against children with disabilities.⁷⁷ Rules of procedure and evidence in national legal systems that give less significance to the testimonies of children with intellectual or cognitive impairments must be amended. Supports should be provided to children to express their will and preferences.

The CRC Committee has recommended that all justice processes in which children are expected to participate must be transparent, informative, voluntary, respectful, relevant, child-sensitive, supported by training, safe, sensitive to risk and accountable.⁷⁸ The Committee emphasises that a judicial hearing “is a difficult process that can have a traumatic impact on the child”.⁷⁹

In meeting these international and European standards a number of general accessibility measures can contribute to ensuring that children with mental disabilities can more directly participate in legal processes. These include:

- Undertaking accessibility audits of courts and judicial rules and implementing national accessibility plans;
- Providing information to the public about justice systems and processes in accessible formats (including easy-read and pictorial formats);
- Using modern information communication technology systems and assistive devices;
- Introducing mandatory provisions to establish procedural accommodations to judicial processes for persons with disabilities; and
- Rolling out general and targeted public awareness campaigns to strengthen awareness.

The UN High Commissioner for Human Rights has pointed out that children must be able to participate in legal processes in an “effective and meaningful way,” including a preference for hearing children directly in legal proceedings without discrimination.⁸⁰ At the same time the best interests principle must always of paramount importance in all legal processes which affect children with mental disabilities.⁸¹

Individual accommodations

General accessibility measures alone are important but not sufficient to ensure that children with mental disabilities can participate in legal processes. Article 13(1) of the CPRD requires States Parties to: “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” (emphasis added). This implies both that legal processes allow for a degree of flexibility which are responsive to the needs of individual children *and* the provision of individualised supports.

The types of assistance available should include sign language, augmentative and alternative communication (including interpreters trained in communicating with children with mental disabilities) and other accessible means, modes and formats of communication of their choice.⁸² An “individual assessment” should be undertaken as soon as a child comes into contact with justice systems. This “assures a role to the children themselves in the decision-making process, and the provision of reasonable accommodation and support, where necessary, to ensure their full participation in the assessment of their best interests.”⁸³

The Child-Friendly Justice Guidelines further explain the importance of a multidisciplinary approach to assessing and providing support to children so that they can access justice, with sensitivity to every child’s individuality and needs:

“A common assessment framework should be established for professionals working with or for children (such as lawyers, psychologists, physicians, police, immigration officials, social workers and mediators) in proceedings or interventions that involve or affect children to provide any necessary support to those taking decisions, enabling them to best serve children’s interests in a given case.”⁸⁴

The following four indicators are derived from these standards.



77 CRC, Article 2; and CRPD, Article 4(1)(b).

78 CRC Committee, General Comment No. 12, para.134.

79 CRC Committee, General Comment No. 12, para. 24.

80 United Nations High Commissioner for Human Rights, Access to Justice for Children, 16 December 2013 A/HRC/25/35, available online at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-35_en.doc (last accessed: 27 March 2015), para. 46.

81 CRC, Article 3(1); and CRPD, Article 7.

82 CRPD, Article 21(b).

83 United Nations Committee on the Rights of the Child, General Comment No. 14: the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC/C/GC/14, available online at http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf (last accessed: 27 March 2015), para. 54.

84 Child-Friendly Justice Guidelines, para 17.

Indicator II.1.

The best interests of the child is a paramount consideration in all processes and procedures involving children with mental disabilities

The CRC establishes firmly that the best interests of the child is a primary consideration in “all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.” This principle means that a child’s welfare, safety and wellbeing must be the primary consideration in all decisions that concern them. The principle emanates from the recognition that adults make decisions on behalf of children on a daily basis: these decisions need to be in the child’s best interests.

CRC Committee has explained the best interests principle entails a right to a best interests assessment, an interpretative legal principle which ensures that laws are interpreted in a way that serves the child’s best interests, and a rule of procedure under which the best interests of the child must be considered through procedural guarantees.⁸⁵ The best interests principle is therefore a central aspect in relation to both the process and the outcome of any proceedings.



Indicator II.2. Justice systems are accessible to children with mental disabilities

Article 9 of the CRPD states that “States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communication, including information and communication technologies and systems, and to other facilities and services open or provided to the public, both in urban and rural areas.”

Article 17 of the CRC also requires States parties to ensure that information promoting children’s social, spiritual, moral, physical and mental wellbeing is provided to them by governments and the media. It also calls for the sharing of such information internationally. Inclusion Europe has produced guidance on how to make information easy to read and understand for people with intellectual disabilities.⁸⁶

The substance, as well as the form, of accessible information is very important. Children with mental disabilities and their parents or guardians must, in the first instance, receive information about their rights, including their rights to participate and to challenge injustice and violations. They must also receive information on how to challenge violations and the supports that are available to them to do so.

The CRPD committee acknowledges that:

“Persons with intellectual and psychosocial disabilities as well as deaf-blind persons face barriers when attempting to access information and communication owing to a lack of easy-to-read formats and augmentative and alternative modes of communication. They also face barriers when attempting to access services due to prejudices and a lack of adequate training of the staff providing those services.”⁸⁷

The CRC Committee has explained professionals must recognise and respect non-verbal forms of communication including play, body language, facial expressions, drawing and painting.⁸⁸ Justice professionals must therefore ensure that children with mental disabilities are equipped with, and enabled to use, any mode of communication necessary to facilitate the expression of their views.⁸⁹ As communication is a two-way process an interpreter or intermediary trained to communicate with children with mental disabilities may also be necessary.⁹⁰

88 CRC Committee, General Comment No. 14, para. 6.

86 Inclusion Europe, “Information for all – European Standards for making information easy to read and understand.” (2014) available online at <http://www.inclusion-europe.org/etr/en/european-easy-to-read-standards> (last accessed: 27 March 2015).

87 CRPD Committee, General Comment No. 2, preamble, para. 7.

88 United Nations Committee on the Rights of the Child, General Comment No. 12: The right of the child to be heard, 1 July 2009, CRC/C/GC/12, available online at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf> (last accessed: 27 March 2015), para. 21.

89 Ibid., para. 20.

90 An intermediary is the term often given to a professional trained in helping to explain the questions put to a child and to explain the answers given by a child.

Indicator II.3.

Justice systems assess the individual needs of each child with a mental disability and ensure that individualised accommodations are made to enable their safe and effective participation

Legal systems and processes should be sufficiently flexible to accommodate a variety of individual needs flowing from the identity and characteristics of each child. In assessing a child's characteristics, the CRC Committee explains:

"The best interests of a child in a specific situation of vulnerability will not be the same as those of all the children in the same vulnerable situation. Authorities and decision-makers need to take into account the different kinds and degrees of vulnerability of each child, as each child is unique and each situation must be assessed according to the child's uniqueness. An individualized assessment of each child's history from birth should be carried out, with regular reviews by a multidisciplinary team and recommended reasonable accommodation throughout the child's development process."⁹¹

The requirement to assess children to determine their needs is therefore a prerequisite to making justice systems accessible to them, to accommodate their needs and protect their best interests. The CRPD defines reasonable accommodation as: "necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."⁹²

The CRPD Committee has explained that "reasonable accommodation seeks to achieve individual justice in the sense that non-discrimination or equality is assured, taking the dignity, autonomy and choices of the individual into account."⁹³

Equally the CRC has explained:

"[E]nvironments and working methods should be adapted to children's capacities. Adequate time and resources should be made available to ensure that children are adequately prepared and have the confidence and opportunity to contribute their views. Consideration needs to be given to the fact that children will need differing levels of support and forms of involvement according to their age and evolving capacities."⁹⁴

Where, for example, a child with a mental disability becomes agitated or anxious in new or formal environment, justice professionals must allow for adjustments that are child-friendly and sensitive to his or her specific needs. These might include providing more break times,⁹⁵ interviewing him/her in familiar and comfortable settings⁹⁶ or allowing a person of trust to accompany them throughout proceedings.

Assessment or screening procedures should be designed in a way that enable children to directly participate in legal processes wherever possible.⁹⁷ Tests which examine cognitive capacities or competence are the wrong approach under international law as they have an exclusionary bias. Instead, the purpose of assessments must be to identify the supports and adjustments children with mental disabilities need to participate in proceedings.



91 CRC Committee, General Comment No. 14, para. 76.

92 CRPD, Article 2.

93 CRPD Committee, General Comment No. 2, para. 26.

94 CRC Committee, General Comment No. 12, para. 134(e).

95 Child-Friendly Justice Guidelines, para. 61: "Court sessions involving children should be adapted to the child's pace and attention span, regular breaks should be planned and hearings should not last too long. To facilitate the participation of children to their full cognitive capacity and to support their emotional stability, disruption and distractions during court sessions should be kept to a minimum."

96 The Child-Friendly Justice Guidelines advocate reducing the number of interviews with children (para. 67), making interview settings more child-friendly (para. 64), and adjusting the way proceedings are conducted to alleviate intimidation and coercion (para. 54).

97 Child-Friendly Justice Guidelines, part III(B)(2).

Indicator II.4. The personal and sensitive data of children with mental disabilities are protected, and they are protected from stigmatisation by the media

Children's privacy must be protected when they come into contact with the justice system,⁹⁸ whether non-judicial (e.g. complaints to an ombudsman) or judicial proceedings. The EU Data Protection Directive defines "personal data" as any information relating to a person through which they can be identified, directly or indirectly.⁹⁹ This includes images, detailed descriptions of the child or the child's family, names or addresses and audio or video records, etc. It also comprises data relating to a child's medical diagnosis, service provision and medical history.¹⁰⁰

The objective of keeping the child's identity private is to protect them from threats, intimidation, retaliation, reprisals and re-victimisation. It ensures that any media reporting does not impair opportunities for rehabilitation and reintegration into the community. The UN Guidelines on Child Victims and Witnesses of Crime recognise privacy as an element of a child's dignity.¹⁰¹

Children with mental disabilities may, however, require their personal and sensitive data to be shared with justice professionals more frequently than other children in order to enable supports to be put in place that accommodate their individual needs.

The personal data of children with mental disabilities must only be shared in accordance with their best interests, wishes and participatory rights; however, this must be subject to confidentiality protections that ensure information is only shared on a need-to-know basis.¹⁰² Further, care must be taken to ensure that those who do need to know such information are only provided with the specific information required in any given situation; only the elements of a child's medical history that are strictly relevant to the provision of a specific accommodating measure should be shared. A child's entire medical history is not likely to be relevant in such cases.¹⁰³

Findings

Indicator II.1. – Best interests

The research suggests that best interests is poorly understood by justice practitioners, particularly in the Czech Republic, Latvia and Lithuania. In these countries the principle has been used to exclude children with mental disabilities from legal processes rather than assessing their needs for support and accommodations.

In the Czech Republic, there is ongoing litigation on behalf of a 14-year-old boy who was denied access to his file by the Social and Legal Protection Authority. According to law the file should only contain information about the child and his family but the Social and Legal Protection Authority, having never consulted the boy, decided it was contrary to the boy's purported "best interests" to see the file. Researchers reported that such situations were not uncommon, and that the approach demonstrated a lack of understanding that accessing justice goes hand in hand with a best interests approach.

In Latvia, representatives of the Orphans' courts told researchers that involving the child in court proceedings could be overly-traumatising and therefore it was better to exclude them. Obtaining the child's view is fulfilled through a psychological evaluation of the child and the judge does not seek the child's views directly. Whilst it is correct to be aware of the stress that legal proceedings can cause to children with mental disabilities, participation can also be empowering. A bias towards excluding children from legal proceedings means that they are less likely to be heard in relation to substantive matters relating to their rights.

In Lithuania, a researcher observed ten civil court hearings and reported that in most cases, judges were interested in the needs and health of the children concerned and also whether their parents were in a position to ensure decent living conditions for them. However, the judges met none of the children and no attempts were made to ascertain their views. The children's wishes did not factor in judicial determinations that had a significant impact on their lives.

98 See, for example: CRC, Article 40(2)(b)(vii); and European Convention on Human Rights (ECHR), Article 6(1).

99 European Parliament and the Council of Europe, Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data, 24 October 1995, 95/46/EC, Article 2(a).

100 Ibid., Article 8(3).

101 UN Guidelines on Child Victims and Witnesses of Crime, Part III, 8(a) ('Principles').

102 Department of Health, UK, *Information: To share or not to share? The Information Governance Review* (London: HMSO, 2013), available online at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/192572/2900774_InfoGovernance_accv2.pdf (last accessed 27 March 2015), 19.

103 Ibid.

Indicator II.2. Accessibility

Individual promising practices and schemes were reported in all project countries, yet in all countries researchers reported that there was a lack of systematic efforts to improve overall accessibility of national judicial systems to children with mental disabilities.

The European Commission for the Efficiency of Justice (CEPEJ) is mandated by the Committee of Ministers of the Council of Europe to improve the efficient functioning of justice systems in Member States, including through evaluation and identification of problems, recommending concrete ways to improve the administration of justice systems, and to provide technical assistance where requested.¹⁰⁴ Member States undertake regular self-evaluation exercises under the guidance for CEPEJ, and provide reports covering a wide range of technical issues. Governments report on measures to improve accessibility for specific groups, such as the use of child-friendly interview rooms¹⁰⁵ and the use of recorded testimony of children to avoid repeat questioning.¹⁰⁶

The governments of Bulgaria, Ireland, Romania and the UK reported that accessible information and special arrangements in courts were available for both children and people with disabilities.¹⁰⁷ However, researchers in Romania¹⁰⁸ and Bulgaria¹⁰⁹ identified that communications aids for people with disabilities were only provided to Deaf, mute, deaf-mute or blind people. Specific communication aids were not made available for people with mental disabilities in these countries.

In the Czech Republic, the government reported that it made accessible information and special arrangements in court available for children but not for people with disabilities.¹¹⁰ The governments of Hungary, Slovenia and Spain claimed that they provide special arrangements in court for children and people with disabilities but accessible information was only reported as being available for children, and not to people with disabilities.¹¹¹

In Latvia and Lithuania, the governments reported that special arrangements in court were available for children and people with disabilities, but accessible information was not reported as being available for either group.¹¹²

In MDAC's research, a failure to provide accessible information to children with mental disabilities and their parents/representatives was a recurrent problem reported in all project countries. In particular, there was often minimal information available to children about their rights during legal processes. In the UK, Romania, Slovenia, the Czech Republic, Ireland, Latvia and Lithuania there were reports of children and parents not being provided with information relating to substantive rights such as the right to live in the community, education matters and decisions about the placement of children into institutions.

Child-friendly interview rooms, recording facilities, video-conferencing

In all ten participating countries researchers reported the existence of specialised child-friendly interview rooms and/or recording and video equipment that allows children to give their testimony just once. The interview rooms are, however, often concentrated in capital/main cities and there are still too few to accommodate the number of children that enter the justice system. For example, only six criminal courts in the Czech Republic had video conferencing equipment.¹¹³ In Slovenia, there are now 11 child-friendly interview rooms, with the first one being established by an NGO.¹¹⁴

In Spain, closed-circuit television and video conferencing facilities are available but other less appropriate measures continue to be used. In one reported case a child was made to give evidence from the door of the courtroom,¹¹⁵ and a specialist lawyer explained that many judges prefer the use of screens (to respect the right of defendants to question the witness) despite video-conferencing being recognised as a more effective way to reduce the stress to child victims.¹¹⁶

104 Council of Europe Committee of Ministers, Resolution establishing the European Commission for the efficiency of Justice (CEPEJ), 18 September 2002, Res(2002)12.

105 Child-Friendly Justice Guidelines, para. 74: "The possibility of taking statements of child victims and witnesses in specially designed child-friendly facilities and a child-friendly environment should be examined".

106 Child-Friendly Justice Guidelines, para. 67: "The number of interviews should be as limited as possible and their length should be adapted to the child's age and attention span."

107 CEPEJ, "Scheme for Evaluating Judicial Systems: Bulgaria" (2014) available online at: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Bulgaria_2014.pdf (last accessed 27 March 2015); "Ireland" (2014), available online at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Ireland_2014.pdf (last accessed: 27 March 2015); "Romania" (2014), available online at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Romania_2014.pdf (last accessed: 27 March 2015); and "United Kingdom" (2014), available online at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/UK_England%20and%20Wales_2014.pdf (last accessed: 27 March 2015). In particular, see the answers to Question 31 in each report.

108 New Criminal Procedure Code, Article 105(3).

109 Administrative Procedure Code, Article 14(5).

110 CEPEJ, "Scheme for Evaluating Judicial Systems: Czech Republic" (2014), available online at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Czech%20Rep_2014.pdf (last accessed: 27 March 2015), Question 31.

111 CEPEJ, "Scheme for Evaluating Judicial Systems: Hungary" (2014), available online at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Hungary_2014.pdf (last accessed: 27 March 2015); "Slovenia" (2014), available online at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Slovenia_2014.pdf (last accessed: 27 March 2015); "Spain" (2014), available online at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Spain_2014.pdf (last accessed: 27 March 2015). In particular, see the answers to Question 31 in each report.

112 CEPEJ, "Scheme for Evaluating Judicial Systems: Latvia" (2014), available online at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Latvia_2014.pdf (last accessed: 27 March 2015); "Lithuania" (2014), available online at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Lithuania_2014.pdf (last accessed: 27 March 2015). In particular, see the answers to Question 31 in both reports.

113 The regional courts in České, Budějovice, Hradec Králové and Plzeň, the high court in Olomouc and the district court in Teplice: see, https://e-justice.europa.eu/content_information_on_national_facilities-319-cz-cs.do?member=1 (last accessed: 27 March 2015)/

114 Interview with the Slovene Human Rights Ombudsman, Ljubljana, Slovenia: 3 March 2014.

115 State Prosecutor General's Office, Circular 3/2009 on protection of child victims and witnesses, 1351. Supreme Court Sentences STS 673/2007 and 1398/1994.

116 Child-Friendly Justice Guidelines, para. 68: "Direct contact, confrontation or interaction between a child victim or witness with alleged perpetrators should be avoided unless at the request of the child victim." Screens, whilst shielding the child, still require the child to be present in the same courtroom as the offender. Video-conferencing allows the child to participate from a safe and distant location.

In Bulgaria it was reported that child victims and witnesses of crime continue to be questioned on multiple occasions by different specialists during criminal proceedings. In relation to criminal matters, this means that a child with a mental disability can be interrogated during the investigation, prior to proceedings, and then throughout any proceedings which are brought to the court.

A similar problem was reported in Hungary, where children who confess to a crime must repeat their confession multiple times. In Spain, it was noted that the questioning had a negative impact on child victims with mental disabilities, who are still made to testify several times about abuse they have suffered.¹¹⁷

Romanian law provides for an interpreter for people “who do not understand, do not speak or do not express themselves very well”.¹¹⁸ In practice, assistance is provided only to people with hearing and speech impairments or for those who do not speak Romanian. No assistance is provided to people who use non-verbal or alternative modes of communication. Similarly, Bulgarian law requires an interpreter to be provided for deaf-mute, Deaf, mute or blind parties to proceedings.¹¹⁹ People with mental disabilities are left off the list. In Lithuania there is a growing number of child interview rooms, but a lack of qualified professionals to interview children in them, especially for children with mental disabilities.¹²⁰

A positive practice was reported in Bulgaria which arose from the setting up of “blue rooms” by an NGO.¹²¹ A blue room is a room used by justice professionals when questioning children, and ten have been built in premises separate from justice buildings. Each of the rooms has two entrances: one for the child and the other for adult participants including the accused offender.

In Ireland, a study on access to justice for people with disabilities who have been victims of crime revealed that they encounter a range of barriers for which no accessibility measures are made available. In particular, while the physical accessibility of court rooms was reported to have improved since the 2005 Disability Act, the structure and lack of flexibility in court proceedings had not.¹²²

Accessible information

In the Czech Republic, the Office of the Public Defender of Rights (Ombudsman) created a hotline and email address through which children could make direct complaints (there is no equivalent hotline or email address for adults).¹²³ It also has a website for children and teenagers explaining their rights. The website does not contain accessible information for children with intellectual disabilities and it is not clear whether such children have ever used the hotline or email complaints mechanism.

In Hungary, a similar website exists which summarises the rights of the child.¹²⁴ A child-friendly version of these rights (referred to as “easy read”) is available on the website, but this does not appear to meet accessibility requirements for children with intellectual disabilities.

In Latvia, the State Inspectorate of Children’s Rights has a website setting out children’s rights in an easy-to-read format, although the website is hidden away and not easy to find. The information provided on the website is also not sufficiently accessible for children with mental disabilities.¹²⁵

In Slovenia, the Supreme Court has produced some books describing the procedure children will experience when called to court.¹²⁶ The books are child-friendly and describe how all court employees should treat children but they are not in an accessible format for children with mental disabilities. In Spain, a specialist unit for victims with intellectual disability, created by the Carmen Pardo-Valcarce Foundation in collaboration with Civil Guard and Mapfre Foundation, developed accessible materials for children with intellectual disabilities to help them to identify and report instances of abuse in a project entitled “No + abuse”.¹²⁷ Also in Spain intellectual disability NGOs, coordinated by FEAPS (Federation of Organizations for persons with Intellectual Disability) developed a guide in 2011 called “Defend our rights day to day”. In Ireland, the Ombudsman for Children has developed child-friendly accessible leaflets for children on how they can make complaints to it.¹²⁸

117 Save the Children Italia ONLUS, *Minor Rights: Access to Justice for children at risk of social exclusion* (Rome: Save the Children Italia ONLUS, 2012), 112.

118 New Criminal Procedure Code, Article 105(1).

119 Administrative Procedure Code, Article 14(5).

120 In 2008, children’s interview rooms were established in police stations and courts. A total of a 5 children’s interview rooms have now been established within Police Departments of the following cities: Vilnius, Kaunas, Klaipeda, Stauliai and Panevezys. Over 60 children’s interviews were conducted at police departments during the years 2008-9, 40 of which took place at Kaunas Police Department’s children’s interview room. The courts were equipped with 41 children’s interview rooms by the year 2011. Children Support Centre, “Children as Victims and Witnesses of Offences: Review of the Situation in Lithuania” (2011), available online at http://www.vaikystebesmurto.lt/sites/paramosvaikamscentras/media/images/Biblioteka/Tyrimu_ataskaitos/2012%20vaikai%20nusikalni (last accessed: 27 March 2014), 24.

121 More information about this practice can be found here: <http://www.sapibg.org/en/deteto-svidetel>.

122 Claire Edwards, Gillian Harold and Shane Kilcommins, *Access to Justice for People with Disabilities as Victims of Crime in Ireland* (University College Cork, School of Applied Social Studies and Centre for Criminal Justice and Human Rights, Faculty of Law, February 2012), available online at http://nda.ie/ndasitefiles/NDA_Access_to_Justice.pdf (last accessed: 27 March 2015)

123 The website is available at www.deti.ochrance.cz (last accessed: 27 March 2015).

124 The website is available at: www.gyermekjogok.ajbh.hu (last accessed 27 March 2015).

125 The website is available at: http://www.bti.gov.lv/lat/lietotaju_ertibam_viegli_lasit/ (last accessed: 27 March 2015).

126 Supreme Court of the Republic of Slovenia, “Jan gre na sodišče” [“Jan is going to the court”] and “Ko moraš na sodišče kot pričā” [“When you have to go to the court as a witness”] (both 2010) available online in Slovenian at <http://www.sodisce.si/znanje/publikacije> (last accessed: 27 March 2015).

127 A website with the materials can be found at www.nomasabusos.com (last accessed: 27 March 2015).

128 Ombudsman for Children, *Complaints from Young People and Children*, available online at <http://www.oco.ie/complaints/handling-complaints-from-children-and-young-people.html> (last accessed: 27 March 2015).

Experiences of children with mental disabilities and their parents

In the UK, two mothers told researchers that their sons, both aged seven at the time and both with mental disabilities, were placed into segregated education without their or their sons' involvement, and without having had a statutory assessment for special educational need.¹²⁹ The children's teachers and the local authority told them what was going to happen and where their children would be educated. They were not told they could challenge this decision or that they had a right to complain.¹³⁰ Published research on educational options for children with disabilities reported that, "the majority of parents did not feel well informed about the education options available for their child during the placement process... [and] almost all of the parents reported having searched for information independently, using websites and sometimes hiring independent professionals to help."¹³¹

A parent in Romania summed up the experience of many parents, explaining that, "parents and legal guardians [of children with mental disabilities] are not informed about the rights of their children and about the possibility of accessing mainstream schools. Usually the child protection authorities inform them that the only option for their children is the special schools."¹³²

In Slovenia, a social worker explained that, "children are poorly informed about their rights. If we don't tell them or their parents don't tell them, they are not informed and they do not know. [...] Even 15 year old children do not know they have the right to hire an attorney and to participate in proceedings. Sometimes even parents do not know that their child can also state an opinion and some parents do not even allow their child to state an opinion."¹³³ In the Czech Republic, a lawyer at the Office of the Public Defender of Rights (Ombudsman) explained that, "social workers do not inform children of their rights in proceedings. Nor do they ascertain the views of the child in order to know what opinion they should represent in the proceedings. They do not even talk to the child after the court adopts the decision."¹³⁴

In the Czech Republic, Latvia and Lithuania researchers reported that children are placed in residential institutions without their involvement at any stage. In the Czech Republic in 2012, the Public Defender of Rights (Ombudsman) visited 347 children over the age of 12 in residential special schools and found that the courts had heard from only 69 of these children before deciding to place them in the institutions.¹³⁵

The representative of a national child advocacy organisation explained that Ireland has, "huge cultural challenges" to having the voice of the child heard because of the belief that "children aren't able to articulate or express their voice[...]". This organisation's experience demonstrates that many children with mental disabilities in care often have their care dictated to them and are not included or involved in the process.¹³⁶ This account is similar to attitudinal barriers that were reported in Latvia. Here, a psychologist responsible for preparing assessments of children for the Orphans' Court explained that, in her view, a child who is not able to communicate verbally is also not capable of expressing their opinion.¹³⁷

In Lithuania, professionals from social care and law enforcement who participated in focus groups believed it was unnecessary to inform children directly about court decisions affecting them as it this is the role of a child's parents or guardians.¹³⁸ The same participants explained that the opinion of the child often goes unheard; the court tends to only involve the child's representative (guardian) or lawyer, as well as to read the reports produced by the Child Protection Service's specialists or psychologists.

Indicator II.3. Assessments and reasonable accommodations

It was not possible to determine whether justice systems were sufficiently accommodating for children with mental disabilities because there was a lack of quantitative and qualitative research data on the experiences of children with mental disabilities in justice systems across all participating countries, with no statistical data available about assessments for reasonable accommodations. The Council of Europe's 'Child Participation Assessment Tool' contains indicators for monitoring the participation of children in justice processes.¹³⁹ These include assessment criteria and the disaggregation of data.

129 One child was educated in a separate classroom within a mainstream school while the other had been referred to a Pupil Referral Unit.

130 Interviews with a parent in Yorkshire and the Humber, UK: 10 and 12 March 2014.

131 Helen Poet, Kath Wilkinson and Caroline Sharp, *Views of young people with SEN and their parents on residential education* (Slough: LG Group Research Report, National Foundation for Educational Research - NFER), 12.

132 Interview with a parent at the office of the Centre for Legal Resources, Bucharest, Romania: February 2014

133 Interview with a social worker at the Department for Protection of Children and Youth at the Center of Social Work, Ljubljana, Slovenia: 10 March 2014.

134 Interview with a lawyer in Brno, Czech Republic: 28 March 2014.

135 Public Defender of Rights, "Report of systemic visits to educational facilities for institutional and protective upbringing" (Brno: Public Defender of Rights, 2012), available online at http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/2012/2012_skolska-zarizeni.pdf (last accessed: 27 March 2015).

136 Telephone interview with a representative from a child advocacy organisation, Galway, Ireland: 1 April 2014.

137 Interview with a psychologist preparing assessments for the Orphan's court, Riga, Latvia: 27 February 2014.

138 Focus groups of professionals from legal, social care and law enforcement backgrounds, took place across three regions of Lithuania: February - March 2014.

139 Council of Europe Children's Rights Division and Youth Department, *Indicators for measuring progress in promoting the right of children and young people under the age of 18 to participate in matters of concern to them* (Council of Europe, 2014), 9.

Researchers found a lack of routine assessment for support needs of children with mental disabilities on initial contact with the criminal or juvenile justice systems in all participating countries. In Bulgaria,¹⁴⁰ Lithuania,¹⁴¹ and Spain¹⁴² the objective of assessments is commonly to determine the ability of a child to give evidence or testimony, and is not (as it should be) to determine what sort of supports needs to be put into place to enable the child to participate. This wrongly places the onus on the child to prove their capacity rather than on the state to provide support to facilitate them to access justice.

Data in the UK showed that around 60% of children in the criminal justice system had significant communication difficulties and around 25% had cognitive or intellectual impairments. Forty three percent of children on community sentences had emotional and health needs and 30% had borderline learning difficulties.¹⁴³ A lawyer told our researcher that, "some accused children are so overwhelmed by the prospect of cross examination in court that they just plead guilty".¹⁴⁴

A promising practice reported in the UK is the use registered intermediaries for vulnerable witnesses. These people facilitate communication between the court and the vulnerable witness,¹⁴⁵ such as a child or adult witness who has a mental disability. Importantly, their role is not simply to aid communication, but rather, "they assume an active role in the communication process. They assess the communication needs and abilities of the vulnerable witness and advise police and the court how to best communicate with the witness in terms of vocabulary, pace, physical environment, use of communication aids".¹⁴⁶

In Lithuania, it was reported that justice system is inflexible and fails to undertake assessments or make adjustments to proceedings to ensure the participation of children with mental disabilities. Instead, such children were subject to insensitive and inappropriate questioning in the court room,¹⁴⁷ including the use of sarcasm.¹⁴⁸ A participant of a focus group recounted seeing a professional shake the shoulders of a child in a wheelchair to try get him to answer a question.¹⁴⁹

The researcher in Lithuania observed ten civil court proceedings. She found that the process and outcomes of the hearings depended significantly on the attitude of the judge.¹⁵⁰ While some judges created a pleasant atmosphere, others raised their voice and created a formal atmosphere that exacerbated an already stressful situation for the children concerned. The ten observations also revealed that judges introduced people's rights at the beginning of the court hearing, however, this was usually done very quickly and formally, without making sure that everything was understood by the child and those representing them.

In the Czech Republic, a 13 year old boy with an intellectual disability was suspected of causing the death of another boy. He was questioned for four and a half hours during which he was brought to the scene of the incident and required to describe what had happened there and to act out what had happened using a mannequin. He was forced to testify even though he repeatedly expressed his will not to continue. The interrogation and reconstruction were carried out by the police in the absence of a lawyer.¹⁵¹

In Slovenia, one mother explained: "As a mother you have to be there all the time and remind [professionals in the court room in criminal proceedings] that they are talking to somebody with disabilities. They have no knowledge, you are the one to teach them. As a parent you have to take over the role of the mediator between the child and the structure that deals with the criminal offence".¹⁵²

Indicator II.4. Data protection and protection from the media

All countries had data protection laws in place that appear to reflect the standards in the EU Data Protection Directive,¹⁵³ which prevents the disclosure of any personal data that can identify a person (i.e. their name, date of birth and place of residence, etc.) without their permission and the confidential treatment of their sensitive data including information about a person's race, ethnicity and physical or mental health.

140 Both the Juvenile Delinquency Act (as amended) and Child Protection Act (as amended) refer to mental disability in the context of assessing legal capacity, not need or the provision of reasonable accommodations.

141 Code of Civil Procedures of the Republic of Lithuania.

142 Criminal Procedure Law, Article 417.3, states: "persons incapacitated physically or morally may not be compelled to testify as witnesses".

143 Jenny Talbot, *Fair Access to Justice? Support for Vulnerable Defendants in the Criminal Courts* (London: Prison Reform Trust, 2012), 1.

144 Information shared by an experienced lawyer for penal reform at a roundtable event on offenders, UK: 2 February 2014.

145 Youth Justice and Criminal Evidence Act 1999, section 29.

146 Penny Cooper and David Wurtzel, "A day late and a dollar short: in search of an intermediary scheme for vulnerable defendants in England and Wales", *Crim L. R.*, 4 (2013), 5.

147 Shared by a judge and probation representative in a focus group, Lithuania: 7 February 2014; also shared by a police psychologist and a child protection service representative in a focus group, Lithuania: 20 February 2014.

148 Ibid. A similar concern was also shared by a parent of a child with mental disability, Lithuania: 28 March 2014.

149 Shared by a parent in a focus group, Lithuania: 28 March 2014.

150 Ten civil court proceedings observed in Lithuania between January and March 2014.

151 League of Human Rights, *Submission to the 108th Session of the UN Human Rights Committee*, 2013, available online at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fCZE%2f14415&Lang=en (last accessed: 27 March 2015), Appendix 1.

152 Focus group with the Head of Institutional Care at Association Sonček, the President of a Council of Experts at the Association Sonček, a user representative and mother of a child with cerebral palsy and mild intellectual disability, at the Cerebral Palsy Association of Slovenia, Sonček, Slovenia: 10 March 2014.

153 European Parliament and European Council, Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, 24 October 1995, 95/46/EC. It was beyond the scope of this study to conduct a detailed analysis of national data protection legislation..

In all ten countries parents could consent to disclose their child's personal data unless a court order prevented this. There seem to be no laws requiring the media to determine whether disclosing a child's personal data is in their best interests, only that they have complied with the requirement to obtain parental consent. Despite data protection laws being in place, in the Czech Republic and Ireland there were reports of stigmatising reportage by the media where children with mental disabilities were offenders of crime. For example, in the Czech Republic, a 14 year old boy with Asperger's syndrome assaulted a teacher. The media did not publish the full name of the boy, but published his first name with the first initial of his family name, his age, a photograph and a video of the area he lived in and the fact he had Asperger's.¹⁵⁴ In Ireland, a 15 year old was found guilty of killing a 14 year old without any discernible motive.¹⁵⁵ The judge found that the child "did not suffer from any formal psychiatric illness",¹⁵⁶ but the media reported the child was seeing a psychotherapist and had attempted suicide in the past.¹⁵⁷ Headlines in the case described the child as a "vicious killer".¹⁵⁸

In Spain, promising media codes were reported which provide guidance on the protection of personal and sensitive data and the safe and de-stigmatising presentation of children and people with mental disabilities through reporting. In 2004 a "Code of Self-Regulation of Television Content and Childhood" was signed by television operators in the country. It includes provisions that the media should not use images of children involved in judicial proceedings and images of children with a serious illness or disability for the purposes of propaganda or in ways contrary to their dignity.¹⁵⁹

In 2008 the Spanish Confederation of Families and Persons with Mental Illness published a guide, "Mental Health and the Media" which aims to promote the positive social image of people with mental disabilities and to provide resources to media professionals encouraging respectful reporting and to avoid stereotyping.



Recommendations

- K.** Governments must take steps to ensure that justice professionals are more thoroughly and rigorously trained on the "best interests of the child" principle which includes access to justice as being in a child's best interests.
- L.** Accessibility audits should be carried out of all courts and judicial procedures with regard to the rights and needs of children with mental disabilities.
- M.** Governments and legislatures should set out the right to reasonable accommodations for children with mental disabilities in the justice system in national law, and provide a non-exhaustive list of the types of reasonable accommodations available.
- N.** National frameworks should be developed to ensure that all children are assessed for their needs on their initial contact with justice systems. This assessment should lead to the provision of reasonable accommodations and adjustments relevant to the individual to the needs of each child, such as communication aids and interpreters.
- O.** Laws of evidence should be amended to recognise the testimony of children with mental disabilities (which may include non-verbal testimony) as valid.
- P.** All governments should take steps to ensure that children with mental disabilities and their parents/guardians get accessible information about their rights, including their rights in all judicial proceedings.

154 See: ČTK, "Toto je učitelka, kterou pobodal její student: Po chodbě se procházel s rukama od krve" [Czech] (blesk.cz, 30 October 2012); and Television Nova, 23 January 2013.

155 *The People at the Suit of the Director of Public Prosecutions v. D.G* [2005] IE CCA 75.

156 *Ibid.*

157 "Teen found guilty of Laois murder", *breakingnews.ie*, 28 July 2004.

158 Liam Collins, "Vicious Killer shocks court with stark lack of remorse", *Irish Independent*, 16 October 2014

159 The Code of Self-Regulation of Television Content and Childhood ['Código de Autorregulación de Contenidos Televisivos e Infancia'], para. 11.2.

Q. The personal data child with mental disabilities is only shared between justice professionals on a need-to-know basis for the purposes of safeguarding the child's best interests, protecting their rights and providing any reasonable accommodations.

R. In conjunction with representatives of the media, government should develop guidance regulatory guidance and share best practices to ensure the confidentiality and dignity of children with mental disabilities in justice processes. This means no information or data should be reported that could lead to the identification of the child and reporting should avoid the use of demonising language or sensationalism.



Cluster III. Facilitating Access to Justice – process indicators

Many people play a role in upholding children's rights and securing their best interests, both in day-to-day matters as well as in the justice system. For anyone, engagement with justice processes is daunting and presents a multitude of barriers. For children, it is the role of parents, guardians, lawyers, social workers and judges to ensure that participation is guaranteed so that justice may be done.

Children with mental disabilities – especially those segregated from society and living in institutions – are at a particular disadvantage in this regard. They are also particularly susceptible to wider rights violations that arise because of their institutionalisation. In many countries, the child's guardian is the institution itself, making them both physically and legally dependent on that institution and creating a conflict of interest. Because of this, many children throughout Europe are effectively barred from complaining to anyone, and engaging with the justice system is a distant dream.

Untrained justice professionals can compound the barriers to justice for children with mental disabilities. If a police officer or a lawyer is unable to identify that a child requires a communication aid or becomes petrified in a particular environment (such as an interview room in a police station, or the witness box in a courtroom) then that child is denied access to justice on an equal basis with other children because the system has failed to accommodate their differences. Children with disabilities may be treated unfairly because they are not able to communicate their views and experiences or their testimony is not properly understood or interpreted.

However, with appropriate forms of support, which take into account their age and their disability, children with mental disabilities can both access and engage with justice systems effectively. In fact, the CRPD recognises that everyone should have the legal recognition necessary to participate in all decisions made in their life.¹⁶⁰ Justice professionals must therefore make sure that the system is flexible enough to provide the requisite supports and accommodate the differences of children with mental disabilities.

The first step to achieving change is, as in so many areas of life, believing that change is possible. Researchers in this project have spoken with professionals in ten countries and as one would expect, there is an enormous variance of attitudes of professionals throughout Europe. In many cases, professionals believed that it is simply impossible for children with mental disabilities to participate in legal proceedings which have a direct impact on their lives. It is these attitudes that must be shifted.

Lawyers are a core safeguard against injustice and they help their clients navigate often complex and intimidating judicial processes. They also translate legal language into something understandable for their client and advocate on their behalf. A recent UN document says that legal assistance and representation is “an essential element of a fair, human and efficient criminal justice system that is based on the rule of law [and] is a foundation for the enjoyment of other rights”.¹⁶¹

Those children who can instruct a lawyer when they are a victim or an offender in criminal proceedings or when their best interests conflict with their parents or guardians in civil and administrative proceedings must be given an opportunity to do so. To enable children to realise this right, lawyers and other professionals working in the justice process must be trained to recognise the rights of the child and know how to promote them. For children who cannot instruct a lawyer, there should be provision for a lawyer to be appointed to represent the child's best interests – which might differ from, for example, the child's parents, or the view of the local government.

Access to justice requires legal aid to be made available to all children to pay for their legal representation. Without a system of State-funded and high-quality legal representation, many children will inevitably be denied justice.

The Child-Friendly Justice Guidelines set out several necessary elements to ensure effective access to justice for children, including the availability of free legal aid. They stipulate that all children have the right to their own lawyer “in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties”. Lawyers representing children must be trained appropriately,¹⁶² should give the child appropriate explanations about the consequences their statements, and ultimately put forward the opinion of the child, rather than their own. In cases where a relative or carer is an alleged offender, the child should be represented independently from them.¹⁶³ The following three indicators are derived from these guidelines and the international standards.

¹⁶⁰ CRPD, Article 12.

¹⁶¹ United Nations General Assembly, Resolution 67/187 on United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 20 December 2012, A/RES/67/187, Introduction, para 1.

¹⁶² An education and training tool for practitioners in justice systems has been developed as part of this project, and can be found online at www.mdac.org.

¹⁶³ Child-Friendly Justice Guidelines, paras. 37 – 43

Indicator III.1. Independent bodies and third persons can bring complaints on behalf of a child or children with mental disabilities¹⁶³

As noted in indicator I.3. above, National Human Rights Institutions (NHRIs) have an important role in facilitating access to and engagement with justice systems. This is particularly important where children (especially those in institutions) are being represented by their parent or legal guardian whose interests may conflict with the child's own or who are simply unwilling to assist the child in seeking justice for a violation of their rights. This cannot be a substitute for or alternative to free legal aid but must complement it by providing additional avenues of redress for children and additional protections in circumstances where free legal aid does not apply, for example, in administrative and civil proceedings. The UN High Commissioner for Human Rights has recognised that:

"If the parents, legal guardians or legal representatives are unable or unwilling to represent child victims in court, it may also be beneficial for children to be able to turn to other actors in getting redress, including National Human Rights Institutions, legal clinics, public child defenders and non-governmental organizations. Moreover the possibility

*to access group litigation and complaints, such as combined cases or test cases, can provide the opportunity to challenge systematic, grave or widespread children's rights violations."*¹⁶⁴

The CRC Committee has explained that part of the role of NHRIs is to provide remedies for breaches of children's rights, either directly by investigating individual complaints submitted by children or by supporting children in accessing other procedures and remedies.¹⁶⁵ NHRIs should therefore be accessible to all children, whatever their characteristics or situations. The Committee goes on to explain why. It says that children's developmental state makes them particularly vulnerable to human rights violations and their opinions are still rarely taken into account. Given that most children have no vote and cannot play a meaningful role in the political process they are left off the political agenda. They encounter significant barriers in accessing justice and the availability of organisations that could help them is "generally limited".¹⁶⁶



Indicator III.2. Legal representation and legal aid is available for children with mental disabilities throughout all justice processes that affect them

International law sets out that everyone charged with a criminal offence has the right to defend him or herself in person or through legal assistance of his own choosing. If a person does not have sufficient means to pay for legal assistance they must be given it free when the interests of justice require.¹⁶⁷ An EU Directive adopted in 2013 guarantees free legal aid for all criminal defendants and countries have until 27 November

2016 to implement it.¹⁶⁸ It sets out that the introduction of a suspect or accused person to a lawyer should happen without delay and from whichever of the following points is the earliest:

- a) Before they are questioned by the police or by another law enforcement or judicial authority;

¹⁶⁴ By "independent bodies" we mean NHRI's, NGO's and third parties with an interest in promoting the rights of the child.

¹⁶⁵ United Nations High Commissioner for Human Rights, Access to Justice for Children, 16 December 2013 A/HRC/25/35, available online at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-35_en.doc (last accessed: 27 March 2015), para. 39.

¹⁶⁶ United Nations Committee on the Rights of the Child, General Comment No. 2: The role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child, 15 November 2002, CRC/C/GC/2, available online at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CR%2fGC%2f2002%2f2&lang=en (last accessed: 27 March 2015), para. 13.

¹⁶⁷ *Ibid.*, para. 5.

¹⁶⁸ International Covenant on Civil and Political Rights (ICCPR), Article 14(3)(d); and ECHR, Article 6(3)(c).

¹⁶⁹ European Parliament and European Council, Directive on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, 22 October 2013, 2013/48/EU.

- b) Upon the carrying out by investigating or other competent authorities of an investigative or other evidence gathering act;
- c) Without undue delay after deprivation of liberty;
- d) Where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before the court.

The right of access to a lawyer entails the following:

- a) Member States shall ensure that suspects or accused persons have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;
- b) Member States shall ensure that suspects or accused persons have the right for their lawyer to be present and participate effectively when questioned. Such participation shall be in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure in accordance with the law of the Member State concerned;
- c) Member States shall ensure that suspects or accused persons shall have, as a minimum, the right for their lawyer to attend the following investigative or evidence-gathering acts where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:
 - i. Identity parades;
 - ii. Confrontations; and
 - iii. Reconstructions of the scene of the crime.¹⁷⁰

Children generally will not have the means to pay for their own legal representation; legal aid is an essential element of a fair, humane and efficient justice system that is based on the rule of law.¹⁷¹

The UN has pointed out that the scope of legal aid in international law is limited to criminal matters, but “access to legal and other assistance in [administrative and civil] matters is nevertheless essential for ensuring that children are able to take action to protect their rights”.¹⁷² It also recommends that “children should have the possibility to complain and initiate legal proceedings in cases of violations of their rights. As children are usually at a disadvantage when engaging with the legal system, they have a particularly acute need for legal assistance and States should provide such services free of charge.”¹⁷³

Principle 1 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (“UN Legal Aid Guidelines”)¹⁷⁴ encourages countries to establish legal aid as a right in domestic law. They suggest that legal aid be “prioritized, in the best interests of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children”.¹⁷⁵ This means that legal aid must be provided to not only cover the costs of children’s legal representatives, but also any costs that arise from ensuring children with mental disabilities are provided with legal assistance and information that is accessible to them, and any costs that arise from providing procedural adjustments. It recommends that legal aid not be means tested, including testing the means of parents of children caught up in the criminal justice system.¹⁷⁶



170 Ibid., Article 3.

171 Annex, para. 1.

172 United Nations High Commissioner for Human Rights, Access to Justice for Children, 16 December 2013 A/HRC/25/35, available online at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-35_en.doc (last accessed: 27 March 2015), paras. 40 and 43.

173 Ibid., para. 58.

174 United Nations General Assembly, Resolution 67/187 on United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 20 December 2012, A/RES/67/187.

175 Ibid., Principle 11.

176 Ibid., Principle 1(c).

Indicator III.3.

All professionals working in the justice process that come into contact with children with mental disabilities must be trained to recognise and facilitate their rights, including their rights to reasonable accommodations

Training for justice professionals needs to take place to ensure that they respect and protect the rights of children with mental disabilities and, especially, do no harm.¹⁷⁷ Article 13(2) of the CRPD requires governments to promote training for those working in the field of administration of justice on procedural and age-appropriate accommodations to ensure that everyone with disabilities can access justice on an equal basis with others.

Training should be provided to professionals on how to recognise when to provide accommodations (such as an

interpreter), how to recognise and promote the validity of alternative communication by children with mental disabilities for use as testimony,¹⁷⁸ and how to adjust procedures to accommodate differences. The CRC Committee has recommended that the rights of children with disabilities should be a core element in their training.¹⁷⁹ In a similar vein, the CoE Child-Friendly Justice Guidelines recommend interdisciplinary training on the rights and needs of children of different ages and groups, to ensure proceedings are adapted.¹⁸⁰

Findings

Indicator III.1. Independent bodies and third parties can bring complaints on behalf of a child or children with mental disabilities

In all project countries, victims and NGOs can complain to the authorities about any violations of children's rights or the rights of people with disabilities. However, in Bulgaria, Czech Republic, Hungary, Latvia, Lithuania and Spain, NGOs are prohibited from bringing complaints on behalf of children with mental disabilities unless they are appointed as representatives by the child's legal guardian or they are granted a power of attorney in relation to the child and a particular action. If they do not fulfill these criteria they are deemed to lack legal standing and they are barred from taking any action.

In the Czech Republic, the Public Prosecutor¹⁸¹ and the Public Defender of Rights (Ombudsman)¹⁸² can submit complaints in relation to violations that arise out of decisions adopted by administrative authorities. The weakness of this system is that

both these bodies do not represent victims. In Hungary, NGOs can bring group complaints to the Equal Treatment Authority on behalf groups of people who have been discriminated against or who are thought of as being in imminent danger but they cannot take on representative actions.

In the UK and Northern Ireland, NHRIs and NGOs working in disability or children's rights can bring complaints on behalf of individuals, subject to complex caveats on standing and public interest. The Equality and Human Rights Commission is the NHRI in England and Wales which has statutory responsibility to bring cases challenging human rights violations on behalf of any individual or group and to monitor the implementation of human rights standards. The Northern Irish Equality and Human Rights Commission can do the same and in Scotland the Equality and Human Rights Commission shares its remit with the Scottish Human Rights Commission and must first discuss issues raised with them before taking any action.

177 A training and education tool has been developed for practitioners in justice systems in the court of this project. Details can be found online at www.mdac.org.

178 For example, Picture Exchange Communication Systems (or "PECS").

179 United Nations Committee on the Rights of the Child, General Comment No. 5. General Measures of Implementation of the Convention on the Rights of the Child, 27 November 2003, CRC/C/GC/5, available online at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CR%2fGC%2f2003%2f5&lang=en (last accessed: 27 March 2015), para. 53.

180 Child-Friendly Justice Guidelines, para. 67.

181 Administrative Court Procedure Code, Act No. 150/2002 Coll., section 66(2).

182 Ibid., section 66(3).

The Children's Commissioner (England), the Commissioner for Children and Young People (Scotland), the Children's Commissioner for Wales and Northern Ireland's Commissioner for Children and Young People all have the power to intervene in cases of wider significance to children's rights but do not have power to initiate proceedings in their own right.¹⁸³

There have, however, been several cases in Ireland where NGOs have brought cases on behalf of individuals. The Irish courts have established that an NGO may bring a case on behalf of a person or group of people where it either "has a bona fide concern or interest in the provisions seeking to be impugned, or else that the rights which it seeks to protect are of general importance to society as a whole".¹⁸⁴ Courts have also decided to grant standing where the potential plaintiff would not be in a situation to command similar expertise and financial backing.¹⁸⁵

In Romania, several cases about children with mental disabilities have been brought to the attention of the Centre for Legal Resources ("CLR"), an NGO in Bucharest. CLR has not been able to help all of the children because there was no legal guardian willing to ask for legal representation on behalf of the children concerned. These situations mostly occurred with institutionalised children whose legal guardian was the institution or the child protection authority. In these cases, CLR can only bring the matter to the attention of the prosecutor as a potential criminal case. An illustration comes from a lawyer who was unable to help a child because of technicalities:

"More than a hundred children were in foster care supervised by five employees and the facility was understaffed. Six children were locked in a room and were lying in three beds. They were so sedated that they could barely breathe. Their hands and feet were bound with ropes. I believe that the UN Convention on the Rights of the Child establishes good standards, but they are often violated in Romania. We filed a complaint but, although these were acts of torture, it was only after six weeks that the prosecutor began the criminal investigation. But the prosecutor did not visit himself, he sent an officer who [...] was not able to hear all the children. Therefore I wonder whether these children have real access to justice."

In 2014, the European Court of Human Rights adjudicated a case against Romania concerning an 18 year old man with an intellectual disability who died at the hands of the state in a psychiatric hospital. The facts and the reasoning of the court reflect the problem of legal standing which is especially applicable to children with mental disabilities. When CLR monitored the Poiana Mare psychiatric hospital in 2004 they met Valentin Câmpeanu in a cold, isolated and locked room which contained only a steel-framed bed without bedding. He was dressed only in a pyjama top. Having been infected with HIV as a child, inexplicably he was denied his anti-retroviral medication by the psychiatric hospital, whose staff did not want to touch him for erroneous fear of catching HIV. He died later that day.¹⁸⁶

The Centre for Legal Resources found out that Mr Câmpeanu did not have any parents or guardians: he had no-one to represent him after his death, to bring his neglect to light and establish accountability. The issue before the European Court of Human Rights was whether the NGO could represent him. Judge Pinto De Albuquerque explained that this case was "the perfect example of a continuing omission by the respondent State, which, by not providing any kind of legal representation or guardianship to Mr Câmpeanu while he was alive and while there was an arguable claim against the State as regards the health care and education treatment he received, did indeed hinder the exercise of his Convention and domestic rights."¹⁸⁷ The crucial issue is that all countries need systems in place where people can be legally represented, and this is particularly important for people who may not be able to act on their own behalf, including children and young adults with mental disabilities.

Indicator III.2. Legal Representation **Criminal representation**

With the exception of the Czech Republic, Ireland¹⁸⁸ and Slovenia,¹⁸⁹ all project countries have systems which provide children a right to a lawyer as soon as they are taken into custody. In the Czech Republic, children are only entitled to a lawyer upon entering custody where they are over the age of 15.¹⁹⁰ Children under 15 are processed through a juvenile justice system which denies them this safeguard. If a child between the age of 15 and 17 is eventually found guilty, they must reimburse the State for the cost of their legal representation.¹⁹¹

183 Children's Act 2004, section 2 (as amended by the Children's and Families Act 2014).

184 *Digital Rights Ireland Ltd v. Minister for Communication & Ors* [2010] IEHC 221, para. 48.

185 *Irish Penal Reform Trust Limited & Ors v. Governor of Mountjoy Prison & Ors* [2005] IEHC 305 citing *R v. Inspectorate of Pollution & Anor. Ex Parte Greenpeace Ltd* (no. 2) [1994] 4 All ER 329.

186 *Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania*, (Application no. 47848/08), European Court of Human Rights, judgment 17 July 2014, para. 61.

187 *Ibid.*, para. 67.

188 *Lavery v. The Member in Charge, Carrickmacross Garda Station* [1999] IESC 29.

189 Courts Act No. 94/2007, Article 454.

190 Juvenile Justice Act, Act no. 218/2003 Coll., section 42(2)(a).

191 Criminal Procedure Code, Act No. 141/1961 Coll., section 152(1) (b).

In Ireland, a suspect is allowed access to a lawyer but the lawyer is not required to be present during interrogation.¹⁹² A recent case involving a child with a psycho-social disability affirmed that, even where the person questioned was under the age of 18 and had severe mental health/behavioural difficulties, the presence of a lawyer was not required for the detention to be lawful.¹⁹³

In Slovenia, children under 15 are entitled to a lawyer from the start of proceedings where the eventual sentence if found guilty is more than three years imprisonment, unless the judge recognises the child needs representation in other cases due to a particular vulnerability.¹⁹⁴

Civil and administrative representation

In none of the participating countries does law set out an entitlement to legal representation for children in their own right (rather than in conjunction with their parents or guardians) in civil or administrative proceedings, unless their best interests conflict with their parents or guardians.

In England and Wales, children can instruct a lawyer in civil or administrative proceedings if the child has obtained the court's permission or a solicitor considers that the child is able, having regard to the child's understanding, to give instructions in relation to the proceedings.¹⁹⁵ The law may be in place, but the Children's Commissioners in the four UK jurisdictions have highlighted the "inconsistency in the granting of separate legal representation to children where this is needed".¹⁹⁶

As noted above, children under 15 in the Czech Republic are not entitled to legal representation because they are in a juvenile justice system. However, juvenile proceedings have two stages – firstly, the criminal pre-trial stage (under adult criminal law) and then the civil judicial stage (under juvenile justice law and civil law). During the first stage, the child is not provided with a lawyer or legal aid and they are denied access to their police file. During this stage, the child may be subject to standard investigative procedures such as police interrogation, fingerprinting, blood sampling and DNA extraction. The juvenile justice system applies a civil (lower) standard of proof than criminal proceedings. As a result, children under the age of 15 can be prosecuted on the basis of evidence gathered in (adult) criminal investigation procedures without the safeguard of a lawyer throughout the evidence-gathering stage on a lesser standard of proof. This anomaly warrants further research.

Legal aid

Where they are defendants in criminal matters, children in all project countries are entitled to legal aid. Children in all countries (except Bulgaria) are also entitled to legal aid in administrative or civil proceedings. The governments of the UK and Ireland have inflicted significant cuts to the legal aid budget for children in civil and administrative proceedings in recent years. In Ireland, such legal aid is subject to parental means testing and legal aid in civil cases is also subject to a further merit test which assesses whether the child is likely to be successful in the proceedings.¹⁹⁷ The Irish Legal Aid Board has noted delays between applications for legal aid and the child being provided with a lawyer in civil cases.¹⁹⁸

A positive practice identified in Lithuania is the National Abuse Prevention and Support for Children Programme whereby child victims of abuse can receive free legal aid and support.

Indicator III.3. Training and education

In Ireland, Slovenia and Spain, little information is available about training courses for professionals coming into contact with children with mental disabilities. In Romania, of the 36 mandatory courses for judges and prosecutors, only two contain information about children's rights and disability.¹⁹⁹ In Hungary, Ireland, Lithuania and Slovenia neither judges, lawyers, police officers nor social workers are required to be trained on any aspect of children's rights or disability rights.

In the Czech Republic, specialist juvenile judges (who try offenders under the age of 15) are trained on how to treat children safely, but there are no minimum guidelines on what this entails. There is no assessment at the end of this training.²⁰⁰ There, each prosecutor's office must have a specialist in children's rights, yet there is also no requirement for the prosecutor to have this specialisation before starting in their position and there is no requirement for their competencies to be examined. The patchiness of the training of justice professionals in the Czech Republic has been criticised by various UN bodies.²⁰¹

192 *JM (A minor) v. Member in Charge of Coolock Garda Station* [2013] IEHC 251.

193 *Ibid.*

194 Courts Act No. 94/2007, Article 454.

195 Family Procedure Rules 2010, Rule 16.6.

196 *UK Children's Commissioners' Report to UN Committee on the Rights of the Child* (June 2008), available online at http://www.niccy.org/uploaded_docs/unccr_report_final.pdf (last accessed: 27 March 2015), 13.

197 Civil Legal Aid Act 1995, section 28.

198 Legal Aid Taskforce, "Civil Legal Aid in Ireland: Information for the Profession", Law Society of Ireland, (2008)9.

199 An e-learning course entitled: "Combating discrimination, based on the ECtHR jurisprudence" aimed at Magistrates and an Undergraduate Law Degree elective module on Juvenile Justice.

200 Juvenile Justice Act, Act no. 218/2003 Coll., section 3(8).

201 United Nations Committee on the Rights of the Child, Concluding observations: Czech Republic, 4 August 2011, CRC/C/CZE/CO/3-4, para. 70; and United Nations Human Rights Committee, Concluding observations: Czech Republic, 22 August 2013, CCPR/C/CZO/CO/3, para. 20(c).

Latvia requires juvenile justice professionals to be trained on child rights, including judges, lawyers, social workers and police that work with children in criminal, administrative and civil proceedings in various capacities, along with any other person that adopts decisions which are or may affect the rights of the child and their legal interests. The training comprises a 40-hour programme which must be completed within a year of the professional occupying their position. Every five years there is a 24-hour compulsory refresher course.

In Spain, the only compulsory training on children's rights is provided to the Specialist Children's Police Department,²⁰² but this training does not cover the rights of children with mental disabilities. In Hungary, while there is no compulsory training for judges, lawyers, police and social workers, training is compulsory for Children's Rights Representatives,²⁰³ who protect

the rights of children placed into protective care including institutions, foster families and children's homes. These people include lawyers, teachers, police, social workers and others experienced in the provision of services to children or children's rights. They must take a 120-hour course and an exam and then a further 14 hours of training each year thereafter. The rights of children with mental disabilities are not included in the training. As noted above, the twenty CRRs in the country are responsible for approximately 22,000 children.

In Ireland, a promising two-year specialist training programme is offered to the Garda Síochána (police) on interviewing techniques for all child victims, including those with mental disabilities. It is an intense program that includes a placement for several months with an NGO. Since 2007, 112 Garda have been trained.²⁰⁴



Recommendations

- S.** Governments of all countries should ensure that NHRIs have a mandate to initiate legal cases on behalf of children, before national and international courts and mechanisms where the child's rights have been violated.
- T.** Governments of all countries should ensure that NHRIs and NGOs have legal standing to bring actions on behalf of children with mental disabilities (individuals and groups) before national and international courts and mechanisms. They should also be eligible for legal aid when bringing such legal actions.
- U.** Governments of all countries must ensure that all children are granted immediate access to a lawyer as soon as they are taken into custody and the lawyer should be required to advise the child throughout all stages of interrogation and throughout all stages of proceedings where a child is prosecuted.
- V.** Governments of all countries must ensure that all children are granted immediate access to a lawyer in civil and administrative proceedings where:
 - a.** Their best interests conflict with their parents or guardians;
 - b.** Their wishes conflict with their parents or guardians and the child is able to formulate their own wishes in line with their evolving capacities; and
 - c.** They have been informed of and requested separate legal representation.
- W.** Governments of all countries should ensure that all children are provided with legal representation free at the point of use in all cases in which they have a stake. Legal aid should not be repayable if the child is found guilty or is unsuccessful in their complaint or application. The level or amount of legal aid should not be means tested.
- X.** Governments of all countries should ensure that legal aid is provided to children with mental disabilities in civil and administrative proceedings and that legal aid includes the provision of reasonable accommodation for children with mental disabilities to participate effectively in the process.
- Y.** Governments of all countries should ensure that every professional working in the justice system who comes into contact with children with mental disabilities undergo regular assessed training on the rights of the child, on disability rights, and on practical measures which they need to take to uphold the rights of children with mental disabilities.²⁰⁵

202 This course is available at: <http://www.intervencionsocial.es/formacion-info/online/menores/> (last accessed: 27 March 2015).

203 Government decree No 214/2012 (30 July 2012) on the Documentation Centre for Patients, Social Care Clients and Children's Rights, sections 4-5.

204 This training course was discovered through the interview of a Gardai (police) by our researcher at the Centre for Disability Law and Policy, NUI Galway: 9 June 2014. No public information on the course was available.

205 This project has produced an online training and education tool for professionals in justice systems who come into contact with children with mental disabilities. The tool is available at: www.mdac.org.

Appendix 1: Project contributors

Project Management Team

Mental Disability Advocacy Center (MDAC)

MDAC is an international human rights organisation which uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide. Our vision is a world of equality, where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all people without discrimination of any from.

Anna Lawson, Professor of Law, Centre for Disability Studies, University of Leeds

The University of Leeds is one of the largest higher education institutions in the UK and one of the UK's top ten research institutions. The School of Law and the Centre for Disability Studies at the University of Leeds have worked in collaboration on this project. The School of Law is one of the UK's leading law schools and was awarded an outstanding rating for the international quality of their research by the 2008 Research Assessment Exercise. The Centre for Disability Studies is an international leader in the field of disability studies, drawing increasing interest and exchange from around the world.

Professor Anna Lawson is Director of the Centre for Disability Studies. She has played lead roles in a range of

interdisciplinary, national and multinational research projects (including projects for NHS England, the EU Agency for Fundamental Rights and the European Commission) and has delivered papers in more than 25 countries. Outside academia Anna works with the Equality and Human Rights Commission, CHANGE (which she chairs) and China Vision.

Eilionóir Flynn, Senior Lecturer and Deputy Director of the Centre for Disability Law and Policy (CDLP), National University of Ireland Galway

The CDLP, based in Ireland, focuses on advancing social justice and human rights for persons with disabilities through legislative and policy reform. With major research accolades and some of the most respected members in the field on the staff board, the CDLP has earned its place as a policy leader, both in Europe and beyond. With only two other entities like it in Europe, and directors – Gerard Quinn and Eilionóir Flynn – who are widely recognised as authorities on international and comparative disability law internationally, the CDLP has made significant headway since a generous grant from Atlantic Philanthropies helped its establishment in 2008. Since then it has raised approximately € million from EU research grants, the Soros Open Society Foundations and other sources.

Project Partners

Bulgaria

Global Initiative on Psychiatry, Sofia (GIP-Sofia)

GIP-Sofia's mission and vision is to promote humane, ethical, and effective mental health care throughout the world and to support a global network of individuals and organisations to develop, advocate for, and carry out necessary reforms. GIP-Sofia undertakes projects and activities that advance all dimensions of mental health systems and care, including: deinstitutionalisation and transforming institutional care; empowering people with mental illness, carers and professionals; engaging in policy development and advocacy; and implementing anti-stigma and public awareness campaigns for people with mental illness.

Czech Republic

The League of Human Rights (LIGA)

LIGA's vision is a fair, free and engaged society for all. Since 2002, LIGA has been systematically promoting human rights, including the rights of people with disabilities and children, by conducting research and preparing analysis, writing alternative reports to UN bodies and litigating strategic cases. LIGA is a member organisation of Fédération Internationale des Droits de l'Homme (FIDH).

Hungary

Dr Judit Zeller PhD

Dr Judit Zeller PhD is Legal Officer at the Office of the Commissioner for Fundamental Rights (National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture) and Senior Lecturer at the University of Pécs.

Prior to her current positions she was Legal Officer at the Office of the Commissioner for Fundamental Rights of Hungary where she took part in investigations on children's rights, the rights of persons with disabilities and human rights in the health care system. She has also worked as a practicing psychologist at the Child Protection Centre of Baranya County, Hungary.

Ireland

**The Centre for Disability Law and Policy (CDLP),
University of Galway.**

As above, Project Management Partner

Latvia

**The Resource Centre for People with Mental Disability (RC
ZELDA)**

RC ZELDA promotes deinstitutionalisation and the development of community-based mental health and social care services for people with mental disabilities (people with intellectual disabilities and people with psycho-social disabilities) through research, monitoring observance of human rights, legal advocacy, strategic litigation and activities to inform and educate the public. RC ZELDA has nearly eight years' experience in research and monitoring of human rights and working with government to harmonise national laws and rules with international human rights standards in the field of mental disability law and advocacy.

Lithuania

**Mental Health Perspectives (formerly known as Global
Initiative on Psychiatry, Vilnius Office) (PSP)**

PSP is a not-for-profit organisation with 14 years of experience in lobbying, networking, awareness raising, advocacy, development and mobilisation activities aiming to promote humane, ethical and effective mental health services and policy development worldwide. PSP has been particularly active in the regions of Central and Eastern Europe, as well as Central Asia. PSP support a wide network of individuals and organisations in development, advocacy, research, monitoring and carrying out reforms in the areas of mental health care and services, social integration and inclusion, child and human rights and non-discrimination.

Romania

The Centre for Legal Resources (CLR)

CLR actively advocates for the establishment and operation of a legal and institutional framework that safeguards the observance of human rights and equal opportunities, free access to fair justice and which contributes to the capitalisation of its legal expertise for the general public interest.

Slovenia

The University of Ljubljana - Faculty of Social Work (UL-FSD)

UL-FSD is the only social work higher education establishment in Slovenia which has developed special fields such as working with youth, the elderly, women, people in mental distress or with a disability and ethnic minorities, etc. In the past 25 years, the UL-FSD has carried out nearly 100 basic and applied research projects and participated in numerous developmental projects. Beside social work theory and concepts, the main research themes included voluntary work, community work, group work, evaluation methods and actual evaluations of social work procedures and programmes, and administration in social work. The Faculty also participated in the planning of community services carried out by non-governmental organisations in the field of social care, especially in the development of intermediate structures (group homes, safe houses, crisis teams), work with families, street work, youth centres, learning of social skills, individual planning and financing, and other community approaches.

Spain

**The "Bartolomé de las Casas" Institute of Human Rights,
Carlos III University of Madrid**

The Institute is made up of a research team comprised of professors and researchers belonging to Universidad Carlos III de Madrid from different areas of knowledge, departments and research groups, many of which are part of the Department of International Law, Ecclesiastical Law and Philosophy of Law. Its main objectives are: to promote the inherent values of human rights; to create a framework of reflection and debate on human rights; to develop research in human rights; to promote scientific work on human rights and to encourage human rights teaching.

United Kingdom (UK)

The University of Leeds.

As above, Project Management Partner.



Expert Panel Members

Andrea Coomber, Director of JUSTICE, an all-party law reform and human rights organisation working to strengthen the justice system – administrative, civil and criminal – in the United Kingdom.

Camille Latimier, Human Rights Officer, Inclusion Europe, the European association of persons with intellectual disabilities and their families.

Dainius Pūras, UN Special Rapporteur on the Right to Health.

Gerison Lansdown, international children’s rights advocate.

Mária Herczog, Member of the UN Committee on the Rights of the Child and President of Eurochild, a network of organisations and individuals working in and across Europe to promote the rights and well-being of children and young people.

Stéphanie Burel, international consultant on children’s rights and manager of this project between May 2013 – March 2014.

Ursula Kilkelly, Professor and Dean of Law, University College Cork, Ireland.



Consultant

Vanessa Sedletzki, international consultant on human rights, governance and policy.



Notes

