

Effective legal assistance for persons detained on mental health grounds

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Outline

- Validity and our experience
- Barriers for persons with disabilities
- The broader context
- Some examples of promising practices

Validity Foundation

- Collaboration with national lawyers and representation of clients before international courts
- EU projects – procedural guarantees for suspects of victims of crimes with disabilities



Access to justice barriers

- Lack of flexibility; formalistic style
 - *„The problem is that it is not checked whether they understood. At the end (i.e. of the document containing the defendant’s rights), it usually says "I have taken note" - NOT that "I understand”*
 - *Taking breaks*
 - *Procedural timelines to account for a client’s situation*
- No direct interaction with the judge
- Lack of available communication channels
- Deprivation of legal capacity
- Gate keepers

Access to justice barriers

- Confidentiality;
- Conflict of interests;
- Social stigma and prejudice;
- Lack of alternatives in the community.

Aim of the justice system?

“The justice system and its symbols are scary. In most places, courts are not about justice, they are about power. For anyone, facing these symbols of power is disabling. Start with thinking about de-focusing the power; the focus should be on justice. It is really about the humanisation of the justice system itself and making it accessible for all.”

Gábor Gombos, former member of the United Nations Committee on the Rights of persons with Disabilities and Senior Adviser to Voices for Justice project

Change of approach

- Article 31 VLCT and systemic interpretation of international law
 - => national reforms should take into account the CRPD;
 - => monitoring of the execution of judgment should be carried out in the spirit of other applicable international instruments

The broader legal framework

- UN CRPD, Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities
- UN High Commissioner for human rights International Principles and Guidelines on Access to Justice for Persons with Disabilities
- UN CRPD General Comment no. 1 on Equal recognition before the law, CRPD/C/GC/1
- United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court

A human rights approach

- The right to understand and be understood
- Right to information
- Right to support
- Right to be heard in person

Good practice example

An Ethics code for lawyers:

Example on procedural adaptations

1. The lawyer, as far as possible, checks whether the need for procedural approval of a person with disabilities has been studied, identified and ensured (in relation to spaces, communication, information, procedural rules and other issues).
2. The lawyer, as far as possible, shall file a motion to identify and ensure the need for procedural arrangements.
3. The lawyer records the extent to which the procedural appeal requirement was met.

Good practice example

Accessible legal aid

1. The lawyer, as far as possible, checks whether the conditions for providing quality and timely legal assistance are observed (separation of cognitive aid, provision of communication facilities, etc.).
2. The lawyer, as far as possible, shall file a petition for quality and timely legal assistance, which also provides for the possibility of choosing a lawyer, in the presence of such choices.
3. The lawyer records the outcome of the petition.

Litigating the right to live in the community

Good

Speak directly to the client

Ask one question at a time and allow time to answer

Use standard interview techniques to evaluate statements and evidence

Give full attention

Listen to the client: they are the experts of their own situation

Make the environment comfortable for the client

Identify supports which the client chooses when considering remedies

Avoid

Directing questions/comments to the client's guardian or staff;

Dismissing the client's concerns because some statements are unbelievable or nonsensical

Relying primarily on the opinions of experts, including medical experts

Asking multiple questions in one sentence

Using abstract concepts (eg 'rights') without explaining concrete situations

Answering phone calls during interviews

Intermediaries

https://www.youtube.com/watch?v=3o_o5ImEBJg

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Thank you!

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