

ACCESS TO JUSTICE FOR PEOPLE WITH MENTAL DISABILITIES

Steven Allen, Co-Executive Director
Validity Foundation (MDAC)

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Outline



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Introduction



- The **Validity Foundation** (formerly MDAC) is an international non-governmental organisation which uses legal strategies to promote, protect and defend the human rights of persons with mental disabilities in Europe and Africa.
- By ‘**persons with mental disabilities**’, we refer to people with intellectual, cognitive, developmental, neurological and/or age-related impairments, or those with learning disabilities; people with psychosocial disabilities, including those who identify as having mental health issues, mental health problems, mental illness, and/or as users, ex-users or future users of mental health services (conventional or traditional), and/or as survivors of psychiatry, fully respecting the concept of neurodiversity; people with multiple, complex and profound disabilities; and those with complex or high support needs, including people with life-threatening or life-limiting health conditions.
- We specialise in **strategic litigation** and **acting on the instructions** of persons with mental disabilities to pursue **redress for human rights violations** - current case docket **≈ 60 cases** at national and international legal fora.

Definitions

- UDHR Article 8: “*Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.*” - **effective access to systems, procedures, information and locations** used in the administration of justice
- CRPD Article 13: Access to justice **on an equal basis with others**, including through the provision of **procedural and age-appropriate accommodations**.
- ECHR Article 6: Right to a **fair trial**
- Charter of Fundamental Rights Article 47: Right to an **effective remedy** and a fair trial

Distinguish:

procedural accommodations from **reasonable accommodations!**



Legal Barriers (1)

VALIDITY

GUARDIANSHIP – DISABILITY-BASED DISCRIMINATION

- *Restricted legal personality*
- *Restricted legal agency*
- *No capacity to instruct lawyers independently*
- *No direct access to courts*

IS THIS CHANGING?

- *Shtukaturv v. Russia*
- *Stanev* line of cases
- *Kędzior*
- Guardianship reforms in CEE



Legal Barriers (2)

CHILDREN WITH DISABILITIES

- *Access to Justice for Children with Mental Disabilities* project – 10 EU MS
- The problem of ‘**evolving capacities**’ – Arts 5 and 12 CRC
- Rarely a direct right of access to courts – dependent on adults

IS THIS CHANGING?

- Council of Europe Child-Friendly Justice Guidelines
- *Gillick* competence – but what about children with intellectual/cognitive/developmental disabilities?

See: www.mdac.org/accessing-justice-children



Practical Barriers (1)

INSTITUTIONALISATION

- Directors of institutions frequently exercise the powers of guardians
- **Conflict of interest** – particularly when complaints relate to human rights violations inside the institution
- Extremely high risk of **acts of reprisal** for pursuing complaints
- Independent legal advice rarely available
- Access of lawyers fully dependent on staff
- Legal aid frequently unavailable
- Monitoring authorities cannot initiate cases



Practical Barriers (2)

VALIDITY

COURTS/LEGAL PROCESSES

- Rigid processes, inflexible judges and strict rules of procedure
- Lawyers do not know how to request **reasonable accommodations**
 - *Lack of a formal procedure to do this*
 - *Lack of understanding of lawyers*
 - *Lack of specialists to support in legal processes*
- Communication barriers
- Attitudinal barriers – testimony not given weight
- Re-traumatisation



See also: www.mdac.org/innovating-lawyers, www.mdac.org/charm-toolkit

Structural Barriers in the EU



KEY PROBLEMATICS

- Access to justice is *primarily* a MS competence

- Does the EU have a role to play?
 - *Charter of Fundamental Rights (applicability)*
 - *CRPD (legal status viz EU law)*
 - *Principle of non-discrimination*
 - *Technical assistance*

- Potential issues:
 - *institutionalisation (e.g. the obligation to prevent misuse of EU financing)*
 - *segregation (e.g. education policy)*
 - *civil and political rights (e.g. European elections)*

VALIDITY

THANK YOU