



EDF recommendations on the EU Strategy on Victims' Rights (2020-2024)

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About the European Disability Forum

The European Disability Forum (EDF) is an umbrella organisation of persons with disabilities that defends the interests of over 100 million persons with disabilities in the European Union. We are a unique platform which brings together representative organisations of persons with disabilities from across Europe. We are run by persons with disabilities and their families, and as such represent a strong, united voice of persons with disabilities in Europe. Specific expertise on gender and women's rights issues is provided by EDF Women's Committee. EDF is committed to the women's movement and an active member of the European Women's Lobby.

Summary

EDF welcomes the commitment of the European Commission to protect the rights of victims in the European Union (EU) and its proposal for an EU Strategy on victims' rights for 2020-2024.

Despite the legal framework on victims' rights developed in the last two decades by the European Commission, many victims in the EU are not granted their rights. Even when measures are available, they are often inaccessible to victims with disabilities. Persons with disabilities face difficulties reporting crimes, accessing support measures and services, and exercising their rights to a criminal proceeding and support throughout.

Physical and/or communication barriers make crimes difficult to report, and myths and stereotypes prevent persons with disabilities from being considered credible by the police and the criminal justice system. Persons with disabilities are often not aware of the legal remedies available, or are afraid of stigmatisation and victimisation. States also fail to provide victims' services accessible to persons with disabilities, from lack of (or inaccessible) information on their rights to inaccessible helplines and shelters. In the criminal proceeding itself, persons with disabilities often do not receive appropriate procedural accommodation and, in many instances, court buildings are not accessible to people with reduced mobility.

Women with disabilities are particularly affected as they are more at risks of being victims of crimes, including sexual and domestic violence, and excluded by the justice system.

To break the barriers faced by victims with disabilities, EDF calls for the adoption of an ambitious and inclusive EU strategy on victims' rights (2020-2024).

In order to have a meaningful impact, the EU strategy on victims' rights must:

- 1. Ensure participation of civil society in its design, implementation and monitoring**, including victim support organisations and organisations of groups over-represented in victim groups, such as organisations of persons with disabilities, including those of women with disabilities.

2. **Strengthen its legal basis** by referring and aligning with the rights enshrined in the UN Convention on the rights of Persons with Disabilities, the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and other key international instruments.
3. **Prioritise implementation and evaluation of relevant EU laws**, including by developing key tools for implementation and regular evaluation mechanisms.

The Strategy should also include specific provisions to ensure the rights of victims with disabilities, as a specific group of victims. In particular, it should look at:

- Ensuring identification of victims with disabilities, including victims of violence living in closed settings;
- Providing adequate and accessible services to victims with disabilities;
- Ensuring active participation of victims with disabilities at all stages of the criminal proceeding;
- Guaranteeing accessible information and communication prior, during and after criminal proceedings;
- Training practitioners on the rights of the most marginalised victims;
- Sanctioning violation of victims' rights;
- Collecting disaggregated data and conducting research on victims.

Glossary

Legal capacity: person's legal ability to enter into a contract. It includes the capacity to be a holder of rights and an actor under the law, for instance to own and inherit property, to make control one's financial affairs, to marry and to vote.

Persons with disabilities: 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.

Procedural accommodation: necessary and appropriate modification and adjustment needed for persons with disabilities to have access to justice and participate in legal proceedings. Contrary to reasonable accommodation, procedural accommodation and age-appropriate accommodation are not limited by a proportionality of the measure. It includes diverse communication methods, allowing video testimony in certain situations, as well as providing professional sign language interpretation and other assistive methods.

Reasonable accommodation: necessary and appropriate modification and adjustment, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise of their human rights and fundamental freedoms on an equal basis with others. To be "reasonable" the accommodation cannot impose a disproportionate or undue burden. Denial of reasonable accommodation is a form of discrimination.

Substitute decision-making: regime of legal capacity where a person decides on behalf of another one. Substitute decision-making regimes can take many different forms, including plenary guardianship, judicial interdiction and partial guardianship. The UN Convention on the Rights of Persons with Disabilities requires states parties to abolish these practices in order to ensure that full legal capacity is restored to persons with disabilities on an equal basis with others. They must be replaced by supported decision-making regimes.

Supported decision-making: regime where a person supports another one in their decisions while respecting the person's autonomy, will and preferences. For example, persons with disabilities may choose one or more trusted support persons to assist them in exercising their legal capacity for certain types of decisions, or may call on other forms of support, such as peer support, advocacy (including self-advocacy support), or assistance with communication.

Introduction

In the last two decades, the European Union has developed a legal framework to protect the rights of victims of crimes, in particular, the [Victims' Rights Directive](#) (2012), the [Compensation Directive](#) (2004), the [Counter-terrorism Directive](#) (2017) and the [Anti-trafficking Directive](#) (2011). This framework specifically considers the rights of victims with disabilities in access to justice, and more in particular accessibility of premises, communication and information. The Victims' Rights Directive specifies that "Member States should ensure that victims with disabilities are able to benefit fully from the rights set out in th[e] Directive, on an equal basis with others, including by facilitating the accessibility to premises where criminal proceedings are conducted and access to information."

Despite these measures, many victims in the European Union, are not granted their rights. Even when measures are available, they are often not accessible to victims with disabilities due to inaccessibility or the lack of reasonable and procedural accommodation. Persons with autism, intellectual and psychosocial disabilities, and more particularly, victims who have had their legal capacity removed, as well as women and girls with disabilities, are often denied participation in criminal proceedings.

The purpose of our position paper is to inform the European Commission in its preparation of the EU Strategy on victims' rights (2020-2024). Our recommendations were prepared with the close involvement of EDF human rights and non-discrimination committee, EDF women's committee, and in cooperation with Victims Support Europe and the European Women's Lobby.

Background information on victims with disabilities in the EU

There are over 100 million persons with disabilities in the European Union, 60 million of them being women and girls with disabilities. Persons with disabilities, and especially women and girls with disabilities, are more at risk of being victims of violent crimes, including hate crimes, than other persons. Women and girls with disabilities also face gender-based and domestic violence, including harassment and other abuses, such as forced abortion and forced sterilisation.

In relation of crimes faced by women with disabilities, the European Parliament stressed that women with disabilities are two to five times more likely to face violence than other women, and 34 % of women with a health problem or a disability have experienced physical or sexual violence by a partner in their lifetime.¹

Once victims of a crime, persons with disabilities have difficulties to access support measures and services available to other victims, and to exercise their rights to and in the criminal proceeding. The first barrier comes from the difficulty for persons with disabilities to report crimes due to physical or communication barriers, or to myths and stereotypes that led them to not be believed by the justice system. This

¹ European Parliament resolution on the situation of women with disabilities ([2018/2685\(RSP\)](#))

specifically affects the rights of women with disabilities, children with disabilities and persons with intellectual or psychosocial disabilities, in particular those placed under guardianship and other regime depriving them of their legal capacity. States also fail to provide victims' services accessible to persons with disabilities. Information on their rights, helplines and shelters are either inexistent or inaccessible. Finally, in the criminal proceeding itself, persons with disabilities often do not receive appropriate procedural accommodation and in many instances court buildings are simply not accessible to people with reduced mobility.

EU's obligations to ensure the rights of victims with disabilities under the UN Convention on the Rights of Persons with Disabilities

The [United Nations Convention on the Rights of Persons with Disabilities \(UN CRPD\)](#) is an international human rights treaty **ratified by the EU and all its Member States**. It commits all who ratify it to implement and promote the full realisation of all human rights for all persons with disabilities through the adoption of new political tools and review of existing legislation and policies.

The Convention has specific provisions on ensuring access to justice and combating violence, abuse and ill-treatment of persons with disabilities. [Articles 12, 13, 15 and 16](#) are particularly relevant. Article 16 on freedom from exploitation, violence and abuse, specifically requires parties of the Convention to prevent abuses by ensuring appropriate forms of disability, gender and age-sensitive assistance and support. It also states that States should take “measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services.”

In 2015 the CRPD Committee adopted recommendations to be followed by the EU in its [Concluding observations on the initial report of the EU](#). The Committee made the following recommendations in relation to the rights of victims with disabilities and access to justice:

- Guarantee full access to justice and eliminate all barriers, including physical and procedural barriers, and those relating to legal capacity, in European courts;
- Take appropriate actions to combat discrimination faced by persons with disabilities in accessing justice by ensuring that full procedural accommodation and funding for training justice personnel on the Convention are provided in its member States;
- Take measures to ensure that all persons with disabilities who have been deprived of their legal capacity can exercise their rights to access to justice;
- Accession by the EU to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) as a step to combating violence against women and girls with disabilities.

EDF's ten recommendations for the EU Strategy on Victims' Rights (2020-2024)

General recommendations

1. Participation of civil society in the design, implementation and monitoring of the Strategy

EDF calls for the adoption of an inclusive EU strategy on victims' rights (2020-2024) which is sufficiently resourced and developed, implemented and monitored in consultation with representatives of civil society, including victim support organisations and organisations of groups over-represented in victim groups, such as organisations of persons with disabilities and women's organisations.

The Strategy should ensure that the rights of specific groups of victims are met, and especially victims from marginalised groups, including persons with disabilities, and persons with disabilities who face other intersectional forms of discrimination, such as women with disabilities, LGBTI persons with disabilities, persons with disabilities from racial and ethnic minorities groups, refugees and migrants with disabilities and older persons with disabilities.

To align with the human rights based approach to victims, the Commission should not refer to "vulnerable persons" (as in the Victim Rights Directive) but "persons belonging to marginalised groups".

2. Strengthening the legal base

The Strategy should be based on the right of equality and non-discrimination as established in the EU treaties, the Fundamental Rights Charter and the **UN Convention on the Rights of Persons with Disabilities** to which the EU and all its member states are party.

The Strategy should refer and be consistent with **the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)** that must be ratified swiftly by the European Union and all its member states. It should call the Council of the EU and EU member states to align their criminal legislation with the Istanbul Convention, including by criminalising forced abortion and sterilisation, and provide adequate support to victims of violence.

Finally, the Strategy should also align with key international instruments, such as the ILO Convention on ending violence and harassment in the world of work, the UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and the CEDAW general recommendation 35 on gender base violence against women.

3. Prioritising implementation and evaluation of relevant EU laws

The Strategy should ensure that one of its priorities is the implementation and evaluation of relevant EU laws. It should on **key tools** to foster implementation, such as the development and strengthening of victim support services in all EU member states. Regular evaluation of the laws and monitoring of their transposition and implementation should also be guaranteed, in order to assess whether they remain fit for their purpose and address remaining gaps.

To address the high level of violence faced by women, the Strategy could consider enhancing the current legislation for victims of male violence, as part of the effort of creating a comprehensive legal framework to tackle the continuum of violence against all women.

Specific recommendations

EDF calls the Commission to incorporate the following recommendations under the Strategy's five key priorities for victims' rights, and most specifically under:

- empowering victims of crime;
- improving protection and support of the most vulnerable victims;
- facilitating victims' access to compensation.

4. Ensuring identification of victims with disabilities, including victims of violence living in closed settings

The European Union and EU member states should ensure mechanisms are in place to identify victims of crime, and especially victims of violence in residential institutions, asylum centres and places of deprivation of liberty, including mental health institutions, day-care centres and occupational centres. Mechanisms to report crimes should be easy to understand, available and accessible to all victims.

To prevent and identify crimes, the EU should ensure all services and programmes for institutionalised persons are effectively monitored by independent authorities. Competent authorities should investigate fully and sanction inefficiency, complicity and negligence on the part of staff working in these closed settings and specific support should be granted to victims.

In practice, States must:

- Put in place simple mechanisms to report crimes and mechanisms to identify victims in day-care centres, occupational centers, residential institutions, and closed settings such as asylum center, mental health institutions and place of deprivation of liberty.

- All services and programmes for institutionalised persons are effectively monitored by independent authorities.

The European Union should support national efforts on monitoring and reporting crimes, including in institutions and closed settings, for instance by felicitating the exchange of good practice.

5. Providing adequate and accessible services to victims with disabilities

General support services

The EU and all its member states must ensure that victims support services are be available and accessible to all victims of crimes. For instance, helplines and shelters must be available and accessible to victims with disabilities. For helplines, it can be done by ensuring that a number can be both called and texted to. Shelters must be physically accessible victims with reduced mobility and able to provide them with accessible information and communication methods. Support services should include psychosocial support for victims, including victims of sexual abuses, domestic violence, forced sterilisation or abortion, female genital mutilation, and human trafficking. States must ensure that women and girls with disabilities can access age and gender appropriate support services, and that services are physically and virtually available to victims living in rural and remote areas.

All victim support services must be accessible to persons with disabilities. There should be no investment in segregated services. In addition, all services must be available, confidential and free of charge- including disability support services. There should be no waiver to confidentiality for guardian, curator or relatives of the victim unless expressly requested by him/her/them, to take into account the fact that guardian, curator or relative may be the perpetrator.

The EU and its member states should develop specific measures to raise awareness of the existence of services, avenues to report crimes, referral mechanisms and, more generally, break barriers victims have in accessing appropriate support services and personal assistance.

Personal assistance for persons with disabilities

Personal assistance for persons with disabilities should be understood as an additional form of support for victims with disabilities that strengthen participation in legal actions, protection and support measures, and services for victims. Personal assistance should be available to all people with disabilities who fall victim to a crime of violence. It should be provided taking into consideration specific gender-based needs in all European Union members states and regardless of the victim's nationality.

Mental health rehabilitation programmes

The EU and its member states should ensure that victims of violence enjoy free access to inclusive and accessible psychosocial recovery programmes in a suitable setting for the mental health, wellbeing, self-esteem, dignity and autonomy of the

individual. These programmes should be gender-sensitive and should be offered as close as possible to their communities, including in rural areas, to facilitate proper post-trauma recovery.

Mental health services for victims of violence should be gender-sensitive, human-rights based and should ensure all medical treatments are administered with the free and informed consent of the patient. To this end, patients should be offered any support they may need to exercise this right and to take decisions about their own lives.

Furthermore, mental health services should also deliver inclusive and accessible specialist support programmes for women who are victims of violence, such as a 24-hour suicide prevention hotline and safe and properly-equipped, community-based crisis centres where they can stay with their sons and daughters.

In practice, States must:

- Invest in support services for victims of crime, including personal assistance for victims with disabilities and mental health rehabilitation programme, in all their territory and on raising awareness on their existence, so that all victims, including those living in rural and remote areas, can access them;
- Ensure that all support services are accessible and inclusive of victims with disabilities;
- Actively involve persons with disabilities and their representative organisations, in particular those who have been victims, in the design, implementation and evaluation of support services.

The European Commission must support such development and fund government and civil society's projects that foster development of accessible support services to victims and raising awareness on their existence.

6. Guaranteeing accessible information and communication prior, during and after criminal proceedings

The EU and all its member states must adopt measures to ensure that citizens, including those with disabilities, and especially women and girls with disabilities, are informed about their rights and available legal remedies even before a crime takes place and be empowered to recognise an act constitutive of a criminal offence. Information on acts constitutive of criminal offences must be available to the general public in a large variety of formats such as easy-to-read, pictograms, braille and sign languages. All digital information on victims' rights must comply with the accessibility European Standard EN 301 549.² Migrants, refugees, victims of human trafficking and persons with disabilities living in segregated institutions, must also be empowered to identify their rights and report crimes, including violence, for instance through information delivered by migration offices, service providers, equality bodies and independent bodies monitoring institutions.

² https://www.etsi.org/deliver/etsi_en/301500_301599/301549/03.01.01_60/en_301549v030101p.pdf

After a crime takes place, and in line with articles 3 and 4 of the Victims' Rights Directive, information and communication methods used with the victim must be age, disability and culturally appropriate. This includes the use of easy-to-read format, pictograms, braille and sign language. The right to interpretation enshrined in article 7 of the Victims' Rights Directive must be interpreted to include sign language interpretation. For instance, a Muslim deaf blind woman should have the right to request for a female interpreter. This applies from first contact with the authorities to condemnation and compensation of victims. In line with article 7 of the Victims' Rights Directive, all information about the case shall be transmitted to the victim in a format that they understand and is accessible to them.

In practice, States must:

- Recognise sign language of their country as an official language and invest in the training of sign language interpreters;
- Invest in the provision of accessible information: for example by designing websites accessible for screen-readers and buying Braille-printers;
- Make digital information accessible by complying with [European Standard EN 301 549 version 3.1.1](#);
- Communicate about rights in easy-to-read format and pictograms, including through teachings on one's rights in public and private schools' curriculum – for instance all girls, adolescents and women must be informed on the definition of rape and consent, including those placed in institutions and in segregated schools teaching children with disabilities.
- Design and deliver mandatory trainings for institutionalised persons, and provide information on how to prevent, recognise and report crimes, including violence.

The European Commission must support such development and fund government and civil society projects that foster accessible communication, information and empowerment of victims. For instance, the EU funded [Just4All](#) project aims to disseminate the use of accessible practices (for persons with disabilities) among legal professionals. The EU could use the outcomes of such projects and disseminate them at EU level. It could also require a disability rights component to be included in each project on access to justice.

The European Commission must ensure that information on access to justice and victims' rights on its website is available in easy-to-read and pictograms. In addition, it could organise a communication campaign on the rights of victims in all languages of the member states and easy-to-read, reflecting the variety of victims of crimes and their different needs. It has been recognised that easy-to-read information and plain language is better understood and remembered by everyone.

7. Ensuring active participation of victims with disabilities at all stages of the criminal proceeding

The EU and its member states must adopt a human right based approach to victims' rights, seeing victims as rights holders and active participants of the justice system. They must ensure the active participation of victims at all stages of the criminal proceeding, including by ensuring the accessibility of communication, information and of the built environment. Police stations, tribunals and courts must be accessible to all victims and victims with disabilities must be granted procedural accommodation to be able to participate in trials, as victims and witnesses. Procedural accommodation must be age and gender appropriate. The right to actively participate to the criminal proceeding also applies to hearing on compensation in line with article 9 of the Compensation Directive. All victims with disabilities have the right to be heard. Courts should not deny their right to be heard on the basis of their disability. Decision on hearing must be made after individual assessment of the victim, irrespective of disability.

In addition, the EU and member states must take measures to ensure that victims with intellectual or psychosocial disabilities, in particular those under substituted decision-making mechanisms, such as guardianship and curatorship, can be heard by police forces and judges. States must guarantee all necessary reasonable accommodations are provided to enable them to exercise their right to justice, give their free and informed consent, and take decisions regarding their own lives. They must ensure that they are not represented by their guardian who may be the perpetrator of the crime. For instance, the legal representative of a person with intellectual disabilities may be the perpetrator of violence, whether he is a parent or a legal entity (such as an institution in which the violence is taking place).

In practice, States must:

- Develop and implement a plan to ensure that victims with disabilities have access to police stations, tribunals and are provided with procedural accommodation to take part in the criminal proceedings, including court's hearings;
- Take urgent measures to abolish guardianship and other forms of substituted decision-making and replace them by supported decision making, to ensure that the right to equality and the right to be heard are complied with.

The European Commission must foster research, data collection and exchange of good practices on access to justice and supported decision-making, in consultation with representative organisations of persons with disabilities, to ensure the active participation of victims with disabilities in the justice system.

In partnership with and while respecting the competences of member states, the European Union should ensure all courtrooms handling crimes, including cases of violence and abuses, are fully inclusive and accessible.

8. Training practitioners on the rights of the most marginalised victims

The EU and its member states must take measures to organise and deliver mandatory trainings on victims' rights, including the rights of persons with disabilities, accessibility and procedural accommodation, to all officials likely to come in contact with victims and working in the criminal justice system, in line with article 25 of the Victims' Rights Directive. All trainings must include an age, gender, cultural and disability perspective, in order to eliminate myths and stereotypes based on discriminatory grounds and ensure that the complaints and statements of victims from marginalised groups in society are given the same weight by police officers, social workers and other first responders. For instance, women and girls with intellectual or psychosocial disabilities are often not believed by the authorities when they report sexual abuse or violence because of myths that they are either asexual or "cannot control their sexuality".

In addition, the European Union and EU member states organise and deliver mandatory trainings for personnel in residential institutions, asylum centres and places of deprivation of liberty to ensure proper, gender-sensitive and human-rights based institutional conduct, including identification and report of crimes, and provision of adequate support for victims.

It is crucial that persons with disabilities, in particular victims with disabilities, and their representatives organisations, be involved in the design and delivery of the trainings. Women with disabilities must be involved in all trainings on violence against women and femicide.

In practice, States must:

- Design and deliver mandatory training on victims' rights, accessibility and procedural accommodation to all personal and official authorities coming in contact with victims;
- Design and deliver mandatory training on identification of crimes, including violence, victims' and disability rights, to personnel in residential institutions, asylum centres and places of deprivation of liberty;
- Involve persons with disabilities, in particular victims with disabilities, and their representatives organisations in the design and delivery of trainings;
- Involve women with disabilities, in the design and delivery of all trainings on violence against women and femicide.

The European Commission must support such development and fund government and civil society's projects on trainings on and for victims with disabilities. It could also create an EU network on training on victims' rights, involving representative organisations of persons with disabilities.

9. Sanctioning violation of victims' rights

The EU and its member states must sanction the violation of victims' rights by public authorities. States must develop accessible mechanisms for victims to report violation of their rights, request enforcement and obtain damages. Equality bodies must be given resources to support victims in the process.

In practice, States should:

- Create an accessible mechanism for victims to report violation of their rights, and condemn such violation;
- Ensure that equality bodies are sufficiently resourced to support victims in informing them about and claiming their rights.

The European Commission must call on member states to develop such reporting mechanisms.

10. Collecting disaggregated data and conducting research on victims

The EU and its member states must collect disaggregated data on victims of crime to identify particular groups of victims of crime and address their specific needs. Data must be disaggregated, at least, by age, gender and disability. Other factors such as race or ethnicity, sexual orientation, gender identity and refugee status may also be considered and are very relevant.

The European Commission should therefore coordinate the collection, analysis and dissemination of EU data on victims of crime with Eurostat and the Fundamental Rights Agency.

In order to implement the Istanbul Convention, combat gender-based violence and support victims, the EU and its member states could fund and conduct specific research on abuse faced by women and girls, including those with disabilities, and sexual abuse in institutions, and access to these victims to the justice system.

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