

**NATIONAL BENCH BOOK:
WORKING WITH DEFENDANTS WITH
INTELLECTUAL AND/OR
PSYCHOSOCIAL DISABILITIES IN
CRIMINAL JUSTICE PROCEEDINGS
BULGARIA**

This Disability Bench Book was developed by KERA Foundation within the project “Enabling Inclusion and Access to Justice for Defendants with Intellectual and Psychosocial Disabilities” (ENABLE – 101056701 – JUST-2021-JACC). The project seeks to promote access to justice and fairer criminal proceedings for defendants with intellectual and psychosocial disabilities in 8 EU countries¹.

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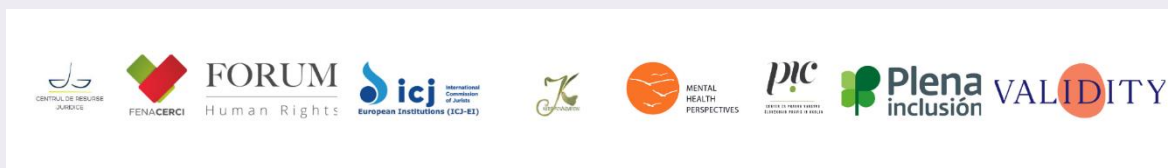
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“The lack of knowledge on how to approach eventually puts society and police, and persons with psychosocial disabilities at risk.”

FROM AN INTERVIEW WITH A JUDGE



01

INTRODUCTION

A. Background

Irrespective of whether they are victims of, witnesses to or alleged perpetrators of crime, persons with disabilities have significant difficulties in accessing justice and engaging with justice actors. At the same time, while reported to be four to ten times more likely to be abused (including sexually) than their peers without disabilities³, individuals with psychosocial and intellectual disabilities - especially those placed in residential settings⁴ - face severe exclusion from justice processes and violations of their fair trial rights⁵. Outdated laws which do not recognise their legal capacity and, consequently, deny the right to stand in a trial and provide testimonies, omission to detect the disability and provide the needed support to access information and communicate, lack of procedural accommodations, lack of specialisation and trainings⁶, attitudinal barriers of most actors participating in the criminal process and lack of access to effective legal advice, are among the systemic challenges faced by persons with intellectual and psychosocial disabilities, living in the EU, that are participating in criminal proceedings.⁷

At the same time, the UN Convention on the Rights of Persons with Disabilities⁸ (*CRPD*), which was ratified by the European Union⁹ and all its Member States without reservations¹⁰, places significant obligations on states to identify and eliminate obstacles or barriers and take proactive, systemic measures to ensure that all persons with disabilities can benefit in an equal manner of their right to access to justice. Nevertheless, although the relevant EU Directives¹¹ and Member-states' legal frameworks recognise the need for support and protect these rights to people with hearing, sensory or physical disabilities, the legislation remains numb to the specific

³ Disability Justice, 'Justice Denied: Abuse and Exploitation': <https://disabilityjustice.org/justice-denied/abuse-and-exploitation/>

⁴ Amelink Q, Roozen S, Leistikow I, Weenink JW. Sexual abuse of people with intellectual disabilities in residential settings: a 3-year analysis of incidents reported to the Dutch Health and Youth Care Inspectorate. *BMJ Open*. 2021 Dec 6;11(12):e053317. doi: 10.1136/bmjopen-2021-053317. PMID: 34873008; PMCID: PMC8650479.

⁵ Smith, T. (2023). *Autism and Criminal Justice. The Experience of Suspects, Defendants and Offenders in England and Wales*. Routledge.

⁶ The International Synthesis report - <https://validity.ngo/wp-content/uploads/2024/08/International-Synthesis-Report.pdf>

⁷ The International Synthesis report - <https://validity.ngo/wp-content/uploads/2024/08/International-Synthesis-Report.pdf>

⁸ UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, A/RES/61/106, 24 January 2007, <https://www.refworld.org/legal/resolution/unga/2007/en/49751>

⁹ The European Union ratified the CRPD on 23 December 2010.

¹⁰ With some exceptions mentioned here:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en

¹¹ Directive on the right to interpretation and translation in criminal proceedings (2010/64/EU); Directive on right to information in criminal proceedings (2012/13/EU); Directive on the right of access to a lawyer in criminal proceedings (2013/48/EU); Directive on strengthening of certain aspects of the presumption of innocence and on the right to be present at the trial in criminal proceedings (2016/343/EU); Directive on legal aid for suspects and accused persons in criminal proceedings (2016/1919/EU); Directive on procedural safeguards for children suspected or accused in criminal proceedings (2016/800/EU)

needs and barriers of persons with intellectual and psychosocial disabilities¹². This is despite that – very often - the same type of measures are provided to other groups in vulnerable situation that may requires similar type of assistance throughout the criminal process, such as minors or women-victims of domestic or sexual violence.¹³ For those few states that *have* put in place support mechanisms, the measures extend only to persons with intellectual and psychosocial that participate in proceedings as victims, leaving outside other participants.¹⁴ There are also countries that have gone ahead to regulate some of these vitally important services, allowing also *CJA* to use the services of a professional facilitator who will assess their needs and carry out the accommodation tasks¹⁵ or use procedural documents written in accessible language¹⁶.

The purpose of this Bench Book is to inform relevant stakeholders about best practices for efficiently involving defendants with intellectual and psychosocial disabilities in criminal proceedings, as well as to propose practical steps for their national implementation. The findings are the result of a thorough analysis of the situation in eight EU countries, including Bulgaria, while the solutions proposed are based on relevant international and regional standards and reflect best practices collected globally and nationally.

B. Who is this Bench Book for and how to us it?

The Bench Book is designed to be a practical guide for judges, prosecutors, lawyers, law enforcement officers and other professionals from Bulgaria (broadly referred to as “*criminal justice actors, referred to below as CJA*”) working in criminal legal settings on cases involving persons with intellectual and/or psychosocial disabilities. It can be useful in guiding their work on cases involving persons with intellectual and/or psychosocial disabilities, which due to the multiple barriers experienced – legal, environmental, informational, attitudinal – require additional support to realise equally their right to access to justice. The practical tools proposed in the Bench Book aim to

¹² e.g. the Directive 2010/64/EU on the right to interpretation and translation guarantees the right to a foreign language interpreter and assistance for people with hearing or speech disabilities in criminal proceedings. Cognitive barriers—difficulties understanding procedures and providing accommodations — are left out. Similarly, the Directive 2012/13/EU on the right to information in criminal proceedings ensures defendants with hearing or speech disabilities have access to information about their rights, accusations, and case materials. The directive as well does not require this information to be accessible for defendants with cognitive barriers.

¹³ e.g. the Directive 2010/64/EU on the right to interpretation and translation guarantees the right to a foreign language interpreter and assistance for people with hearing or speech disabilities in criminal proceedings. Cognitive barriers—difficulties understanding procedures and providing accommodations — are left out. Similarly, the Directive 2012/13/EU on the right to information in criminal proceedings ensures defendants with hearing or speech disabilities have access to information about their rights, accusations, and case materials. The directive as well does not require this information to be accessible for defendants with cognitive barriers.

¹⁴ The International Synthesis report - <https://validity.ngo/wp-content/uploads/2024/08/International-Synthesis-Report.pdf>

¹⁵ Spain National Study, Enable project, April 2023, p.29

¹⁶ Lithuania National study, Enable project, April 2023, p.9.

clarify how CJA should deal with each of those systemic barriers that are most likely to arise at the pre-judicial and judicial stages of criminal proceedings in order to enable defendants with intellectual and/or psychosocial disabilities to participate equally in proceedings.

While the focus of this Bench Book is on defendants in criminal justice settings, the principles, standards, and recommendations made in it may be helpful to other participants of the criminal process, experiencing these types of disabilities, including victims and witnesses, as well as in broader contexts including in civil proceedings.

C. Methodology

The content of this bench book was developed by Kera Foundation, Bulgaria based on the findings of a national research on barriers of defendants with intellectual and psychosocial disabilities in accessing criminal justice services¹⁷, carried out within the ENABLE project¹⁸. The presented information and recommendations were gathered through research, interviews, consultations and multidisciplinary meetings with persons with disabilities, judges, lawyers, NGO representatives and other relevant stakeholders in the period from January 2023 to June 2024.

D. Main definitions and terminology

- **Person with disabilities** – In terms of Article 1 of the CRPD, 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 others¹⁹. Persons with psychosocial and intellectual disability refers to diverse communities, particularly those who face specific kinds of human rights violations on the basis of their actual or perceived mental disabilities. Bearing in mind that this is an evolving concept, these include, among others, people who self-identify as or are perceived or treated as persons with neurological impairments, including age-related and degenerative impairments; persons with autism and autistic persons; persons with learning impairments; persons who hear voices, etc. According to the Bulgarian Persons

¹⁷ ENABLE Project, National Briefing Papers: <https://validity.ngo/projects-2/enabling-inclusion-and-access-to-justice-for-defendants-with-intellectual-and-psychosocial-disabilities/national-briefing-papers/>

¹⁸ Full name of the project: Enabling inclusion and access to justice for defendants with intellectual and psychosocial disabilities (101056701 – ENABLE – JUST-2021-JACC). More information can be accessed here: <https://validity.ngo/projects-2/enabling-inclusion-and-access-to-justice-for-defendants-with-intellectual-and-psychosocial-disabilities/>

¹⁹ UN Convention on the Rights of Persons with Disabilities, Article 1

with Disabilities Act “Persons with disabilities are individuals with physical, psychological, intellectual or sensory deficiency which might while in contact with the outside environment hinder their full and effective participation in the social life.” - § 1, item 1 from the Additional provisions of the PDA.

- **Legal capacity** – according to General Comment No.1, the CRPD, legal capacity includes the capacity to be both a holder of rights and an actor under the law²⁰. Legal capacity to be a holder of rights entitles a person to full protection of his or her rights by the legal system. Legal capacity to act under the law recognizes that person as an agent with the power to engage in transactions and create, modify or end legal relationships.
- **Procedural accommodations** – refer to all necessary and appropriate “modifications and adjustments in the context of access to justice, where needed in a particular case, to ensure the participation of persons with disabilities on an equal basis with others.”²¹ Most of the measures described in this Bench Book required to eliminate barriers to access to justice faced by persons with disabilities in justice processes and procedures amount to “procedural accommodations.”
- **Reasonable accommodations** – as defined by Article 2 of the CRPD, represent the necessary and appropriate modification 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.”
- **Supported decision-making vs Substituted decision-making** - Supported decision-making is a model that the CRPD requires to be entrenched in legal systems and laws, which requires that persons with disabilities are provided with a range of support options, including the support of people they trust (e.g. family, friends, peers, advocates, lawyers, interpreters, facilitators/intermediaries), in order to support and enhance their ability to make decisions for themselves. Opposite to the former, substituted decision-making is a model entrenched in many legal systems and laws, which deprives persons with disabilities of the right to make decisions for themselves, and, instead delegates the right to others to make decisions on behalf of persons with disabilities (most often someone is appointed

²⁰ CRPD Committee GC No 1, para 12, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>

²¹ https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf, p 9.

to be “guardian” by law). The latter, despite its ongoing prevalence in legal systems across the world, is in direct contravention of the CRPD and in violation of the autonomy and legal capacity of persons with disabilities.

- **Equity vs Equality** – The words equity and equality are often used interchangeably, but they have a different meaning. Equality means each individual or group of people is given the same resources or opportunities. Equity recognizes that each person has different circumstances, and allocates the exact resources and opportunities needed to reach an equal outcome. Equity can be defined as giving everyone what they need to be successful. In other words, it's not giving everyone the exact same thing. If we give everyone the exact same thing, expecting that will make people equal, it assumes that everyone started out in the same place - and this can be vastly inaccurate because everyone isn't the same.²²
- **Access vs Accessibility** – Access means the opportunity or right to do something or enter a place. For example, if you have a work badge, you have access to your work premises. Accessibility refers to the design of products, devices, services or environments so as to be usable by persons with or without disabilities and includes information and communications. Physical accessibility, for example, involves the creation of a barrier-free environment where persons with disabilities can move freely (think of systemic solutions for stairs and heavy doors for persons using a wheelchair) or can independently access information freely (think of availability of documents in Braille or Easy Read format)²³
- **The Medical model vs the Human rights model of disability** - the medical model of disability places the focus on the person's condition, which is understood to directly cause their disability, while the Human rights model of disability on the other hand, places the individual centre stage in all decisions affecting him/her, places focus on the inherent dignity of the human being and the barriers created by society and the interaction of such barriers with each individual person with a disability.²⁴ It acknowledges that social, attitudinal, legal and other barriers frequently prevent individuals with disabilities from enjoying human rights on an equal basis.

²² <https://www.internationalwomensday.com/Missions/18707/Equality-versus-Equity-What-s-the-difference-as-we-EmbraceEquity-for-IWD-2023-and-beyond>

²³ UN Disability Inclusive Language Guidelines:

<https://www.ungeneva.org/sites/default/files/2021-01/Disability-Inclusive-Language-Guidelines.pdf>

²⁴ Anna Lawson & Angharad E. Beckett (2021) The social and human rights models of disability: towards a complementarity thesis, *The International Journal of Human Rights*, 25:2, 348-379, DOI: 10.1080/13642987.2020.1783533.

02

RIGHTS OF PERSONS WITH
DISABILITIES:
INTERNATIONAL AND EU
LEGAL FRAMEWORK

The UN Convention on the Rights of Persons with Disabilities (*CRPD/the Convention*) is regarded as a key instrument in the international legal framework governing the rights of people with disabilities.²⁵ The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.²⁶

It is important to note that the CRPD includes its General Comments, which are authoritative interpretations of the Convention issued by the Committee on the Rights of Persons with Disabilities (*the Committee*)²⁷. Among the most relevant General Comments (GC) to the topic of this Bench Book are GC on Article 12 (Equal recognition before the law)²⁸, Article 9 (Accessibility)²⁹, Article 19 (Right to live independently and be included in the community)³⁰, Article 5 (Equality and non-discrimination)³¹. *The Committee* and Special Rapporteur on the Rights of Persons with Disabilities also issued important guidelines for implementing the CRPD, including the Guidelines on Article 14 on the right to liberty and security of persons with disabilities³², as well as the International Principles and Guidelines on Access to Justice for Persons with Disabilities (*the International Principles*).³³

Among the most important obligation, specified by the *CRPD*, that Bulgaria (and its relevant agents) assumed to ensure fair trial rights are the following:

²⁵ The CRPD Convention and the Optional Protocol entered into force on 3 May 2008. It is the first comprehensive human rights treaty to be open for signatures by regional integration organizations. The CRPD was adopted on 13 December 2006 and was opened for signature on 30 March 2007. There were 82 signatories to the Convention, which was the highest number of signatories in history to a UN Convention on its opening day. United Nations Department of Economic and Social Affairs. "Convention On The Rights Of Persons With Disabilities (CRPD)." Accessible [here](#).

²⁶ UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, Art. 1, available [here](#)
https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_61_106.pdf

²⁷ The Committee on the Rights of Persons with Disabilities, established by the Convention (Article 34), monitors the implementation of the Convention by states parties. The Committee overseeing the implementation of the CRPD issues General Comments and concluding observations on states' that are party to the Convention regarding their progress on implementation.

²⁸ General Comment 1 to UN CRPD is available in English here: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-1-article-12-equal-recognition-1>.

²⁹ General Comment 2 to UN CRPD is available in English here: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-2-article-9-accessibility-0>.

³⁰ General Comment 5 to UN CRPD is available in English here: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no5-article-19-right-live>.

³¹ General Comment 6 to UN CRPD is available in English here: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-non-discrimination>.

³² the Guidelines on the right to liberty and security of persons with disabilities are contained in the Annex to A/72/55, the Committee's Bi-Annual Report 2016.

³³ UN, Special Rapporteur on the Rights of Persons with Disability, International Principle and Guidelines on Access to Justice for Persons with Disabilities (2020).

- **prohibit all discrimination** on the basis of disability and **guarantee** to persons with disabilities **equal and effective legal protection** against discrimination on all grounds.³⁴
- **ensure that the right to stand trial** must be recognised to all persons with disabilities, at all levels of the criminal justice system, without discrimination, and that constructs such as “cognitive incapacity” and “mental incapacity”³⁵, as determined, for instance, by functional or mental status assessments (that are common in most legal systems) are not used to restrict the right to legal capacity.”³⁶
- provide the support necessary to enable persons with disabilities to make decisions that have legal effect.³⁷ Such **support measures “must respect the rights, will and preferences of these persons** and should never amount to substitute decision-making.”³⁸
- promptly **identify and recognise the barriers** and the appropriate **support measures to enable an effective participation in proceedings** of a person suspected or accused in criminal proceedings via initial assessment, carried out by police officers, law enforcement or judicial authorities, as well as other competent authorities, including independent experts.³⁹
- take measures to **provide gender and age-appropriate individualized procedural accommodations**, according to the will and preference’ of the person concerned.”⁴⁰. Such accommodations encompass all the necessary and appropriate modifications and adjustments needed to make decisions for themselves in a particular case⁴¹, which include (1) access to

³⁴ According to Article 2 of the CRPD discrimination on the basis of disability represents “(...) any distinction, exclusion or restriction 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; (...)”

³⁵ The CRPD Committee has clarified that the CRPD strongly rejects the application of concepts and standards such as “unfitness to stand trial” and “insanity defences” as discriminatory and in violation of the Convention. The Committee has therefore called for the removal of all such standards from criminal justice systems in States Parties to the CRPD. Declarations of unfitness to stand trial or non-responsibility or incapacity in criminal justice systems are not only discriminatory, but lead to detention of persons based on their disabilities contrary to Article 14 of the CRPD.

³⁶ Ibid, International Principles, in paragraph 1.2.c,

³⁷ CRPD, GC No 1, para. 16.

³⁸ CRPD, GC No 1, para. 17.

³⁹ Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, Recital 6.

⁴⁰ UN OHCHR, ‘Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (December 2017), A/HRC/37/25, para 26.

⁴¹ World Health Organization, “Supported decision-making and advance planning: WHO QualityRights Specialized training,” 1 January 2019, accessible [here](#)

intermediaries/facilitators (2) provision of procedural adjustments, and (3) modifications, adjustments to the environment and communication support, to ensure access to justice for persons with disabilities.⁴² Accommodations should be organized before the start of proceedings, and all participants should be informed of their availability throughout the course of legal proceedings.⁴³ In addition, they should be available in digital form as well. This is particularly important within the context of remote hearings and use of video-links.

- have **access to legal notices and information in a timely and accessible manner** on an equal basis with others, and that information about justice systems and procedures, including notices that require a response or an action to be taken, are available in an accessible format (including sign language, and audio guides, telephone line advice and referral services, etc) that are also compatible with diverse forms of AAC, including low and high tech.⁴⁴
- ensure that persons are **informed of their rights orally or in writing, in accessible language**, considering any particular needs and barriers of the suspect/ accused persons with intellectual and psychosocial disabilities and that information about their procedural rights, in an accessible format, can be received on request.⁴⁵
- ensure that suspects or accused persons who do not speak or understand the language of the criminal proceedings are **provided with effective, accurate and impartial interpretation** both receptively (i.e. understanding what persons with disabilities are saying) and expressively (i.e. having the skill necessary to convey information back to those persons).⁴⁶
- **provide free or affordable legal assistance**, that is competent and timely. Also, in order to participate equally in any legal proceedings and discharge their professional duties, **lawyers of persons with disabilities should be provided with procedural accommodations**, such as interpreters, assistive technology

⁴² UN International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 3.2.d.

⁴³ Ibid, Principle 3, Guideline 31, p.15.

⁴⁴ Article 21 of the CRPD, UN International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 4.

⁴⁵ Commission Recommendation 2013/C-378/02 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, Section 3 – Rights of vulnerable persons, Right to information.

⁴⁶ Directive 2010/64/EU of the European Parliament and of the Council – Articles 1, 2, 4 and 5; CRPD, UN International Principles and Guidelines on Access to Justice for Persons with Disabilities.

and intermediaries/facilitators, or the resources necessary to support effective communication with clients, witnesses and other persons with disabilities.

- ensure that suspects and accused persons have the right to be present at their trial⁴⁷ and that their right to presumption of innocence is fully guaranteed⁴⁸

The greater part of these rights, including the right to information, right to interpretation and translation, right of access to a lawyer and legal aid are also protected within the European Union by relevant EU legislation, such as Directives and Recommendations of the European Commission.⁴⁹ Bulgaria ratified the CRPD in 2012, and committed to implement its provisions without any reservations. Bulgaria has legal mechanisms in place to ensure compliance with international human rights standards. The Constitution recognizes the supremacy of ratified international treaties, including those related to human rights, and courts are expected to interpret domestic laws in harmony with Bulgaria's international obligations. Art. 5. (4)⁵⁰ of the Bulgarian Constitution stipulates that international treaties ratified by Bulgaria are part of the domestic legal order and have supremacy over national legislation. This implies that international human rights treaties ratified by Bulgaria prevail over conflicting national laws. Therefore, Bulgarian courts are expected to interpret domestic laws in a manner consistent with Bulgaria's international obligations. At the same time, Bulgarian courts have recognized the principle of direct application of international human rights treaties. This means that if national legislation provides weaker safeguards than those guaranteed by international treaties, individuals can invoke the provisions of these treaties directly before domestic courts.

⁴⁷ Article 14.3 International Covenant on Civil and Political Rights; Article 8.2 Directive 2016/343/EU.

⁴⁸ Directive 2016/343/EU on strengthening of certain aspects of the presumption of innocence and on the right to be present at the trial, Article 3.

⁴⁹ Recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (2013) -Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions (2022).

⁵⁰ The Constitution states that "International treaties which have been ratified in accordance with the constitutional procedure, promulgated and having come into force with respect to the Republic of Bulgaria, shall be part of the legislation of the State. They shall have primacy over any conflicting provision of the domestic legislation." <https://www.parliament.bg/en/const>.

03

DEFENDANTS WITH
DISABILITIES AND THE
JUSTICE SYSTEM

Our recent study has shown that Bulgaria has yet to implement mechanisms that allow for the identification of people who require accommodations in the early stages of criminal proceedings⁵¹. At the same time, when a person was discovered to have an intellectual or psychosocial disability, the (forensic doctor's) evaluation was requested to evaluate/confirm individual's "incompetency" to stand trial, rather to assesses what are the support needs to enable their effective participation in proceedings. If a defendant is found "incompetent" to stand trial, he/she is usually subjected to a period of forced institutionalization, compulsory treatment in a forensic psychiatric facility, or, sometimes, in a prison. By custom and practice the period of confinement may be indefinite, even longer than the penalty envisaged for the same crime.

These circumstances raise serious concerns about the realization of the right to participate equally in the justice processes, the fairness of these trials and their outcomes, and the capacity of criminal justice participants to carry out their duties with the due diligence required in these life-changing matters. Lack of specialisation and training on the subject is commonly noted as one of the main causes of insufficient disability awareness among justice actors.

Persons with disabilities in Bulgaria also face other forms of discrimination and exclusion, which can impede their access to justice. Discrimination on the basis of disability may be compounded by simultaneous discrimination on the basis of other identities or bases such as gender, ethnicity, poverty, education.⁵² These along with prejudice and the lack of supportive community-based services are the pillars of interdependent disadvantage systems in which defendants with disabilities are frequently the victims.

As recognized by the CRPD Committee in its General Comment No.6, in reality persons with disabilities do not enjoy their rights on an equal basis with others because of various factors such as "deprivation of legal capacity, forced institutionalization,

⁵¹ Enable Bulgarian National Report is available in English at:

https://validity.ngo/wp-content/uploads/2023/06/KERA_National-briefing-paper_English.pdf.

⁵² UN OHCHR, 'Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities' (December 2017), A/HRC/37/25, para 16. As clarified by the CRPD in its General Comment No 6: "[d]iscrimination can be based on a single characteristic, such as disability or gender, or on multiple and/or intersecting characteristics. 'Intersectional discrimination' occurs when a person with a disability or associated to disability suffers discrimination of any form on the basis of disability, combined with, colour, sex, language, religion, ethnic, gender or other status. Intersectional discrimination can appear as direct or indirect discrimination, denial of reasonable accommodation or harassment." CRPD GC No 6, para 19.

exclusion from general education, pervasive negative stereotypes, prejudices, and lack of access to employment.”⁵³

The CRPD Committee commits States to an “inclusive equality”⁵⁴ approach which is “a new model of equality developed throughout the Convention” which “embraces a substantive model of equality” and “extends and elaborates” on the content of the right to quality by including:

- “(a) a fair redistributive dimension to address socioeconomic disadvantages;
- (b) a recognition dimension to combat stigma, stereotyping, prejudice and violence and to recognize the dignity of human beings and their intersectionality;
- (c) a participative dimension to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion in society; and
- (d) an accommodating dimension to make space for difference as a matter of human dignity.

The Convention is based on inclusive equality.”⁵⁵

⁵³ CRPD, General Comment No 6, para. 8.

⁵⁴ In the draft of the General Comment No.6, the Committee adopted the concept of equality suggested in the submission made by Sandra Fredman and other scholars. Fredman’s model of equality pursues four main objectives: “redressing the social and economic disadvantage associated with disability; addressing stigma, stereotyping, prejudice and violence; enhancing participation; and accommodating difference by achieving structural change.” See: Sandra Fredman, Meghan Campbell, Shreya Atrey, Jason Brickhill, Nomfundo Ramalekana, Sanya Samtani, Achieving Transformative Equality for Persons with Disabilities: Submission to the CRPD Committee for General Comment No.6 on Article 5 of the UN Convention on the Rights of Persons with Disabilities, available at [CPRD-Submission-1.pdf \(ox.ac.uk\)](https://www.unhcr.org/refugees/cprd-submission-1.pdf).

⁵⁵ GC No 6, Para 11.

04

PRESUMPTION OF
INNOCENCE AND LEGAL
CAPACITY

The criminal justice system in Bulgaria, like in many other countries, requires that a defendant have a certain level of "mental capacity" before being put on trial, which is defined by most doctrines as competency or capacity to stand trial. The decision about a defendant's ability to participate is mostly based on the opinions of forensic psychiatric experts who have been specifically asked to assess this ability. Courts may disregard expertise on occasion, but clinical opinion usually prevails. Once the defendant is declared insane/incompetent, investigation stops and the case is closed. Nonetheless, these defendants are placed in psychiatric hospitals for compulsory treatment and because of the periodic extensions of the compulsory treatment, *"defendants may be in the criminal justice system much longer than if they were traditionally sentenced."*⁵⁶ Eventually, defendants with disabilities do not have access to the same defenses as other defendants, such as self-defense, duress, and the absence of *mens rea* (intent). In this way, a medical diagnosis can be used to justify excluding a person from equal participation in the justice system.

This also raises serious concerns about the presumption of innocence: a person may be detained for years for compulsory treatment without the court examining the person's actual attitude and intent toward the crime, undermining the purpose of the criminal process in general.⁵⁷

*"... defendants with disabilities should be judged based on their actual state of mind at the time of committing the acts, taking into account how the formation of intent or construction of knowledge with respect to the crimes charged may have been affected by the person's subjective perception or experience of distress. Irrespective of whether it conforms to what others might imagine as reasonable or expected. Consideration of the subjective dimension of the mental element of a crime is required to ensure persons with disabilities have the opportunity to benefit from the doctrine of mens rea on an equal basis with others. Moreover, defendants should be able to present evidence related to the existence of oppression, unbalanced power relations, or violence and how these impact on the defendant's perceptions. In other words, in considering mens rea subjectively it is necessary to take into account contextual aspects, so as to ensure that disability is considered in a social context."*⁵⁸

⁵⁶ 'Implementing the CRPD in criminal justice systems – briefing paper', R. Fleischner, Access to Justice Knowledge Hub, July 2022, not publicly available.

⁵⁷ Which, in most jurisdictions, is to protect the person, society and the state from crime, as well as to protect the person and society from wrongdoing by persons in positions of power in their work related to the investigation of alleged or committed crimes, so that any person who has committed a crime is punished according to his guilt and no innocent person is held criminally responsible and convicted.

⁵⁸ 'Implementing the CRPD in criminal justice systems – briefing paper', R. Fleischner, Access to Justice Knowledge Hub, July 2022, not publicly available.

Abandonment of the individual's right to the presumption of innocence and in the denial of due process safeguards which are recognized in international law and applicable to every person are called by the CRPD Committee to be immediately discontinued as well as laws giving effect to such practices must be repealed.⁵⁹

All these issues are in substance legal capacity related. States must ensure that the legal capacity of persons with disabilities is recognised at all levels of the criminal justice system, without discrimination. All persons with disabilities have a right to legal capacity and should not be denied access to justice – or participation in any justice processes and procedures – on the basis of disability.⁶⁰ States are required by the CRPD to “[e]nsure that constructs such as “cognitive incapacity” and “mental incapacity”, as determined, for instance, by functional or mental status assessments that are common in most legal systems, are not used to restrict the right to legal capacity.”⁶¹

As highlighted by the CRPD Committee in its General Comment No.1, in most States: “where a person is considered to have impaired decision-making skills, often because of a cognitive or psychosocial disability, his or her legal capacity to make a particular decision is consequently removed.”⁶²

This represents a “functional approach” which “attempts to assess mental capacity and deny legal capacity accordingly.” In such an approach, determinations are typically “based on whether a person can understand the nature and consequences of a decision and/or whether he or she can use or weigh the relevant information.” The CRPD Committee has strongly underlined that denial of legal capacity on the basis of a functional approach is discriminatory. Indeed, such a functional approach presumes that the decision-making skills of a person with a disability are deficient in a way that applies solely to persons with disabilities and “presumes to be able to accurately assess the inner-workings of the human mind”, leading to the denial of rights.⁶³ The general assumption must be in each and every case, that all people are capable of making, and thus being responsible for, their own decisions and actions.⁶⁴

⁵⁹ UN OHCHR, ‘Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (December 2017), A/HRC/37/25, para 39.

⁶⁰ International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 1.

⁶¹ Ibid, International Principles, in paragraph 1.2.c.

⁶² CRPD Committee, General Comment No. 1, 11 April 2014, available at [General Comment No. 1 - Article 12: Equal recognition before the law \(Adopted 11 April 2014\) - Plain English version | OHCHR](#), para. 15.

⁶³ Committee on the Rights of Persons with Disabilities, ‘General Comment No. 1 (2014) Article 12: Equal recognition before the law’, CRPD/C/GC/1 (19 May 2014), para 15.

⁶⁴ Ibid.

Deprivation of legal capacity, whether formally mandated or as a result of informal or common and longstanding legal practices, processes and procedures, leads to exclusion from judicial and other legal processes. It has pervasive effects on the right of persons with disabilities to a fair trial under due process of law.⁶⁵ The CRPD Committee has condemned common limitations of the rights of persons with disabilities, such as deprivation the right to be heard in person, pursue adversarial proceedings, give evidence or contest witnesses.⁶⁶ All “instruments for protection” of disability rights must not be “based on removing legal capacity or otherwise hindering the access of persons with disabilities to justice.”⁶⁷

A. Case law

Preliminary reference before ECJ (Case C-467/2018)

The issue of terminating criminal justice proceedings and substituting with compulsory treatment were subject to preliminary reference by the Lukovit District Court in Bulgaria to the Court of Justice of the European Union (CJEU, ECJ).⁶⁸ In its ruling⁶⁹ the ECJ confirms the shortcomings of such practice⁷⁰ and criticises the existence of judicial proceedings which allows for persons in cases of insanity defense to be placed in psychiatric hospitals due to therapeutical and security reasons, without the court verifying that certain procedural rights of these persons were respected.⁷¹ Further, the ECJ clarifies that the presumption of innocence must be interpreted to require that the

⁶⁵ UN OHCHR, ‘Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (December 2017), A/HRC/37/25, para 34.

⁶⁶ UN OHCHR, ‘Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (December 2017), A/HRC/37/25, para 34.

⁶⁷ GC No 6, para 49 (c).

⁶⁸ The preliminary reference is available in Bulgarian language at:

<https://curia.europa.eu/juris/document/document.jsf?docid=206294&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=BG&cid=2144006>, and in English language at:

<https://curia.europa.eu/juris/document/document.jsf?docid=206294&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=2144006>

⁶⁹ Ruling dated 19.09.2019 of the ECJ, case C-467/2018, available in Bulgarian language at:

<https://curia.europa.eu/juris/document/document.jsf?docid=217905&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=BG&cid=2144006>, and in English language at:

<https://curia.europa.eu/juris/document/document.jsf?docid=217905&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=2144006>

⁷⁰ The Court’s Ruling confirms the deficiency of this procedure and its incompliance with Directive 2012/13/EU on the right to information in criminal proceedings and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings.

⁷¹ Interpretation by the ECJ on Art. 47 of the Charter of Fundamental Rights of the European Union as well as Art. 8, para 2 of Directive 2012/13/EU and Art. 12 of Directive 2013/48/EU, point 2 of the Ruling.

prosecutor proves within the court proceedings that the person, whose hospitalisation is requested, is the actual perpetrator.⁷²

Medina Vela v. Mexico (No. 32/2015)

In its views in the Communication *Medina Vela v. Mexico* (No. 32/2015),⁷³ the CRPD Committee found a violation of article 12 of the CRPD where the State denied the person with disability the possibility to exercise their legal capacity to plead not guilty, challenge the evidence against them, designate a defence lawyer and challenge any decisions.⁷⁴ The State decided to apply a special procedure for persons exempt from criminal liability, and declared the applicant “unfit to testify”.⁷⁵ The CRPD Committee recalled in this case that states are obliged to recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life, and to provide access by persons with disabilities to the support they may require in exercising their legal capacity.⁷⁶

Marlon James Noble v. Australia (No. 7/2012)

In its views in the communication *Marlon James Noble v. Australia* (No. 7/2012), the CRPD Committee focused on the denial of legal capacity of persons with intellectual disabilities. The applicant was an individual with intellectual disability who was charged for two criminal offences but was declared unfit to stand trial and put into custody. The applicant complained a violation of various rights, including his right to liberty and the right to access justice. The Committee found a violation of these rights and highlighted that States shall “(e)nsure that adequate support and accommodation measures are provided to persons with mental and intellectual disabilities to enable them to exercise their legal capacity before the courts whenever necessary (...).”⁷⁷

Doolan v. Australia (No. 18/2013)

The Committee has adopted similar recommendations in its views in the communication *Doolan v. Australia* (No. 18/2013).⁷⁸ The author of this communication was a man with psychosocial disability who was committed to custody after being

⁷² Interpretation by the ECJ on Art. 3 of Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, and Art. 51, para 1 of the Charter of Fundamental Rights in view of Art. 427 et seq of CPC, point three and four of the Ruling.

⁷³ Views adopted by the Committee under article 5 of the Optional Protocol concerning communication in *Medina Vela v. Mexico*, no 32/2015, 15 October 2019.

⁷⁴ *Ibid.* para. 10.6.

⁷⁵ *Ibid.* para. 10.4.

⁷⁶ *Ibid.* para. 10.6.

⁷⁷ CRPD Committee, Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 7/2012, UN Doc. CRPD/C/16/D/7/2012 (2016).

⁷⁸ CRPD Committee, Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 18/2013, UN Doc. CRPD/C/22/D/18/2013, para. 9-10.

charged with common assault.⁷⁹ He complained the violation of several rights including his rights under Articles 12, 13, 14, and 15 CRPD because he was declared unfit to stand trial and he was denied his legal capacity.⁸⁰

Stanev v Bulgaria

In *Stanev v Bulgaria*⁸¹ the European Court of Human Rights (ECtHR) found a violation of Article 6(1) (Right to a fair trial) of ECHR as a result of the applicant being denied access to a court to seek the restoration of his legal capacity. It also found violations of Articles 3 (Prohibition of torture), 5 (Right to liberty and security) and 13 (Right to an effective remedy) of the ECHR. In this case, Mr Stanev was placed under partial guardianship and further placed in a social care institution. The conditions of life in the social care institution were extremely poor but Mr Stanev was not permitted to challenge his institutionalization without his guardian's consent to initiate legal proceedings.⁸² In its decision, the Court referred to Articles 12 and 14 CRPD and holding that an individual's right to ask a court to review his declaration of incapacity was one of the most important rights for the person concerned. The Court also observed that Mr Stanev's legal capacity will be decisive for the exercise of all his rights and freedoms affected, in turn, by the declaration of incapacity.⁸³

Shtukaturov v. Russia

In *Shtukaturov v. Russia*,⁸⁴ the ECtHR held that there had been a violation of Article 6 of the ECHR because the applicant had not been provided with an opportunity to participate in proceedings regarding the determination of his legal capacity. The Court also found a violation of Articles 5 and 8 of the ECHR. The applicant had a "mental disorder", and was declared legally incapable by Russian courts, and was confined in a psychiatric hospital against his will.⁸⁵ In a similar way, in *Nikolyan v. Armenia* the Court found that the applicant's lack of access to court in divorce and eviction proceedings, as well as in proceedings through which he had sought restoration of his legal capacity had breached Article 6(1) of the ECHR.⁸⁶ In this case, the Court also refers to Article 8 ECHR (Right to respect for private life), finding that: "the domestic legal system did not differentiate between different degrees of incapacity for persons

⁷⁹Ibid. para. 1-2.7.

⁸⁰Ibid. para. 3.5.

⁸¹ *Stanev v Bulgaria*, Application No. 36760/06, judgment 17 January 2012, (2012) 55 EHRR 22, § 241.

⁸² See summary of the case <https://mdac.org/en/content/stanev-v-bulgaria-gc>

⁸³ *Stanev v Bulgaria*, Application No. 36760/06, judgment 17 January 2012, (2012) 55 EHRR 22, § 241 and para. 5.

⁸⁴ *Shtukaturov v. Russia*, ECtHR, 27 March 2008, <https://hudoc.echr.coe.int/eng/?i=003-2302658-2460255>

⁸⁵ Ibid. para. 6-25.

⁸⁶ *Nikolyan v. Armenia*, 3 October 2019.

suffering from a mental disorder and did not provide for measures of protection tailored to the individual needs of the person concerned.“

In *Blokhin v Russia*, the Grand Chamber of the ECtHR found a violation of Article 6(1) (Right to a fair trial) and Article 3 (Prohibition of torture) finding that the applicant’s “defence rights” had been violated.⁸⁷ The applicant – a 12 year old child with mental and neurobehavioural disorder – had been questioned by the police without access to legal assistance and was not permitted to question the statements of two witnesses that served as a basis for his placement in temporary detention.⁸⁸

The European Court of Human Rights does more often acknowledge the relevance and application of the CRPD. In its decisions the ECtHR focuses on procedural legal standards. In particular, the Court ruled that the right to a fair trial implies access to effective remedies and that the deprivation of liberty on mental health grounds should present both an objective and a subjective element to not be arbitrary (*Stanev v. Bulgaria*).⁸⁹ In other cases, it highlighted the importance of procedural guarantees like participating in the proceedings (*Shtukaturov v. Russia*),⁹⁰ having access to court (*Nikolyan v. Armenia*),⁹¹ or having access to information (*Z.H. v. Hungary*)⁹² in order to guarantee respect of the right to liberty. In general, the Court focuses its argumentation on procedural safeguards and “defence rights” like in *Blokhin v. Russia*.⁹³

However, the legal standards developed through this jurisprudence do not seem to guarantee the same level of protection as required by the CRPD. While the ECtHR sets the requirements needed to avoid arbitrary detention on grounds of mental health, Article 14.1 CRPD clarifies that “the existence of a disability shall in no case justify a deprivation of liberty.” Therefore, according to the CRPD, the detention of persons on the grounds of their mental disability would be arbitrary per se. Moreover, the ECtHR found violations of the ECHR on the basis of a lack of procedural guarantees in the proceedings to declare legal incapacity and it refers to different grades of legal incapacity (*Nikolyan v. Armenia*).⁹⁴ On the other hand, Article 12.2 CRPD clearly states

⁸⁷ ECtHR Grand Chamber, *Blokhin v Russia*, Application No. 47152/06, Judgment of 23 March 2016, para. 216.

⁸⁸ *Ibid.* para. 10-54.

⁸⁹ ECtHR, *Stanev v Bulgaria*, Application No. 36760/06, Judgment 17 January 2012.

⁹⁰ ECtHR, *Shtukaturov v. Russia*, Application No. 44009/05, Judgment of 27 March 2008.

⁹¹ ECtHR, *Nikolyan v. Armenia*, Application No. 74438/14, Judgment of 3 October 2019.

⁹² ECtHR, *Z.H. v. Hungary*, Application No. 28973/11, Judgment of 8 February 2013.

⁹³ ECtHR Grand Chamber, *Blokhin v Russia*, Application No. 47152/06, Judgment of 23 March 2016.

⁹⁴ ECtHR, *Nikolyan v. Armenia*, Application no. 74438/14, Judgment of 3 October 2019.

that “persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life,” and it does not refer to different grades of legal capacity.

B. Practical guidance and recommendations

1. **Recognize and assume the full legal capacity and right of defendants with disabilities to participate in all stages of the proceedings and in all courts**
 - a. Provide persons with disabilities the **support and accommodations** necessary to exercise their legal capacity;
 - b. Ensure that **constructs such as “cognitive incapacity” and “mental incapacity,”** as determined, for instance, by functional or mental status assessments, are not used to restrict a person’s right to legal capacity.
 - c. Ensure that defendants who have been previously **declared to be without legal capacity** to participate in court proceedings have the right to appeal or otherwise seek restoration of their legal capacity and have access to accommodations and supports, as well as legal assistance to participate in court proceedings.
 - d. Judges and other relevant justice actors should bring to the attention of the law makers any legislation that is in violation of the CRPD.
 - e. If a defendant with a disability **lacks the necessary intent** (mens rea) within the usual meaning of the term, the defendant should be treated the same way as any other defendant who lacks intent.⁹⁵
2. **Ensure that all suspects and accused persons with disabilities are presumed innocent until proven guilty under the law**
 - a. Already during the pre-trial stage of the proceedings, the presumption of innocence might be affected.
3. **In place of the insanity defense/incompetency to stand trial law, the state should establish mechanisms to support and accommodate persons with disabilities in the criminal justice system**
 - a. This could include the use of communication facilitators (intermediaries), advocates, and other support individuals and processes (See more about communication facilitators in Bulgaria in Section 6.1 below).

⁹⁵ Implementing the Convention on the Rights of persons with disabilities in criminal justice systems, A briefing paper, July 2022, p. 19.

- b. Restorative justice may be a fair way to divert defendants with disabilities away from the criminal justice system.
 - c. Improving the public defence system is another important step that will aid in the process of eliminating capacity-based interventions. Public defenders and all lawyers “*must understand the impact of criminal justice system on persons with disabilities, communicate effectively, and recognise and be faithful to the tenants of legal capacity.*”⁹⁶
4. Ensure that **any assessments** conducted on defendants with disabilities before and during court proceedings are **aimed at determining the procedural accommodation and support** required to ensure their full and effective participation in the proceedings;
 - a. Such assessments must take into considerations the will and preference of the individual with disability.
5. **Ensure safe, fair and effective engagement of the persons with disabilities in the proceedings and the opportunity to fully participate in proceedings**
 - a. Ensure the provision of adjustments and accommodations and supports, including intermediaries/facilitators, wherever and whenever needed, to enable clear communication among and between persons with disabilities and courts; and – support services or person.
6. **Review policies, guidelines and practices**
 - a. Review all policies, guidelines and practices that directly or indirectly restrict the legal capacity of persons with disabilities, including those that establish and apply doctrines of “**insanity defence**” and “**incompetency to stand trial**”, which prevent persons with disabilities from participating in legal processes based on questions about or determinations of their capacity;
 - b. Review all policies, guidelines and practices that authorize **medical professionals** to be the sole or preferred “experts” in determining how and to what extent and with what support persons with disabilities can participate in legal proceedings;
 - c. Review policies, guidelines and practices, including court orders, that subject defendants with disabilities to **detention** (whether in a prison, a

⁹⁶ ‘Implementing the CRPD in criminal justice systems – briefing paper’, R. Fleischner, Access to Justice Knowledge Hub, July 2022, not publicly available.

mental health facility or any other institution) for a definite or indefinite term based on perceived dangerousness or need for care.

7. **Train police officers on accommodating different types of disabilities and on the rights of people with disabilities to avoid stereotypes or misunderstanding of some behaviours.**
8. **Criminal justice reform must consider crime prevention**
 - a. Defendants with disabilities tend to struggle with poverty, little or no education, and no community support other than psychiatric care. Thus, preventing crime and recidivism would necessitate an intersectional approach, as well as the establishment of an effective system of community-based services.
9. **Policymakers should put persons with disabilities who have lived through the criminal justice system at the center of all reform efforts.**

C. Promising practice

Sweden abolished the insanity defence in 1965. Swedish law recognizes mens rea (meaning intent or “guilty mind”) as an element of a crime but provides that a defendant’s mental status may not be considered in determination of guilt. Rather, a person’s mental disability may be considered in sentencing. A guilty defendant with a psychosocial disability may, therefore, be committed to a forensic facility for treatment. The term of the institutionalization is indefinite, but the individual must be released when the requirements for involuntary psychiatric treatment are no longer met.

Therefore, although defendants in Sweden will have the right to have their cases adjudicated, and an opportunity to force the government to prove its case, the outcome – indefinite institutionalization – may be the same as for defendants who successfully use the insanity defence in nations that allow it.

In its comments to Belgium, the CRPD recommended changes to laws to guarantee that persons with disabilities “who have committed a crime ... be tried under the ordinary criminal procedure, on an equal basis with others and with the same guarantees, although with specific adjustments to ensure their equal participation in the criminal justice system.” In 2009, the High Commissioner for Human Rights wrote that recognition of the legal capacity of persons with disabilities requires replacing

criminal defences based on “mental or intellectual disability” with “disability-neutral” doctrines.

In Portugal, the law guarantees that all persons have legal capacity through the scheme of an “accompanied adult,” which permits that if a person cannot exercise their rights, it is possible to request the necessary accompanying measures from the Court. The measures can be requested by the Public Prosecutor’s Office, by the persons themselves and by the spouse or other relative with the consent of the person.

In Spain, Law 8/2021 recognised legal capacity for all people with disability, guardianship was eliminated, and judicial measures of support for people with disabilities are adopted as last resort. In this way the Spanish legislation moved from a system of substitution of decision-making to a system of support in decision-making.

05

IMPLEMENTING RIGHTS OF
DEFENDANTS WITH
DISABILITIES: PROCEDURAL
ACCOMMODATIONS

Procedural accommodations are not yet recognised as a state obligation nor a right of the defendant with disabilities. Apart from the requirement for sign language interpreters, it is possible to conclude that no actual procedural accommodations are in place. Yet, procedural accommodations are vital in ensuring access to justice for persons with disabilities and realizing a range of human rights including the rights to legal capacity, participation, information, interpretation, lawyer and legal aid. It is difficult to outline all possible accommodations for persons with disabilities, as these are case specific and depend on individual situations.

Under Article 12(3) UN CRPD national authorities must:

“create an actionable and enforceable right to receive the individually determined procedural accommodations, including support, necessary to enable persons with disabilities to participate effectively in all proceedings in any court, tribunal or forum”.

The CRPD Committee has “consistently indicated that procedural accommodations should be provided on the basis of the ‘free choice and preference’ of the person concerned.”⁹⁷ With specific references to judges, according to the UN OHCHR, it has indicated that “[t]he judge or the responsible entity should give primary consideration to the request of the individual with disability, as they know best what their own accommodation needs are.”⁹⁸

Moreover, in its views in the communication *Medina Vela v. Mexico* (No. 32/2015),⁹⁹ the Committee found a violation of Article 13 of the CRPD (effective access to justice on an equal basis with others) due to Mexico’s failure to make provision of procedural accommodations. The State in this case had denied the applicant the possibility of exercising their right to access justice by failing to ensure their opportunity to participate in the judicial proceedings. The applicant was not permitted to testify, refute evidence or attend hearings pertaining to his own case. Furthermore, the applicant was not notified of the decisions taken in his matter. The application for the special procedure did not guarantee that procedural accommodations would be made to enable the applicant to access justice on an equal basis with others.

⁹⁷ UN OHCHR, ‘Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (December 2017), A/HRC/37/25, para 26.

⁹⁸ UN OHCHR, ‘Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (December 2017), A/HRC/37/25, para 26.

⁹⁹ Views adopted by the Committee under article 5 of the Optional Protocol concerning communication no 32/2015, 15 October 2019, para 10.7.

The CRPD Committee has addressed the importance of granting procedural accommodations also in its views in the communication *Gemma Beasley v. Australia* No. 11/2013.¹⁰⁰ The applicant in this case was deaf and was summoned to be a juror in criminal jurisdiction. However, she was denied the assistance of a sign-language interpreter or other procedural accommodation that would allow her to exercise her role.¹⁰¹ In its recommendations, the Committee recalled the State's duty to ensure reasonable and procedural accommodations to enable her to fully participate.¹⁰²

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

Principle 3

"Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations."¹⁰³

To prevent (...) discrimination and ensure that the effective and equal participation of persons with disabilities is guaranteed in all legal proceedings, States are required to take measures to provide gender and age-appropriate individualized procedural accommodations for persons with disabilities. Such accommodations encompass all the necessary and appropriate modifications and adjustments needed in a particular case, including:

- Access to intermediaries or facilitators,
- Provision of procedural adjustments, and
- Modifications, adjustments to the environment and communication support, to ensure access to justice for persons with disabilities.

Accommodations should be organized before the commencement of proceedings.¹⁰⁴

Police officers, prosecutors and others involved in arrests and investigations of criminal offences should be knowledgeable about the rights of persons with disabilities, be alert

¹⁰⁰ CRPD Committee, Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 11/2013, UN Doc. CRPD/C/15/D/11/2013 (2016).

¹⁰¹ Ibid. para. 1-2.3.

¹⁰² Ibid. para. 9.

¹⁰³ International Principles and Guidelines, Principle 3.

¹⁰⁴ Ibid, Principle 3, Guideline 31, p.15.

to the possibility that a person may have a disability and, throughout the course of an arrest or investigation, adjust their responses accordingly.¹⁰⁵

Independent third persons, such as attorneys or others, should be available to accompany persons with disabilities to the police station to assist them in the investigative process, including, for example, fingerprinting or giving a biological sample.¹⁰⁶

All participants in legal proceedings must be advised of the availability of procedural accommodations if needed and desired because of disability.¹⁰⁷

It is also important to note, that if procedural accommodations for the person with disability are not made during police interrogations, such interrogations might be declared unlawful by the courts, which might impede the delivery of justice.

A. Requests for and offers of accommodations

According to the International Principles, States should enact legislation and produce guidelines that enable “persons with disabilities to request procedural accommodations, including modifications of or support in legal processes, with appropriate protection of their privacy.”¹⁰⁸ Throughout the course of legal proceedings, all participants must be “advised of the availability of procedural accommodations if needed and desired because of disability.”¹⁰⁹

The International Principles also explain that States shall guarantee the availability of procedural accommodations to give people with disabilities the possibility to choose how to defend themselves.¹¹⁰ The CRPD Committee highlights the main difference between procedural accommodations and reasonable accommodations. While reasonable accommodations are limited by the concept of disproportionality, procedural accommodations do not have this limitation.¹¹¹

¹⁰⁵ International principles, p 16.

¹⁰⁶ International Principles, Guideline 3.2(i).

¹⁰⁷ International Principles, p 17.

¹⁰⁸ International Principles, para 32(k).

¹⁰⁹ Ibid, para 32(l).

¹¹⁰ International Principles, para. 5.2 f.

¹¹¹ GC No. 6, para. 25 d.

States must therefore provide for the possibility for all persons with disabilities to have access to all procedural accommodations they may need to participate fully in justice processes. This duty to determine which accommodation are needed and make them available exists even where the person in question does not request such accommodations. The Committee describes leaving the responsibility of requesting accommodations on persons with disabilities alone as placing a “disproportionate or undue burden” on such already marginalized individuals.¹¹²

Although a person with disability may eventually choose to not accept the accommodations suggested or provided by the State, the State is nevertheless required to offer and make accommodations – determined in consultation with the person with disability themselves – available.

Despite these obligations, in Bulgaria, like in other EU Member states, there are no guidelines for justice actors in relation to requesting and/or offering procedural accommodations.¹¹³

Too often persons with disabilities are not believed, when they disclose their disabilities and needs. Justice actors should assume, in good faith, that an individuals’ disclosure of a disability and their requests for accommodations are accurate and necessary unless proven otherwise in clear terms and on an objective basis.

Practical guidance and recommendations

- 1. The defendant’s right to a fair trial on an equal basis with others must be respected from the first contact with law enforcement officers and throughout all processes, through access to procedural accommodations.**
 - a. All justice actors must ensure that accommodations are available for persons with disabilities to allow for their participation in each procedure, from the first contact with law enforcement authorities and through all processes.**
 - b. Persons with disabilities** should participate in the determination of their disability. An allegation of an individual that they have a disability is enough to place an obligation on the authorities to make a full determination, taking into account the individual’s views.

¹¹² Para 25(b).

¹¹³ National briefing paper, Bulgaria, 2023, p.16.

- c. **Adequate support services** should be made available within the criminal justice system to ensure the provision of procedural accommodations for persons with disabilities.
 - i. **Where identification of needs for procedural accommodations needs to be in place, it has to be done at the beginning of the proceedings, at the earliest moment possible.**
 - ii. **Preparations** for procedural accommodations and other adjustments in the hearing must be made prior to the hearing/trial.
2. All participants, including defendants with disabilities, should **be informed about their rights and the availability of procedural accommodations** throughout the course of the proceedings.
 - a. Ensure that defendants **are aware of the possibility** to have procedural accommodations throughout the proceedings and know that **they can request them at any time.**
 - b. It should **not be the sole responsibility** of the defendant to request the accommodations. All justice actors have a proactive duty to initiate the provision of accommodations.
3. A **comprehensive procedure for recognising, requesting, assessing, and providing** individual support for persons with disabilities should be developed and implemented.

**Good
Practice**

In Spain procedural accommodations can be requested by any of the parties by the public prosecutor, the judge or by the person with a disability themselves. The police can request them when .. with a person with a disability.

4. Clear and **effective procedures on procedural accommodations** must be developed and implemented by all justice actors whenever a person with disabilities, in particular intellectual and/or psychosocial disabilities, faces the criminal justice system.

- a. A **guide or manual on procedural accommodations for the administration of justice** should be created to facilitate justice actor's approach to persons with disabilities.
- b. **All relevant actors must cooperate** to establish a more uniform and efficient framework for providing appropriate procedural accommodations for defendants with disabilities. Efficient coordination is necessary among the agents of justice at the state, regional, and local levels.
- c. All procedural accommodations should be **gender- and age-appropriate**.

5. Systemic recommendations

- a. Judiciaries should develop and adopt **rules/guidelines** that recognise the right to receive procedural, age and gender-appropriate accommodations, including support, necessary to enable defendants with disabilities to exercise their legal capacity, and participate effectively in all proceedings in court.¹¹⁴
- b. Justice actors and national authorities should **consult closely with and actively involve persons with disabilities** and their representative organizations in all discussions and decision-making regarding procedural accommodations.

B. Individual assessment for adoption of procedural accommodations

In addition to seeking input from the individual about their accommodation needs, an individual assessment is a necessary and appropriate process to ensure the full and proper participation of persons with disabilities in criminal proceedings. Such individual assessments should be used to:

¹¹⁴ These include- Adaptation of the venue; Appropriate waiting spaces; Removal of cloaks and wigs; Adjustments to the pace of proceedings; Separate building entrances and waiting rooms and protective screens to separate persons with disabilities from others if necessary due to physical or emotional distress; Modifications to the method of questioning in appropriate circumstances, such as allowing leading questions, avoiding compound questions, finding alternatives to complex hypothetical questions, providing extra time to answer, permitting breaks as needed and using plain language; and Use of pre-trial video recording of evidence and testimony, if necessary, practical and possible, in such a manner as not to contravene basic rights, such as the right to confront and cross-examine witnesses.

“identify the particular barriers that a person with disability experiences (...) and their specific support needs. It determines how to remove or overcome the barriers, what support and procedural accommodations are necessary, and how to provide these. Ideally, it should take place from the first contact with the relevant authorities in the administration of justice.”¹¹⁵

In EU law, the Recommendation on vulnerable persons, states that it is important to identify and recognize vulnerability.¹¹⁶ The Recommendations suggest that:

“an initial assessment should be carried out by police officers, law enforcement or judicial authorities. The competent authorities should also be able to ask an independent expert to examine the degree of vulnerability, the needs of the vulnerable person and the appropriateness of any measures taken or envisaged against the vulnerable person.¹¹⁷ The persons concerned (suspects or accused) should have the right to challenge such assessment.”¹¹⁸

Responsibility for such individual assessments typically lies with a range of criminal justice actors and authorities in charge of the different phases of criminal proceedings from police to prosecuting authorities and legal to the judicial officers. However, in practice, the individual assessment process can be initiated, implemented and coordinated through support services, social workers, law enforcement, court officials, court-appointed experts, and other professionals. A particular type of qualified institution or professional can be mandated by law or court order to systematically conduct and update the individual assessment in criminal proceedings.¹¹⁹ Overall, justice actors should take responsibility for ensuring that such assessments have occurred and that the nature of such assessments have led to measures which have ensured a fair process to persons with disabilities that is consistent with States obligations under the CRPD.

According to a Validity toolchest¹²⁰ focused on victims with disabilities, an individual assessment should:

¹¹⁵ Validity, Voices for justice, Toolchest for professionals, p.22, see: <https://validity.ngo/wp-content/uploads/2023/01/Voices-for-Justice-TOOLCHEST-for-professionals- EN.pdf>

¹¹⁶ Recital 6, Commission Recommendation 2013/C-378/02 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings.

¹¹⁷ Ibid.

¹¹⁸ Ibid, Recital 7.

¹¹⁹ Validity, toolchest, p. 24.

¹²⁰ Validity Voices for justice, Toolchest for professionals, p.24-25.

- Be conducted in a systematic way from first contact with the justice system. The information can be shared in a way that does not compromise the confidentiality of the individual and ensures that their needs are understood and met;
- Respect the legal capacity of the person, and their will and preference;
- Involve a multidisciplinary approach and team to include the correct people and expertise in the process. For people with disabilities, this may include, as examples, a support person, a social worker, a communications expert, a lawyer;
- Set out clearly the barriers that the person with disability faces, and what support and procedural accommodations are necessary to overcome these barriers, including where responsibility lies for provision, and how these will be provided in practice;
- Take place continuously, so that needs and barriers can be identified and addressed at all stages of the process; and
- Identify a particular contact person to whom the person with disability can always go to with requests for additional or different forms of support and procedural accommodations.

Issues and Challenges

The quality of information available to competent authorities, including justice actors, necessarily determines the effectiveness of accommodations that can be devised and provided while taking into account the person's will, preferences and needs. This information should be gathered as soon as possible, before questioning begins, through a preliminary assessment with this goal in mind.

In practice, information about disability may be difficult to obtain for a variety of reasons. A defendant may be uncomfortable or afraid to disclose their disability due to stigma or mistrust of criminal justice authorities based on their perceptions and/or experiences. This may be felt even more strongly, for example, by female defendants due to societal stigma associated with and discrimination prevalent on the basis of both gender and disability individually and simultaneously. Alternatively, a defendant may in fact be unaware of their own disability or the impact it may have on their ability to participate effectively in justice processes and procedures. Moreover, the accelerated nature of some criminal justice proceedings may make conducting an assessment by

a competent professional prior to the first questioning practically difficult and seemingly cumbersome for court processes and localized levels.

In practice, disability-rights organizations report that there is no methodology for identifying disability in criminal justice systems in Bulgaria. When they are not provided with medical documentation, justice actors must rely on their personal sensitivity and knowledge to determine whether an individual has a disability and whether this has any bearing on their ability to participate in justice processes and procedures. If justice actors believe there is something "wrong" with the way a person communicates or behaves, and they suspect that sufficient evidence for the commission of a crime that has been alleged exists, they will typically file a request for forensic expertise in relation to an individual's disability. A psychiatrist and a psychologist then conduct an examination, which is designed to determine the person's "sanity/competency" to stand trial. Some interviewees reported experiencing such evaluations as being biased towards certain outcomes, diagnosis-centered and prejudiced against them as persons with disabilities. They also reported that the conclusions of such "expert evaluations" are frequently accepted by justice actors without further consideration and then dominate the entire justice process.¹²¹

One good practice has been identified in Bulgaria, whereby sometimes an NGO assesses the social functioning of an individual with a disability. Such an assessment may help to provide information to the court on the person's social functioning and communication needs, which can assist a court to enable the provisions of support **for an individual's effective participation in a trial**. However, the practice is relatively new and has only covered a small number of cases thus far.¹²² (*Please see below section 6 'Good practices'*)

Practical guidance and recommendations

1. **A practical mechanism to identify disability early in the procedure (individual assessment)** should be developed and implemented, ensuring that all necessary measures are taken to ensure that the person with a disability can go through the criminal procedure on an equal basis.
 - a. Identification, for example through an individual assessment, should occur early in the criminal justice process **at the very beginning of the**

¹²¹ National briefing paper, Bulgaria, 2023, p. 50

¹²² National briefing paper, Bulgaria, 2023, p. 31, A video explaining the aim of the assessment and how it can be used, available at: <https://www.youtube.com/watch?v=jtQUPc9uUj8>. So far, this instrument is used mostly in civil law cases.

proceedings, and prior to any actions undertaken as part of the criminal justice proceedings, for instance prior to police interview.

- b. The police and law enforcement authorities and any other justice actor or other individual involved in identification of disability must identify, if someone has a disability, and provide assistance, accommodations and support from early stages of the proceedings. These actors should be adequately trained on this duty and be able to identify disability early in the process.

Good Practice

In some, countries such as UK and Spain, this assessment can be done by intermediaries.

- c. Assessment and communication in this regard should not be used to diagnose or specify disability, but rather to obtain the information required for the competent authority to determine, in consultation with the person with a disability, and decide **the provision of procedural accommodations**.

2. **Identify and disseminate best practices** regarding the identification of disability and develop training actions focusing on the human rights model of disability and which adjustments should be made so that persons with disabilities can participate on an equal basis.¹²³

Good Practice

In Bulgaria, the courts use an “NGO assessment of the social functioning of persons with disabilities and their special needs.”¹²⁴ This assessment is designed to be used in all courts addressing cases with persons with disabilities. It aims to increase the effective participation in the trial and to improve the protection of the person’s rights and interests.¹²⁵

3. **Information sharing rules and safeguards should be in place when individual assessment is being conducted by justice actors.**

¹²³ Portugal national paper.

¹²⁴ National briefing paper, Bulgaria, 2023, p. 31.

¹²⁵ Ibid.

4. The defendants should **be involved in the development of the individual assessment**, should receive it when finalised and should have the right to comment on it, with communication and other support as necessary.
5. Judges and other justice actors should **verify that the individual assessment has been completed** early in the process.

C. Intermediaries (or communication facilitators)

Intermediaries (also sometimes referred to as “communication facilitators”) are persons who work, as required, with justice system personnel and persons with disabilities to ensure effective communication by and with a person with a disability during legal proceedings. Some persons performing similar roles may be referred to as Communication Assistants (Australia) or Communication Support Specialists (US).¹²⁶

Intermediaries are typically appointed and employed by the court¹²⁷ and their aim is to facilitate communication for the Court in the proceedings relative to access to justice. They are not support persons per se but rather a conduit to facilitate effective communication, to ensure that a defendant or accused person understands questions and can be understood by justice actors and other participants in legal processes. The intermediary also takes time to understand the communication needs of the defendant/accused and should be involved in a case at the earliest point possible, ideally at the point at which the accused is interviewed by the police. Through intermediaries, persons with disabilities can be supported in making informed choices and effectively communicating them. This is done in different ways depending on the individual’s particular disability but always by making sure that things are explained and talked about in ways that the individual understands. Intermediaries also have a key role to play in recommending appropriate accommodations and supports, which may be provided to assist an individual's effective participation in the legal process.¹²⁸ The role of an intermediary may vary across various jurisdictions.

¹²⁶ JISK – Module 2 defining the justice intermediary, p.3, See: <https://justiceintermediary.org/modules/>

¹²⁷ For instance, in the United Kingdom, the Criminal Procedure (Amendment) Rules 2021, Article 18.27 clarifies that intermediaries are appointed by the Court.

¹²⁸ Ibid.

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

Principle 1, Guideline 1.2.j enjoins States to:

“provide intermediaries or facilitators, wherever and whenever needed, to enable clear communication among and between persons with disabilities and courts, tribunals and law enforcement agencies to ensure safe, fair and effective engagement and the opportunity to fully participate in legal processes”.¹²⁹

Intermediaries or facilitators, must be available to facilitate communication between persons with disabilities and law enforcement and court personnel.¹³⁰

According to the International Principles, “Intermediaries are neutral and they do not speak for persons with disabilities or for the justice system, nor do they lead or influence decisions or outcomes.”¹³¹

Intermediaries (facilitators) provide support for persons with disabilities in order for them to enjoy legal capacity on an equal basis with others.¹³²

Independent intermediaries or facilitators trained to provide communication assistance to parties to the proceedings and the justice system should be available in every justice system.¹³³

Intermediaries should be best considered as officers of the court and be responsible to the court or justice system more broadly.

An appellate court in England described how an intermediary assisted a defendant with intellectual and communication disability in a criminal case in the following way:

“... maintained a visual record to enable the [defendant] to follow the evidence; she wrote simple sentences for him; and she held twice daily meetings with [him] outside court to summarise past and future events in the trial; she assisted him with a vocabulary folder to explain more difficult concepts; and she was eventually able to explain satisfactorily to him what the role of the jury was.”¹³⁴

Issues and challenges

¹²⁹ International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020), p. 9.

¹³⁰ Ibid.

¹³¹ International principles, p 10.

¹³² Principles, Principle 3.

¹³³ International Principles, p. 15.

¹³⁴ R. v. Dixon, [2013] EWCA Crim. 465^a available at <https://www.bailii.org/ew/cases/EWCA/Crim/2013/465.html> in: Implementing the Convention on the Rights of persons with disabilities in criminal justice systems, A briefing paper, July 2022.

In the number of EU Member States intermediaries or communication facilitators for defendants with disabilities in criminal proceedings are not regulated by law at all.¹³⁵ Access to intermediaries is also often difficult. Even in States, where the use of facilitators is enshrined in law, there are no clear indications on other practical elements to organize and allow their work. For example, Spanish laws do not specify who can perform this role, what qualifications are required for the role, or how facilitators should be funded.¹³⁶

In Romania, for instance, communication facilitators or intermediaries are not regulated by law, but in practice criminal justice actors sometimes seek the assistance “informal intermediaries/support persons” when they see fit (these are sometimes referred to as “intermediaries” but are not regulated as such).¹³⁷ There are instances when the court may order that a psychologist¹³⁸ (when dealing with a victim of a crime, also a specialist in victim counselling) is present during the hearing, but only specifically for a victim of a crime¹³⁹ or a minor¹⁴⁰ whenever they are a victim or a witness.¹⁴¹ No such provision is made for a defendant or other participants in justice processes. In terms of the CRPD, provision for support for persons with disabilities should be provided to all participants in all justice processes and procedures irrespective of the nature of the participation by the individual with a disability.¹⁴²

In Spain,¹⁴³ the Civil Procedure Act and the Voluntary Jurisdiction Act expressly provides for accommodations for persons with disabilities and allows for an “expert professional to act as facilitator to provide the necessary adaptations and accommodations to enable the person with a disability to understand and be understood.”¹⁴⁴ However, although this role is recognised by law, it has not been further regulated and detailed by guidelines and policies. This means that it is not specified by law who can perform this function, what qualifications, expertise and experience are required to do so, or how such positions are to be financed or by whom.

¹³⁵ See for instance Romania, Lithuania (Lithuania national study, Enable April 2023, p.13), Slovenia (Slovenia national study, Enable, April 2023, p.56), Portugal (Portugal, national study, Enable April 2023, p.39), Slovakia (Slovakia national study, Enable, April 2023, p.16)

¹³⁶ Spain National Paper, Section 3.1.2.2/page 20.

¹³⁷ CLR, National paper ENABLE project, Romania, April 2023, p.12.

¹³⁸ In the provisions of the Romanian Criminal Code only the psychologist and the specialist in victim counselling are specified to be present at a hearing in cases with victims of crimes (adult or underage). And in the case of underage witnesses the provisions specify only the presence of a psychologist in a hearing. Project partners do not have any data regarding initial training or continuous training for psychologists in these cases.

¹³⁹ Art. 111 (6) (b) Criminal code, Romania, See: CLR, National paper ENABLE project, Romania, April 2023, p.12.

¹⁴⁰ Art. 111 (8¹) Criminal code, Romania, See: CLR, National paper ENABLE project, Romania, April 2023, p.12.

¹⁴¹ Art. 124 (1) Criminal code, Romania, See: CLR, National paper ENABLE project, Romania, April 2023, p.12.

¹⁴² CLR, National paper ENABLE project, Romania, April 2023, p.23.

¹⁴³ National Enable Study on Spain, April 2023, p.21.

¹⁴⁴ Ibid.

According to Plena Inclusión, the author of national study in the Enable project, in most cases the disabilities were only discovered after the trial, and therefore there are typically no facilitators involved in the proceedings, although the Spanish law permits their involvement.¹⁴⁵

Please see more about the intermediary scheme in Bulgaria in section 6 ‘Good practices’ below.

Practical guidance and recommendations

- 1. Where needed, an intermediary should be called to assist in communication during police interviews with the person with disability suspected of the crime.**
2. As a form of procedural accommodation, **intermediaries/communication facilitators should be provided to defendants with disabilities wherever and whenever needed**, to enable clear communication between them and the courts, to ensure safe, fair and effective engagement, and to provide the opportunity to fully participate in all stages of proceedings.
 - a. A sufficient number of trained intermediaries should be made available for persons with disabilities from the start of the proceedings, and at all stages of the administration of justice.
 - b. Systematic training on the role of intermediaries should be in place.
 - c. The use of intermediaries should not generate any costs for persons with disabilities. Otherwise, it would be discriminatory.**
- 3. Systemic recommendations:**
 - a. In the long-term procedural accommodations – including the possibility of an intermediary/communication facilitator – should be included in national legislation and rules applicable to the courts to ensure the full implementation of the CRPD in the justice systems.
 - b. Develop a code of conduct for intermediaries, which could include the following: who can be an intermediary, what conditions need to be fulfilled, code of ethics, the need to remain a neutral part in the process, sanctions.

¹⁴⁵ Spain National Study, Enable project, April 2023, p.29.

D. Right to be accompanied by a support person, which may include a relative

The right to be accompanied by a support person, including a relative, is not directly provided by the CRPD but it is an essential component of a set of measures to ensure equal access to justice for persons with disabilities. In particular, Article 12(3) of the CRPD requires States to provide persons with disabilities with access to the support they may require to exercise their legal capacity, which is, if appropriately organized, supported by the possibility of such accompaniment. The CRPD Committee has interpreted the term “support” in Article 12 as sufficiently broad to include the possibility of persons with disabilities being entitled to choose one or more trusted persons to assist them in exercising their legal capacity.¹⁴⁶

The third principle of the UN International Principles and Guidelines explicitly refers to the obligation of States to guarantee the right to be accompanied.

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

Principle 3, Guideline 3.2.d requires States to ensure procedural accommodations by:

“(d) Allowing persons with disabilities, at all stages of the process if they so choose, to be accompanied by family, friends or others to provide emotional and moral support, without replacing, however, the role of an intermediary or facilitator.”

These support persons play an important and specific role that differs from the one of the intermediaries. As explained in the previous section (Section IV.1.3), intermediaries may have different functions, but in general, offer practical support to facilitate communication and to provide adequate accommodations. Families, friends, and other trusted persons can offer moral and emotional support.¹⁴⁷

Practical guidance and recommendations

1. Since the first contact with the authorities, persons with disabilities should **be informed of their right to be accompanied by a support person of their choice, that could include a family member.**

¹⁴⁶ CRPD Committee, GC No.1 para 17.

¹⁴⁷ UN International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 3.2.d.

- a. Ensure that the trusted person can be present during all stages of the proceeding.
 - b. Identify a procedure to indicate the support person and provide adequate legal provisions to regulate the procedure.
 - c. Allow persons with disability to choose their support person. Do not assume that the support person will necessarily be a family member or that a person with disability will necessarily want to make use of a support person.
 - d. Do not replace the intermediary/communication facilitator with the support person. The facilitator and the support person have different roles and where needed, they should both be guaranteed at all stages of the proceeding (See more about communication facilitators in Bulgaria in Section 6.1 below).
2. There should be the possibility to have **face-to-face contact with the trusted person**. Contact only via phone call might especially not be adequate for some persons and circumstances, for instance for persons with sensory disabilities or deaf persons.

E. Procedural adjustments and modifications

Article 13 CRPD requires States 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.” General Comment No. 1 of the CRPD Committee on equality before the law clarifies that persons with disabilities may need support to access justice and this support “could take various forms, including recognition of diverse communication methods, allowing video testimony in certain situations, procedural accommodation, the provision of professional sign language interpretation and other assistive methods.”¹⁴⁸

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

¹⁴⁸ CRPD Committee, General Comment No.1 on Article 12: Equal Recognition before the Law, CRPD/C/GC/1 (2014), para. 39.

Procedures must be adopted for hearings that ensure the fair treatment and full participation of persons with disabilities. For instance:¹⁴⁹

- (i) Adaptation of the venue;
- (ii) Appropriate waiting spaces;
- (iii) Removal of cloaks and wigs;
- (iv) Adjustments to the pace of proceedings;
- (v) Separate building entrances and waiting rooms and protective screens to separate persons with disabilities from others if necessary due to physical or emotional distress;
- (vi) Modifications to the method of questioning in appropriate circumstances, such as allowing leading questions, avoiding compound questions, finding alternatives to complex hypothetical questions, providing extra time to answer, permitting breaks as needed and using plain language;
- (vii) Use of pre-trial video recording of evidence and testimony, if necessary, practical and possible, in such a manner as not to contravene basic rights, such as the right to confront and cross examine witnesses.

Practical guidance and recommendations

1. **Ensure that the venue in the justice system, including waiting areas, is always sufficiently adapted and accessible for persons with disabilities – and appropriate to the specific needs of the person.**
 - a. For instance, limit exposure to others when necessary.¹⁵⁰
 - b. Consider seating and positioning to be adapted when needed (for instance lawyers sitting with their back to the defendant in court, may need adaptation)
 - c. Ensure the contact with the justice system is not intimidating – for instance remove uniforms by police officers, it may be helpful to make the setting less formal and intimidating.

¹⁴⁹ International principles, p.16.

¹⁵⁰ UK bench book.

2. **Ensure the pace of the proceedings is well adjusted – ensure for instance rather short sessions, frequent breaks.**¹⁵¹
3. **Make available support animals services to support persons with disabilities when waiting for court or when giving evidence.**¹⁵²

F. Communication support

Everyone is entitled to understand and be understood in all justice processes and procedures so that access to justice is guaranteed to all.

Article 2 of the CRPD defines “communication” to include languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology.¹⁵³ It also defines “language” to include spoken and signed languages and other forms of non-spoken languages.¹⁵⁴

Under Article 4 of the CRPD, States are obligated to undertake or promote research and development pertaining to an availability and use of new technologies, including: information and communication technologies; mobility aids; devices; and assistive technologies. Such technologies must be suitable for persons with disabilities, giving priority to technologies at an affordable cost.¹⁵⁵ In addition, States are obligated to provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities.¹⁵⁶

In terms of Article 9 of the CRPD, States must take appropriate measures to ensure to persons with disabilities enjoy access, on an equal basis with others, to, in the broadest possible range of settings: the physical environment; transportation; information and communications, including information and communications technologies and systems; and to other facilities and services open or provided to the public.¹⁵⁷

¹⁵¹ Justice Intermediary Starter Kit, Module 7 Accommodations, p.5.

¹⁵² According to the Disability Access Bench Book of the Judicial College of Victoria, Australia, assistance animal is an animal that is trained to perform tasks or functions that help a person with a disability to alleviate the effects of the disability. This includes animals trained to pick things up for people with mobility disabilities, animals trained to assist people who have seizures, or to provide comfort to vulnerable witnesses when waiting for court or when giving evidence from a remote witness facility. The practice is also used currently in the US and UK.

¹⁵³ Convention on the Rights of Persons with Disabilities (2006), accessible [here](#)

¹⁵⁴ Convention on the Rights of Persons with Disabilities (2006), accessible [here](#)

¹⁵⁵ Convention on the Rights of Persons with Disabilities (2006), accessible [here](#)

¹⁵⁶ Convention on the Rights of Persons with Disabilities (2006), accessible [here](#)

¹⁵⁷ Convention on the Rights of Persons with Disabilities (2006), accessible [here](#)

Article 21 of the CRPD requires States to take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion. This includes the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.¹⁵⁸

The CRPD Committee's General Comment No. 2 specifies that information and communications technology include the internet, mobile phones, radio, television, computers and computer equipment.¹⁵⁹ States have a duty to make the internet and other information and communications technology accessible to persons with disabilities.¹⁶⁰

The General Comment also further clarifies that Article 9 of the CRPD requires that any public buildings and places should provide support for persons with disabilities, including: (1) clear signs in Braille and easy to understand formats; and (2) communication and support services, including people who can guide persons with disabilities around the building or communicate in sign language.¹⁶¹

All processes in the justice system must provide the technical and other support necessary for the defendants with disabilities to use **any form of communication as necessary**¹⁶² for their full participation, including:

- (i) [Assistive listening systems and devices](#) (useful in case of hearing impairments);¹⁶³
- (ii) [Open, closed and real-time captioning, and closed caption decoders and devices](#) (useful in case of hearing impairments);¹⁶⁴
- (iii) Voice, text and video-based telecommunications products (useful in case of hearing impairments);
- (iv) Videotext displays (useful in case of hearing impairments);

¹⁵⁸ Convention on the Rights of Persons with Disabilities (2006), accessible [here](#)

¹⁵⁹ Committee on the Rights of Persons with Disabilities, 'General Comment No. 2 (2014) on Article 9: Accessibility', CRPD/C/GC/2 (2014), accessible [here](#)

¹⁶⁰ Committee on the Rights of Persons with Disabilities, 'General Comment No. 2 (2014) on Article 9: Accessibility', CRPD/C/GC/2 (2014), accessible [here](#)

¹⁶¹ Committee on the Rights of Persons with Disabilities, 'General Comment No. 2 (2014) on Article 9: Accessibility', CRPD/C/GC/2 (2014), accessible [here](#)

¹⁶² International principles, p 16.

¹⁶³ For instance, see: <https://www.nidcd.nih.gov/health/assistive-devices-people-hearing-voice-speech-or-language-disorders>

¹⁶⁴ For instance, see: <https://www.washington.edu/doit/what-difference-between-open-and-closed-captioning>

- (v) [Computer-assisted real-time transcription \(useful in case of hearing impairments, cognitive or learning impairments\);¹⁶⁵](#)
- (vi) [Screen reader software, magnification software and optical readers \(useful in case of visual impairments\);¹⁶⁶](#) and
- (vii) Video description and secondary auditory programming devices that pick up audio feeds for television programmes (useful in case of hearing impairments).

Suitability of telephone- and video-conferencing may need to be determined on a case-by-case basis.¹⁶⁷ In some instances they will be totally unsuitable for persons with disabilities, in other instances they will require modification of settings and modes, and still their use may significantly enhance the ability of individuals with disabilities to participate in legal processes.

In addition to intermediaries/facilitators and trusted persons discussed above, other support persons may assist individuals with disabilities in a variety of ways. Such persons might include:

- i. Note-takers (useful in case of hearing impairments, intellectual and psycho-social disabilities, cognitive or learning impairments);
- ii. [Qualified sign language and oral interpreters \(useful in case of hearing impairments, speech disabilities\);¹⁶⁸](#)
- iii. [Relay services](#) (useful in case of hearing impairments, speech disabilities);¹⁶⁹
- iv. [Tactile interpreters](#) (useful in case of hearing or visual impairments).¹⁷⁰

Practical guidance and recommendations

1. Provide support for communication and access to information through **communication facilitators /intermediaries** (See more about communication facilitators in Bulgaria in Section 6.1 below).
2. Ensure that all **communication support persons** are able to interpret effectively, accurately and impartially, both receptively (i.e., understanding what

¹⁶⁵ For instance, see: <https://nationaldisabilitynavigator.org/ndnrc-materials/disability-guide/computer-aided-real-time-transcription-cart/>

¹⁶⁶ For instance, see: <https://www.afb.org/blindness-and-low-vision/using-technology/using-computer/part-ii-experienced-computer-user-new-0>

¹⁶⁷ International Commission of Jurists, "The Courts and COVID-19" (5 May 2020), p. 5.

¹⁶⁸ For instance, see: <https://nationaldisabilitynavigator.org/ndnrc-materials/disability-guide/sign-language-interpreters/>

¹⁶⁹ For instance, see: <https://nationaldisabilitynavigator.org/ndnrc-materials/disability-guide/telecommunications-relay-service-2/>

¹⁷⁰ For instance, see: <https://wfdb.eu/interpretation/>

persons with disabilities are saying) and expressively (i.e. having the skill necessary to convey information back to those persons), while using any necessary specialized vocabulary (e.g. legal or medical) and respecting professional and ethical standards;

3. **Written information** should be available in alternative formats: justice actors must ensure the elaboration of and provision of access to easy-to-read documents.
 - a. Ensure that information about court procedures, including notices that require a response or an action to be taken (e.g. summonses, subpoenas, writs, orders and sentences), is **provided in accessible format**.¹⁷¹
4. **Ensure adequate training** on communication tools and methods for all justice professionals.
 - a. Ensure the language barrier is overcome through training of justice actors.

Good Practice

According to the Australian Disability Access Bench Book, an easy way to avoid this language barrier is to avoid using legal terminology and to use instead concrete and plain language. For instance, the judges and legal representatives should use the verb “to follow” instead of the verb “to comply”. Judges and legal practitioners should also explain particular terms and check during the hearing whether the defendant understands the meaning of specific words.

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5. **At all stages of the proceedings ensure that all court processes provide the technical and other support necessary for defendants with disabilities to use any form of communication as necessary for their full participation.**¹⁷³ These include:
 - a. Assistive listening systems and devices;

¹⁷¹ Accessible formats include: Sign language; Video and audio guides; Telephone line advice and referral services; Accessible websites; Induction loop, radio or infrared systems; Closed captioning; Braille; Easy Read and plain language; Facilitated communication; and amplification devices and document magnifiers.

¹⁷² Australian Disability Access Bench Book, available at [Disability Access Bench Book \(judicialcollege.vic.edu.au\)](http://disabilityaccessbenchbook.judicialcollege.vic.edu.au).

¹⁷³ These include- Assistive listening systems and devices; Open, closed and real-time captioning, and closed caption decoders and devices; Voice, text and video-based telecommunications products; Videotext displays; Computer-assisted real-time transcription; Screen reader software, magnification software and optical readers; Video description and secondary auditory programming devices that pick up audio feeds for television programmes.

- b. Open, closed and real-time captioning, and closed caption decoders and devices;
 - c. Voice, text and video-based telecommunications products;
 - d. Videotext displays;
 - e. Computer-assisted real-time transcription;
 - f. Screen reader software, magnification software and optical readers;
 - g. Video description and secondary auditory programming devices that pick up audio feeds for television programs.
- 6. Provide communication support, including through third-parties, for example:**
- a. Note-takers;
 - b. Qualified sign language and oral interpreters;
 - c. Relay services;
 - d. and Tactile interpreters, where and when necessary.
- 7. Provide justice professionals with communication tools to use in communication with persons with disabilities.** For instance:
- a. The [AAC pictograms browser](#)¹⁷⁴ and an [example of use](#).¹⁷⁵
 - b. An example of a “[communication board](#)”¹⁷⁶
 - c. [Easy to read guidelines](#)¹⁷⁷
 - d. How to write [a social story](#)¹⁷⁸ and an [example of use](#).¹⁷⁹

¹⁷⁴ Aragonese Center of Augmentative and Alternative Communication (ARASAAC) website available at [AAC Symbols and shared resources - ARASAAC; the Augmentative and Alternative Systems of Communication \(AAC\) are ways of expression different from spoken language, that aim at increasing and/or compensating for the difficulties of communication and language of many people with disabilities. For instance, they can be used to better communicate with persons presenting cerebral palsy \(CP\), intellectual disability, autism spectrum disorders \(ASD\), neurological diseases such as amyotrophic lateral sclerosis \(ALS\), multiple sclerosis \(MS\) or Parkinson’s disease, muscular dystrophies, traumatic brain injuries, aphasias.](#)

¹⁷⁵ OHCHR, Making sure people with disabilities get justice - EasyRead version of: International Principles and Guidelines on access to justice for persons with disabilities, available at [ISL133 20 ER UN Access to Justice \(ohchr.org\)](#).

¹⁷⁶ Access Ability Australia (AAA), Communication Board. Workshops and Meetings, available at [City-of-Mandurah-Workshops-and-Meetings-Communication-Board-V1.pdf \(accessabilityaustralia.com\)](#); [Communication boards use symbols to share ideas, wants, needs, and thoughts, assisting individuals with communication challenges. They are typically used with persons with intellectual disabilities, autism spectrum, learning disabilities, traumatic brain injuries, dementia, or deafness.](#)

¹⁷⁷ Mencap, Am I making myself clear? Mencap’s guidelines for accessible writing (2002) available at [guidelines_for_accessible_writing.pdf \(funding4sport.co.uk\)](#); [For instance, they can be employed to communicate with people with intellectual disabilities, learning disabilities, or autism spectrum.](#)

¹⁷⁸ Autism Services, Education, Resources and Training (ASERT) website, available at [How to Create a Social Story — PAAutism.org, an ASERT Autism Resource Guide; Social stories help people to react to social situations that may be challenging like appearing in court, being detained or being arrested. They are typically used to communicate with people with autism spectrum.](#)

¹⁷⁹ Access Ability Australia (AAA), The Capital. Social Story, available at [A-visit-to-The-Capital-Social-Story-V1.pdf \(accessabilityaustralia.com\)](#).

05

GOOD PRACTICES IN
BULGARIA

A. Communication facilitators

In 2023, in Bulgaria a training for communication facilitators (CF) was delivered to five speech and language therapists by background. The trainer was Paula Backen, who is a certified communication facilitator (justice intermediary) in England. Supervision of real cases will also be provided as well as expert support from organisations implementing CF schemes in Mexico and New Zealand. The Bulgarian experts are already part of the world CF map and will have the opportunity to gain and share experience globally.

Scope of work of the CF

From a substantive point of view, the work of the CF could be successfully applied in different justice related areas involving communication with persons with specific communication needs. However, following predominantly the UK model, the Bulgarian group of CFs were trained as experts for court trials and pre-trial proceedings. More specifically, this group of CFs were trained to work with adults in criminal cases, whether being witnesses, defendants or victims.

Without generalising, persons with specific communication needs may often be persons with a physical, intellectual or psychosocial disability.

How CFs work

The work of a CF as a specialist appointed to a case involves several stages:

- 1) Assessment of the person's communication skills and barriers of the justice system

Through the assessment, the CF checks the person's narrative skills, comprehension of questions and other speech, attention parameters, and what types of resources will keep their attention and participation. Those skills are assessed objectively, without being related in any way to the facts or other specifics of the case.

- 2) Drafting a report with recommendations to the investigative authorities/court for effective communication with the person

In a brief report, the CF shall describe the results of the assessment under item 1 and make recommendations to the appointing authority on how and where to communicate with the person for the communication to be effective. Some guidance and accommodations for the communication are proposed, such as: speed and tone of delivery; simplifying the questions and vocabulary and grammar used; times and

breaks; orientation, time and distance related questions; level of literacy; additional support for narrating – technical, visual, presence of a support person (significant others, relatives); organisation of the physical space where the communication takes place - seating arrangements, lighting of the room, venue, etc.

At the end of the report, the CF also makes a recommendation on whether or not the CF needs to be involved in future proceedings and to facilitate real-time communication. If the recommendation is that there is no need for further involvement of the CF, then it is considered that the guidance provided in the report for the communication with the person is sufficient for the authority to conduct a successful communication by themselves.

- 3) If necessary, the CF shall participate in the proceedings in real time and shall facilitate communication with the person

The CF may have indicated in the report under item 2 that there was no need for his/her further involvement. However, the final decision rests with the appointing authority and they may decide that the CF is needed and should be involved. And vice-versa, if the CF recommends in their report that he/she should be involved in the proceedings, the appointing authority may decide that the guidance in the report is sufficient to continue with the communication by themselves and not involve the CF as a facilitator.

Basic principles of the CF work

1. Consent - the initial assessment and further involvement of the CF in the proceedings is only done with the consent of the person.
2. Impartiality - The CF considers only the communication needs of the person in the context of the particular case aimed at conducting effective communication between the person and the court/investigative authority. In this regard, CF:
 - a) does not form/does not express an opinion on the case;
 - b) is not a party to the proceedings and is not interested in the outcome of the proceedings;
 - c) does not judge the act or the guilt of the person;
 - d) does not evaluate the work of judges, lawyers, prosecutors;
 - e) does not assess or take any view as to the person's witness credibility or sanity/capacity to stand trial;

- f) does not interpret the will of the person;
 - g) does not represent the person;
 - h) does not support the person in making decisions but help the person does so in terms of communication only;
 - i) should not be a relative or otherwise closely related to the person;
 - j) may not have any other professional relationship with the person, for example having worked or working with them in therapy.
3. Individual approach - the recommendations that the CF makes in his/her report and the methods of work in the course of actual proceedings are strictly individual, tailored to the specific needs and features of the person's communication, as well as to the specific context in which the communication takes place.
 4. Proportionality - the accommodations offered by the CF must be sufficient and tailored to the person's circumstances to the degree these accommodations ensure effective participation during proceedings.
 5. Be achievable - the accommodations offered by the CF are feasible and proven to support communication for persons with specific communication needs.
 6. Confidentiality - CF shall maintain complete confidentiality of the information made known to him/her in this capacity. The CF may discuss cases he/she is working on with other CFs for the sole purpose of supervising the work and while maintaining the anonymity of the persons.

<p>What a communication facilitator IS NOT</p>	<p>What IS a communication facilitator</p>
<p>CF has no legal training nor does he/she take a position on legal matters.</p>	<p>CF is a qualified speech and language therapist, expert in speech/language and communication skills and their disorders. The CF is familiar with basic legal concepts and procedural roles, as well as the general framework of trial</p>

	and pre-trial proceedings, but the CF is not a lawyer, nor does the CF form opinions or take positions on legal matters, including the legal evaluation of the facts of a case.
CF is neither an expert witness nor an interpreter.	CF is an expert who can assist the court and the investigative authorities in their communication with persons with communication difficulties or atypical communication, in real time and through recommendations to the authorities.
The CF does not interpret the will and wishes of persons, nor does he/she support them in their decision making.	The CF only provides accommodations to maximise understanding in communication between persons with communication difficulties or atypical communication and other participants in criminal proceedings.
CF does not defend nor represent persons with communication needs.	CF is an independent expert who, like expert witnesses and interpreters, may be appointed by the court or investigative authorities at the request of any of the parties to the proceedings. The guiding principle in the work of the CF is impartiality, and for that the CF should not be otherwise related to the persons, he/she is appointed to work with.
CF does not assess the witness credibility or sanity/capacity to stand trial of persons.	The work of the CF is limited to conducting effective communication with persons with communication

	<p>difficulties or atypical communication. The CF intervention allows such persons to participate in the process, which is their right, regardless of what the forensic experts have concluded about their witness credibility or sanity/capacity to stand trial. Sometimes, after the involvement of CF, it becomes clear that such expertise is practically unnecessary, and that the problem is indeed at the level of communication.</p>
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Identifying a person with communication needs

How may we know that a CF is needed in a case:

- The person speaks unintelligibly, has difficulty articulating;
- The person talks about issues unrelated to the questions;
- His/her speech is slurred or incoherent;
- Difficulty to understand the questions is observed;
- Visible mental and/or physical discomfort (makes nervous repetitive body movements similar to tics or rituals, or other atypical gestures, specific phrases or words repeated extremely often, etc.);
- The memories of what happened seem unreal, illogical, without clear consistency;
- Other atypical behaviours that clearly make it difficult to have effective communication with the person.

The evidence of an existing medical diagnosis may be a guide to some specific needs of the person, however such needs may not necessarily relate to the person's ability to communicate. Accordingly, the absence of a diagnosis should not be decisive and should not automatically exclude the need for support in order to carry out communication.

Something important to be noted: Some communication disorders may appear to be of a nature that affects the credibility of what is being said. But it might not be the case.

The CF could assist the process by distinguishing communication needs from other conditions, and could also recommend the involvement of other professionals.

Legal grounds on which CFs may be appointed

The role of the CF is not explicitly regulated in the Bulgarian legislation. However, this is not an obstacle to the appointment of CFs as supporting external independent experts when there is a need for this type of expertise.

The following provisions could be used as legal grounds for the appointment of a CF in the proceedings (non-exhaustive list):

- Article 11 (non-discrimination), Article 15 (2)(3) (for affording all procedural means necessary for the defence, explaining the rights and ensuring the possibility to exercise them), Article 142 (concerning interpreters, by analogy) of the Criminal Procedure Code (CPC);
- Article 67 (1) of the Persons with Disabilities Act (PDA) on the provision of all support measures necessary for effective access to justice;
- Article 13 (again on ensuring effective access to justice through the provision of procedural support measures at every stage of the proceedings) in conjunction with Article 12 (full legal capacity of persons with disabilities) of the Convention on the Rights of Persons with Disabilities (CRPD);
- Principle 3 of the International Principles and Guidelines on Access to Justice for Persons with Disabilities¹⁸⁰: provision of procedural accommodations that, among others, should facilitate effective communication to ensure understanding of the rights, the documents on the case file and the participation in proceedings (e.g. use of augmentative and alternative communication methods, use of communication facilitators);

as well as some specific ones:

- Article 55(5) of the CPC on the provision of information to defendants in a language and manner they understand, taking into account their specific needs;
- Article 74(4) of the Mol Act on the provision of information to detainees in a language and manner they understand, taking into account their specific needs;

¹⁸⁰ International Principles and Guidelines on Access to Justice for Persons with Disabilities, adopted in 2020 by the UN High Commissioner for Human Rights:
https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf

- Article 106a of the MoI Act concerning the exercising of powers, informing on the actions taken and explaining the rights of persons and the use of an interpreter, sign language interpreter or other person in this regard (by analogy).

How to contact a CF

On this website <https://communication-facilitators.bg/> you can find further information about the work of the CF, as well as a brief CV of the experts trained to carry out this work. In the ‘Make a referral’ section you will find a form via which you can send a request for involving a CF in a particular proceeding. CF will contact you in due course.

B. Individual assessment on the social functioning and assessment of the needs for support in court proceedings

In 2019-2022, several organizations in Bulgaria (Global Initiative in Psychiatry - Sofia in partnership with the Bulgarian Center for Not-for-Profit Law and the Union of Judges in Bulgaria) worked on a project called "*Ex iure ad iustatium (from law to justice); principles for a fair trial for people with disabilities*".¹⁸¹

Within this project, they created a set of assessments which to facilitate access to justice for persons with intellectual and psychosocial disabilities. One is on the “social functioning” of the persons, the other one is about the needs for support in court proceedings.¹⁸² Initially, these tools were designated to serve three particular types of court proceedings: placements in residential care settings, forced psychiatric treatments and placements under guardianship. However, the specifics and needs they explore might be found relevant more broadly and the tools be applied successfully in other types of proceedings as well.

a) Individual assessment on the social functioning:¹⁸³

This assessment is based on the understanding that social functioning is a set of fundamental social roles and the way a person performs them, including position of the person in social groups and interaction with group members.¹⁸⁴ It aims at providing the court with a more realistic picture about the abilities of the person and available

¹⁸¹ The project was funded by the Active Citizens Fund Bulgaria under the European Economic Area Financial Mechanism 2014-2021. Information about the project is available here: https://equalrights.gip-sofia.org/?page_id=17

¹⁸² Both documents are available in Bulgarian at: https://equalrights.gip-sofia.org/?page_id=52

¹⁸³ The method is described in the Handbook for the Study of Social Functioning, available in Bulgarian here: http://equalrights.gip-sofia.org/wp-content/uploads/2022/08/Social-functioning-assessment-tools_V.pdf

¹⁸⁴ Handbook of Assessment on Social Functioning, Section II, p. 6 -12.

resources for support rather than thinking of the person through a medical diagnose only.

Although the assessment was not designated for criminal justice cases, the information it tends to seek as well as the approach might be especially useful in establishing the real intent of the defendant towards the crime.

b) Assessment of the need for support in court proceedings:¹⁸⁵

This assessment tends to provide the court with valuable insights on the difficulties persons with disabilities encounter in accessing justice, which may be directly or indirectly related to the disability.

Ultimately, it provides understanding of the barriers persons with disabilities face in enjoying their right to access to justice. The barriers are analyzed in each case individually and support measures are recommended accordingly. The assessment explores four main areas of support, as follows:

- Attitude of the person towards the court proceedings;
- Decision making support;
- Communication;
- Practical support for access to justice (logistical support).

Within these four areas procedural accommodations and other supporting measures are recommended such as: modifications of the proceedings in terms of duration, preparations, etc.; easy-to-read materials; auxiliary technical aids for communication; provision of services for supported decision making or other supporting social services, etc.

How to involve an assessment in a trial

Global Initiative in Psychiatry – Sofia is the organization experienced in delivering both of the above assessments. It is at the court's discretion whether to engage the organization in delivering an assessment within trial. If a person with disability is involved however, procedural accommodations must be in place to ensure access to justice in line with Art. 13 of the CRPD. Respectively, the court has the obligation to seek for any such expertise and eventually arrange for the provision of all necessary accommodations.

¹⁸⁵ The matrix for assessing the need for support in court proceedings for persons with intellectual and mental health difficulties was delivered under the said project and is available in Bulgarian language here: http://equalrights.gip-sofia.org/wp-content/uploads/2022/08/Assesment-need-of-support_V.pdf

Anyone being a party to the court proceedings, including persons with disabilities, could request for an assessment.

NOTE: It is to be noted that the communication facilitators scheme in section 6.1 has been developed quite recently and is newer comparing to the assessment of the needs for support in court proceedings, here in section 6.2. The communication facilitators scheme in a way build upon previous experience, yet we reckon all these tools to supplement one another positively.

Eventually, all these good practices create a bridge between justice and social systems and tend to make proceedings more inclusive and humane.

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ADDITIONAL

A. Directory

Communication facilitators, Bulgaria: Informal cooperative of speech and language therapists trained as communication facilitators in criminal proceedings, described in details in Section 6.1 above. Website: <https://communication-facilitators.bg/>

Global Initiative in Psychiatry – Sofia, Bulgaria, a NGO organization experienced in social and justice related work with persons with mental disabilities. In relation to access to justice, GIP has created a template of and provide to courts individual assessments, as described in details in Section 6.2 above. More about the assessments can be found at: https://equalrights.gip-sofia.org/?page_id=52

B. Further readings

The Model Disability Rights Bench Book was drafted as part of the Enable project using information and research from national partners in eight EU Member States: Bulgaria, the Czech Republic, Lithuania, Portugal, Romania, Slovakia, Slovenia and Spain. It sets out the international legal framework governing rights of defendants with disabilities and provides practical recommendations, aiming at improving access to justice and respect for the rights of persons with disabilities at all stages of criminal proceedings. The Model Bench Book also served as a basis for the development of national bench books tailored to each jurisdiction, like this very one. Find more about the Model Bench Book here: (<https://validity.ngo/wp-content/uploads/2024/09/ENABLE-Model-disability-benchbook-1.pdf>)

Australian Disability bench book offers very useful information about the type of generic accommodations which might be required for persons with various types of disabilities that might be especially useful when accommodations are needed for persons with multiple disabilities. This info could be included in further readings: <https://www.judicialcollege.vic.edu.au/eManuals/DABB/index.htm#59310.htm>

See Examples of Benchbooks in the UK, in the US and in Australia:

UK's Equal Treatment Bench Book available at Equal Treatment Bench Book (April 2023 revision) (judiciary.uk); Adult Court Bench Book and Pronouncement Bilder available at Adult Court Bench Book (May 2023) (judiciary.uk). Bench Book for US District Court Judges available at Benchbook for U.S. District Court Judges, Sixth Edition (fjc.gov); Military Judge's Bench Book available at jagcnet.army.mil/EBB/. Australian Disability Access Book available at Disability Access Bench Book (judicialcollege.vic.edu.au); National Domestic and Family Violence Bench Book

available at Contents - National Domestic and Family Violence Bench Book (aija.org.au).

UN Disability Inclusive Language Guidelines:

<https://www.ungeneva.org/sites/default/files/2021-01/Disability-Inclusive-Language-Guidelines.pdf>