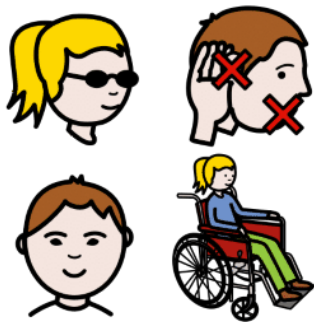




Disability Bench Book BULGARIA



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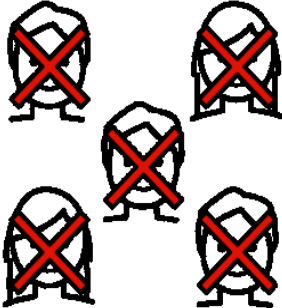


5.1. Individual assessment

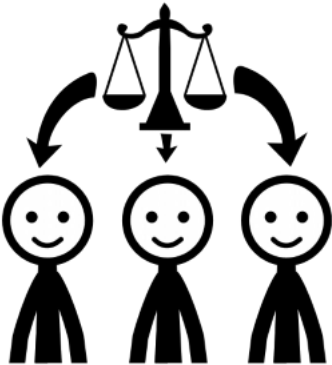
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	<p>1. Introduction</p>
	<p>Persons with disabilities can:</p> <ul style="list-style-type: none"> • Become victims of a crime • Witness a crime • Commit a crime <p>In either role, persons with disabilities have difficulties in accessing justice and reaching police, lawyers, prosecutors, and judges.</p> <p>Law in Bulgaria does not recognize the rights of persons with disabilities as for other people.</p>
	<p>The UN Convention on the Rights of Persons with Disabilities (CRPD) says that every person with disability has the right to access to justice.</p> <p>There are almost no procedural accommodations for persons with disabilities.</p>

There are almost no special qualification and training for the judges, lawyers and prosecutors.

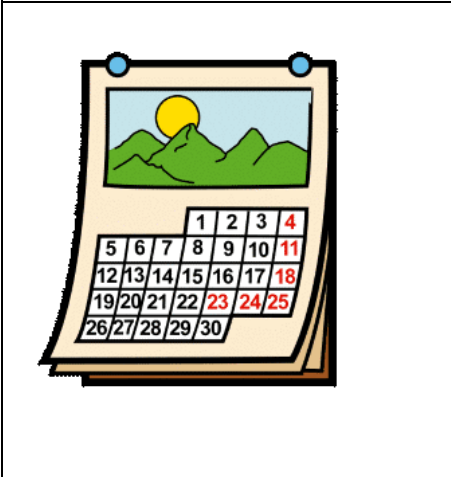


The purpose of this Bench Book is to inform about the ways for inclusion of defendants with disabilities in criminal proceedings.


1.1 Who is this Bench Book for

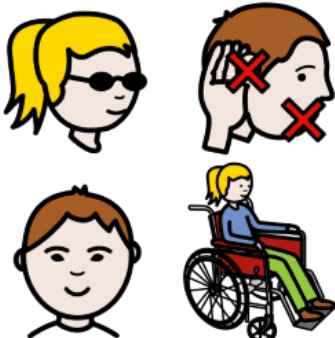


The bench book is for judges, prosecutors, lawyers, policemen and other specialists in Bulgaria.



1.2 How was the Bench Book done
Kera Foundation made this Bench Book for Bulgaria.

	<p>It is based on research about the difficulties that defendants with intellectual or psychosocial disabilities have in criminal proceedings.</p> <p>The research is made between January 2023 and June 2024.</p>
	<p>Information about the research in easy to ready format can be found here:</p> <p>https://www.kerafoundation.com/wp-content/uploads/2024/02/2024_02_08_ENABLE_Eng_ETR_Bulgaria.pdf</p>

	<p>1.3 Main definitions</p> <p>Persons with disabilities – persons with physical, psychosocial, intellectual or sensory disabilities which make it difficult for them to participate in social life on an equal basis with other people.</p>
	<p>Legal capacity – to have rights and the right to exercise them.</p>



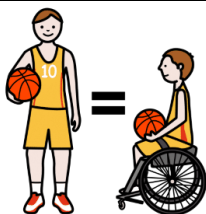
Procedural accommodations – all appropriate changes to justice proceedings which will help persons with disabilities to participate in them on an equal basis with others.



Supported decision making and guardianship

Supported decision making: Special measures which help persons with disabilities make decisions for themselves.

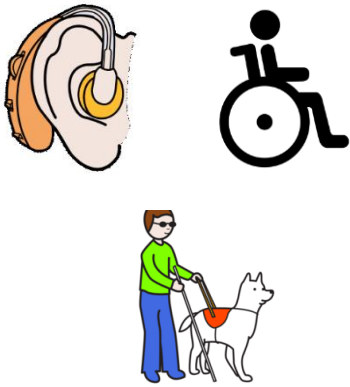
Guardianship: When the person has no right to make decisions for themselves. Instead, someone else makes decisions for them.



Equality and equity

Equality means that every person is given an equal chance in their life.

Equity means that every person is given what he or she needs in different situations in order to achieve equal results with other people.



Access and accessibility

Access means an opportunity or a right to do something or to enter a place.

Accessibility is the way goods, devices, services and places are made so as all people are able to use them.

This includes information and communication.



Medical model and human rights model

The medical model puts disability first.

The human rights model puts the person in the center of all decisions.



2. International legal framework

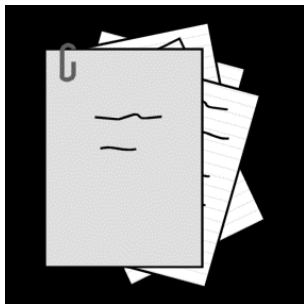
CRPD is the most important document from the international legal framework about the rights of persons with disabilities.



3. Defendants with disabilities and the justice system

In Bulgaria persons with disabilities do not have the right to participate equally in the justice system.

Persons with disabilities in Bulgaria are left out of justice proceedings because of their disability.



4. Legal capacity and innocence

In criminal justice in Bulgaria defendants must have a certain level of “mental capacity” in order to participate.

The assessment of this capacity is based mostly on documents.

This is wrong.



All persons with disabilities have the right to participate in all justice and legal systems. They cannot be refused this right because of their disability.



Good examples from the case law

- Cases before the European Court of Human Rights (ECtHR): *Stanev vs. Bulgaria*, *Shtukaturov vs. Russia*, *Blokhin vs. Russia*
- Communication of the UN CRPD Committee:
 - *Medina Vela vs. Mexico* (No. 32/2015 r.)
 - *Marlon James Noble vs. Australia* (No. 7/2012 r.)

- *Doolan vs. Australia* (No. 18/2013 r.)



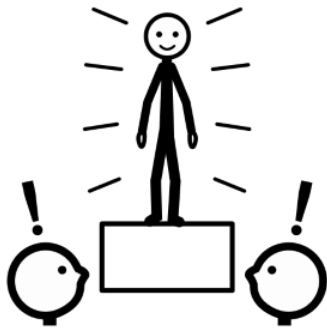
When persons are declared incompetent to stand trial, the court terminates criminal proceedings and replaces them with a placement in a psychiatric hospital of other type of involuntary treatment.

This way it is never clear if they were the ones who really committed the crime.

Then the rule about being innocent until proven otherwise is broken.



The Court of the European Union disapproved such practice in its Ruling C-467/2018.



Recommendation:

Defendants with disabilities must be able to exercise their right to:

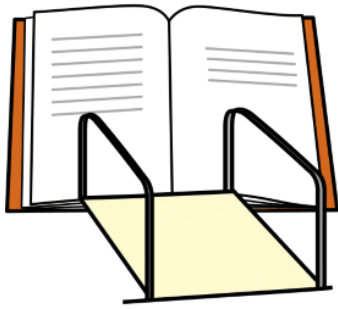
- Take part in in all stages of proceedings and before all courts,
- support and procedural accommodations in order to exercise all their rights,
- appeal – to say that they do not agree;
- support and legal aid in order to take part in in criminal proceedings.



All defendants with disabilities are innocent until proven guilty according to the law.

There must be training for specialists from the justice system about the rights of persons with disabilities.

Persons with disabilities who have experience with the justice system must take part in any justice reform.



5. Procedural accommodations

In Bulgaria procedural accommodations are not recognized as a right of the defendants with disabilities.

Procedural accommodations are important for the persons with disabilities in order to access justice and exercise their human rights.




In Bulgaria sign language interpreters are the only procedural accommodation.




Procedural accommodations are all necessary and appropriate changes in each case individually.

Things must be prepared before providing procedural accommodations must be done before the proceedings begin.

All participants in the proceedings must be informed about the procedural accommodations.

	<p>Recommendations</p> <p>The right of the defendant with disability to a fair trial must be respected as with any other person.</p> <p>All specialists from the justice system must provide procedural accommodations to persons with disabilities.</p>

	<p>5.1. Individual assessment</p> <p>Individual assessment helps persons with disability participate in criminal proceedings.</p> <p>Individual assessment aims at showing:</p> <ul style="list-style-type: none"> - the barriers for persons with disabilities; - what support they need.
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Justice authorities are responsible for having this individual assessment done.

Any participant in the proceedings may request for such individual assessment.

The individual assessment must be made by a team of specialists like a social worker, a communication specialist, a support person, a lawyer.



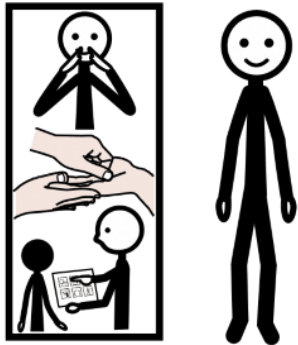


Recommendation

To have rules for how to identify disability at the start of the proceedings.

To identify disability in the beginning of the proceedings and to have an individual assessment done.

The individual assessment must be made together with the person with disability. The person must have the right to express their opinion about the assessment.

To have rules for protection of information and personal data.

	<p style="text-align: center;">5.2. Communication facilitators</p> <p>Communication facilitators (CFs) are specialists who work with the justice authorities, the persons with disabilities and the other people taking part in the proceedings.</p> <p>The CFs can be chosen by the court or the police.</p> <p>The CFs can be requested by anyone who takes part in the proceedings.</p>
	<p>Problems</p> <p>In many countries from the European Union laws do not include CFs.</p>
	<p>Recommendations</p> <p>If needed, it is better for the CF to be appointed from the beginning. They should take part in the first communication and questioning between the person with disability and the police.</p>



5.3. Right to have a support person

CRPD does not say directly that the person with disability has the right to a support person in the proceedings, but in some other UN documents it is mentioned as responsibility of the State.



Recommendation

Upon first contact with the authorities, persons with disabilities must be informed on their right to have a support person with them.

A support person can be a relative or any other person who the person with disability chooses.



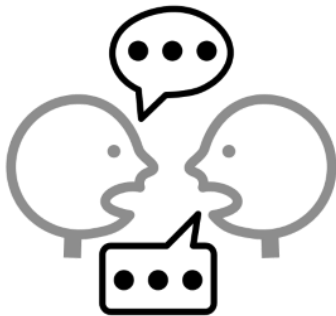
5.4. Adapting procedures

There is an important legal document about adapting procedures. This is the United Nations International Principles and Guidelines on Access to Justice of Persons with Disabilities (The UN International Principles and Guidelines).

These rules say that changes should be made so that people with disabilities can take part in proceedings better. . For example:



- Adapting the venue;
- waiting spaces designed with disabled people in mind;
- Removal of robes or other formal wear;
- Adapting the speed of the proceedings;
- Changes to the way of questioning – avoid complex questions, give more time for answer, use simple language, etc.;
- Using video recordings of questionings, if needed and possible.
- Easy-to-read information



5.5. Support for communication

Everybody has the right to understand and to be understood during the whole time of the criminal proceedings.

Article 2 of the UNCRPD says that communication comes in many forms.



Recommendation

To provide support for communication and information through communication facilitators.

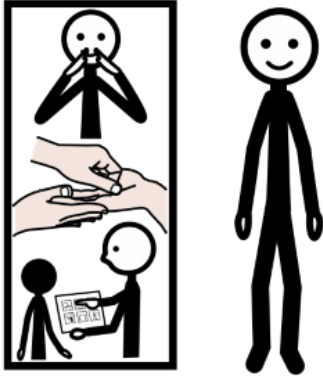
To provide technical and other support needed for defendants with disabilities in order to use all forms of communication. For example:



- Easy to read documents;
- Assistive listening systems and devices;
- Real-time captioning;
- Videotext displays;
- Note takers;
- Qualified sign language and tactile interpreters.



6. Good practices in Bulgaria



6.1. Communication facilitators

In 2023, there was a training in Bulgaria for communication facilitators (CF).

CF assist communication with persons with specific communication needs in justice proceedings.

CF make a report to the court/investigating authorities with recommendations on effective communication.

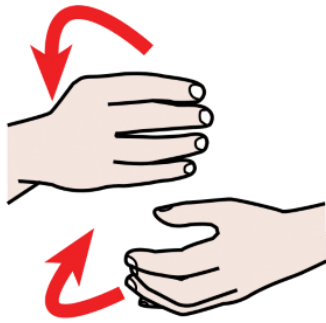
If needed, CF participate in proceedings and assist communication in real time.



How to contact a CF

On this website you can find additional information about the work of CF and how to contact them:

<https://communication-facilitators.bg/>



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

In 2019-2022, Global Initiative in Psychiatry – Sofia, Bulgarian Center for Non-Profit Law and The Union of Judges in Bulgaria worked on a project.



Within this project, they created assessments which to help access to justice of persons with intellectual or psychosocial disabilities in Bulgaria:

1. Assessment of the social functioning of the persons
2. Assessment of the needs for support in court proceedings



More about these assessments can be found here:

https://equalrights.gip-sofia.org/?page_id=52

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Full project description: <https://validity.ngo/projects-2/enabling-inclusion-and-access-to-justice-for-defendants-with-intellectual-and-psychosocial-disabilities/>



Special font for persons with mild to moderate forms of dyslexia. **Adys font**

Pictograms: www.pictoselector.eu