

**BRIEFING PAPER ON BARRIERS  
FACED BY DEFENDANTS WITH  
INTELLECTUAL AND/OR  
PSYCHOSOCIAL DISABILITIES IN  
THE CRIMINAL JUSTICE SYSTEM  
IN ROMANIA**

This briefing paper was developed by Centre for Legal Resources (Romania) 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 countries:

- Romania (Centrul de Resurse Juridice)
- Portugal (Fenacerci – Federação Nacional de Cooperativas de Solidariedade Social)
- Czechia (Fórum pro lidská práva)
- Slovakia (Fórum pro lidská práva)
- Slovenia (PIC – Pravni center za varstvo človekovih pravic in okolja)
- Bulgaria (KERA Foundation)
- Spain (Confederación Plena Inclusión España)
- Lithuania (Mental Health Perspectives)

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## **Author**

Cezara Băceanu

## **Research Team**

Georgiana Pascu, Cezara Băceanu, Georgiana Dărăștean

## **Editor**

Georgiana Bădescu

## **Contacts in Romania**

Centre for Legal Resources

Arcului str., no. 19,

District 2, Bucharest

021032, Romania

Contact person: Georgiana Pascu

E-mail: gpascu@crj.ro

## **Project contacts**

Validity Foundation – Mental Disability Advocacy Centre

Impact Hub, Milestone Institute

Budapest, Wesselényi utca 17.

1077 Hungary

E-mail: validity@validity.ngo

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# TABLE OF CONTENTS

	<b>Executive summary</b>	03
<b>01</b>	<b>Introduction</b>	08
<b>02</b>	<b>Goals and methodology</b>	13
<b>03</b>	<b>Defendants with disabilities access to justice</b>	16
	<b>Political and legal framework</b>	17
	01 Transposition of the international legal framework	20
	02 Overview of the national legal framework regarding access to justice	24
	03 Training and awareness for criminal justice professionals	35
	04 Statistics and data on access to justice	36
	05 Main findings	38
	<b>Experiences about the access to justice of defendants with disabilities</b>	41
	01 Defendants' with disabilities experiences	44
	02 Criminal justice professionals' experiences	50
	03 NGOs, human rights institutions, and support service professionals' experiences	62
	04 Brief analysis of patterns	67
<b>04</b>	<b>Conclusions and recommendations</b>	68
	<b>Conclusions</b>	69
	<b>Recommendations</b>	71
<b>05</b>	<b>References</b>	74
	<b>Annexes</b>	76
	Annex 1 - Profile of the interviewees	77

# EXECUTIVE SUMMARY

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# EXECUTIVE SUMMARY

“While access to justice is fundamental for the enjoyment and fulfilment of all human rights, many barriers prevent persons with disabilities from accessing justice on an equal basis with others. Such barriers include restrictions on the exercise of legal capacity; lack of physical access to justice facilities, such as courts and police stations; lack of accessible transportation to and from these facilities; obstacles in accessing legal assistance and representation; lack of information in accessible formats; paternalistic or negative attitudes questioning the abilities of persons with disabilities to participate during all phases of the administration of justice; and lack of training for professionals working in the field of justice. In the justice system, persons with disabilities are often considered to be unworthy of, unable to benefit from or even likely to be harmed by due process protection provided to all other citizens. Even fundamental rights, such as the right to remain silent and the presumption of innocence, may be denied either directly in law or policy or indirectly in custom and practice. The risks are extreme – e.g. false confessions, erroneous verdicts and unlawful deprivation of liberty.”[1]

## The aim of this national briefing paper is to allow an assessment in Romania of:



How and what barriers defendants with intellectual and psychosocial disabilities face in the criminal justice system in accessing information, support and procedural accommodations that prevent them from participating, and



To what extent and what ways is there law, policy and/or practice (including promising practices) that enable defendants with intellectual and/or psychosocial disabilities to overcome these barriers, particularly through provision of procedural accommodations?

This report will inform reform and development of a disability bench book and protocol to improve accessibility of criminal proceedings.

[1] 2020, International Principles and Guidelines on Access to Justice for Persons with Disabilities, p. 6, available [here](#).

# EXECUTIVE SUMMARY

## Main findings regarding barriers, challenges and best practices

1. Although the small number of interviews required did not allow us to establish a group for covering the whole country, the representativeness and diversity of sources is an important indicator of the situation at national level. The findings of the report reveal that, despite positive developments over the last decade, mainly due to partial alignment with European and international legislation, Romania continues to face problems in terms of effective access to justice for suspects and defendants with intellectual and/or psychosocial disabilities. No data is collected on how many people with disabilities face the justice system. This data could highlight the barriers encountered and possible solutions for people with disabilities to access justice effectively.
2. A very important obstacle in the process of access to justice remains the lack of training of justice personnel. It emerged that the criminal justice professionals are insufficiently familiar with the notion of procedural accommodations and are thus unable to identify certain aspects of the administration of justice that violate the right of access to justice of persons with disabilities.
3. The Romanian legislation provides medical confinement as a safety measure for persons without legal capacity who have committed a criminal offence. The CRPD Committee has recommended the removal of the safety measure of confinement into a psychiatric institution or compulsory medical treatment for persons who have been declared not criminally responsible on the grounds of "alienation" or incapacity (CRPD Committee (2015a, para. (20)).
4. A case of good practice mentioned by several professionals is the AdaptJust courses<sup>[2]</sup> organized by CLR, which aimed at strengthening the capacity of legal and psychosocial specialists (magistrates, lawyers, psychologists, social workers and psychiatrists) with a multidisciplinary approach, in order to implement the ECHR<sup>[3]</sup> decisions on the rights of persons with intellectual and/or psychosocial disabilities, as well as topics regarding procedural adaptations, deprivation of liberty and independent living in the community, hearing persons with intellectual and/or psychosocial disabilities, etc.

[2] More information on AdaptJust courses in section 03.03 Training and awareness for criminal justice professionals.

[3] European Court of Human Rights

# EXECUTIVE SUMMARY

## Main recommendations

1. There is a need to harmonise the national procedures and legislation with the European standards on creating an environment of equal conditions for people with intellectual and/or psychosocial disabilities with all citizens and to give them the opportunity to understand and be understood, so that access to justice is guaranteed to all. Support and accommodation rather than discriminatory assessment of capacity to understand and ability to be judged is also essential. The national legislation should be amended with express regulation of legal assistance for persons diagnosed with intellectual and psychosocial disabilities.
2. Improve inter-institutional collaborations to ensure the CRPD implementation, involve more and work with disability organisations and people with disabilities. Creation of a platform for communication between professionals, that includes the INML[4], and the presence of a specialist to ensure safe communication between the professionals in the judicial system and the person with disabilities. For penitentiaries, there needs to be an outside person who has experience and specialization in working with people with disabilities and be available for collaborations.
3. The lack of knowledge (from the most trivial to the most specific) among lawyers can substantially affect the fate of people with intellectual and/or psychosocial disabilities. The lawyer must be the first person who ensures that the fundamental rights and freedoms of their client are respected. With a complete lack of training in this area, it becomes impossible to ensure effective and unbiased access to justice for people with disabilities. There must be an obligatory specialization of lawyers to work with people with disabilities. Therefore, through the institutions responsible, the continuous training of magistrates and lawyers, in the field of access to justice of defendants with intellectual and/or psychosocial disabilities needs to be ensured, as well as sufficient funding to create a system of ongoing training for justice, medical and social professionals who interact with people with intellectual and/or psychosocial disabilities.
4. Adopt clear and effective procedures to be followed by the professionals whenever a person with intellectual and/or psychosocial disabilities faces the criminal justice system. Criminal justice professionals recommended the creation of guides and manuals, in order to facilitate the professional's approach to people with disabilities. In practice, the police inform defendants of their rights, but practices vary, from written to verbal information, including un-accessibilized leaflets, which can be difficult to understand. They must ensure that defendants understand their rights correctly and provide written and verbal information as soon as they become suspects. Programmes and procedures should be drawn up to provide correct information to people with disabilities, and adapted according to the types and degrees of disability.

[4] Institute of Forensic Medicine

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IT IS SOCIETY THAT  
"DISABLES" PERSONS  
WITH DISABILITIES  
FROM EXERCISING  
THEIR HUMAN RIGHTS  
AS CITIZENS.

UNITED NATIONS, 2008

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# 01

INTRODUCTION

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# INTRODUCTION

Access to justice for people with disabilities is recognized on Article 13 of the Convention on the Rights of Persons with Disabilities (CRPD) which establishes that: “States Parties shall 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, to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages”, and “in order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff”.

According to the United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020) procedural accommodations include:

“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. Unlike reasonable accommodations<sup>[5]</sup>, procedural accommodations are not limited by the concept of “disproportionate or undue burden”. (p. 9)

The practical implementation of Article 13, and specifically the access to justice of defendants with intellectual and or psychosocial disabilities is an issue which has not been much investigated, at least in some European countries. This project aims at filling this gap by analysing the barriers (and best practices) to participation in the criminal justice process, focusing specifically on persons with intellectual and/ or psychosocial disabilities).

According to the CRPD, disability is an evolving concept and “results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”. In other words, the CRPD adopts a social and human rights model which proposes a new conceptualization of disability: “it is society that “disables” persons with disabilities from exercising their human rights as citizens” (United Nations, 2008) if the necessary adaptations to the social participations of these persons are not provided.

[5] “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” (Article 2, United Nations, 2006)

# INTRODUCTION

The general purpose of this briefing is to present the results of research on the barriers defendants with intellectual and psychosocial disabilities face in the criminal justice system in accessing information, support and procedural accommodations that prevent them from participating. The briefing will also assess to what extent is there law, policy and/or practice (including promising practices) that enable defendants with intellectual and/or psychosocial disabilities to overcome these barriers, particularly through provision of procedural accommodations.

The research guidelines are based on the international normative framework as set out in the relevant and intersecting articles of the CRPD: article 12 (Equal recognition before the law) and article 13 (Access to justice); the International Principles on Access to Justice for Persons with Disabilities (UN, 2020):

Principle 1 (All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability);

Principle 3 (Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations);

Principle 4 (Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others);

Principle 5 (Persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process);

Principle 6 (Persons with disabilities have the right to free or affordable legal assistance);

Principle 10 (All those working in the justice system must be provided with awareness-raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice);

# INTRODUCTION

European Convention on Human Rights: Article 5 (Right to liberty and security), 6 (Right to a fair trial), 13 (Right to an effective remedy) and 14 (Prohibition of discrimination);

and EU acquis on procedural rights: right to interpretation and translation in criminal proceedings[6];

right to information in criminal proceedings[7];

right of access to a lawyer in criminal proceedings[8];

strengthening of certain aspects of the presumption of innocence and on the right to be present at the trial in criminal proceedings[9];

legal aid for suspects and accused persons in criminal proceedings[10];

and procedural safeguards for vulnerable persons suspected or accused in criminal proceedings[11].

In what follows, we present the goals and methodology of the study, then we summarize the main findings of the field work - desk research and semi-structured interviews - and we end up with the main conclusions and recommendations regarding the access to justice for defendants with intellectual and/ or psychosocial disabilities in Romania.

[6] Directive 2010/64/EU of the European Parliament and of the Council – Articles 1, 2, 4 and 5;

[7] Directive 2012/13/EU of the European Parliament and of the Council– On the right to information in criminal proceedings – Articles 3, 4, 6 and 7;

[8] Directive 2013/48/EU of the European Parliament and of the Council – On right to access to a lawyer in criminal proceedings, including EAW and on the right to have a third party informed about deprivation of liberty and communicate with third persons – Articles 3, 4, 11 and 13

[9] Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings – Article 6 – 8 and Recital 42;

[10] Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings – Article 4 and 9;

[11] Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings – Section 2 and 3.

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PART OF THE  
PROBLEM IS THAT  
WE TEND TO THINK  
THAT EQUALITY IS  
ABOUT TREATING  
EVERYONE THE  
SAME, WHEN IT'S  
NOT. IT'S ABOUT  
FAIRNESS. IT'S  
ABOUT EQUITY OF  
ACCESS.

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– Judith Heumann

# 02

GOALS AND  
METHODOLOGY

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# GOALS AND METHODOLOGY

To improve knowledge on experiences and participation barriers faced by defendants and accused with intellectual and/or psychosocial disabilities in the criminal justice system (pre-trial and trial phase, i.e., from investigation/ arrest to sentence).

## The specific goals of this project phase were:



### **Map the national legal and political framework**

(laws, policies, strategies, orientations, or others) about access to justice to defendants with disabilities, mainly focusing on the provision of reasonable and procedural accommodations.



### **Examine the experience of different stakeholders**

- defendants with intellectual and psychosocial disabilities, criminal justice professionals, support services professionals, Non- Governmental Organisations and Human Rights Institutions – about the access to justice of defendants with disabilities, **identifying barriers, challenges and areas of improvement** they envision in it.



### **To collect recommendations**

- from the different stakeholders - on how to promote the inclusion and access to justice for defendants with intellectual and psychosocial disabilities, specifically **identifying the main support and procedural accommodations needed**.

## GOALS AND METHODOLOGY

To achieve these goals the methodological approach combined **desk research** and field work. The desk research involved the identification and analysis of relevant policy documentation (e.g., national legislation, policy, strategies, reports, statistics) regarding the provision of reasonable and procedural accommodations in the justice system for persons with disabilities.

Additionally, for **the field work, semi-structured interviews** (N= 16) were carried out with key stakeholders: Defendants with intellectual and /or psychosocial disabilities (N=4); Criminal justice professionals (N=7); Support services professionals (N=2); Non-Governmental Organisations (N=2), and Human Rights Institutions (N=1). The interviews were conducted from February 2023 to May 2023. It was given priority to interviewees who have had experience/contact with the criminal justice system in the last three years. A non-probability purposeful sampling technique was used to identify and recruit the participants of this project. The identification of the interviewees was possible with the help of the national partners of the project. The data was analyzed using content analysis. In the next section we summarize the main key finds of the desk research and interviews.

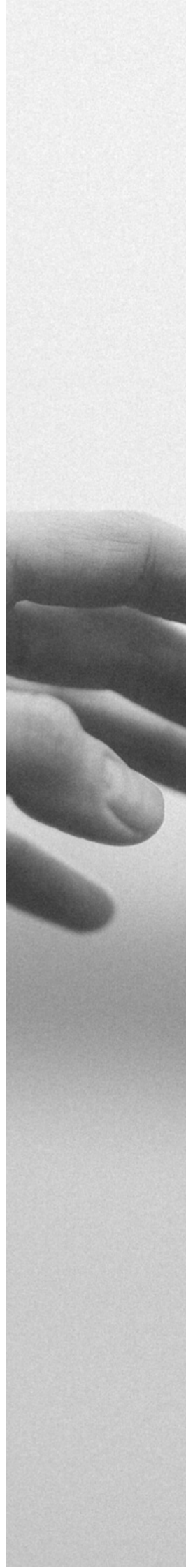
03

DEFENDANTS WITH  
DISABILITIES ACCESS  
TO JUSTICE

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# POLITICAL AND LEGAL FRAMEWORK

- 01** Transposition of the international legal framework
- 02** Overview of the national legal framework regarding access to justice
- 03** Training and awareness for criminal justice professionals
- 04** Statistics and data on access to justice
- 05** Main findings



# DEFENDANTS WITH DISABILITIES ACCESS TO JUSTICE

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JUSTICE SYSTEMS  
REFLECT THE VALUES  
OF THE SOCIETIES IN  
WHICH THEY ARE  
EMBEDDED.

## ACCESS TO JUSTICE

The main goal of the desk research was to shed light into the legal and political framework about access to justice to defendants with disabilities.

# POLITICAL AND LEGAL FRAMEWORK

The results of this analysis are presented in four sub-sections:

- a) identification of the main international legal policies and orientations regarding access to justice adopted in Romania;
- b) brief overview of most relevant domestic laws, policies or strategies which regulate the access to justice of persons with disabilities;
- c) how training and awareness raising for those working in the field of administration of justice is being promoted, and finally,
- d) we will present available official data related to the access to justice for persons with disabilities.



## 01 Transposition of the international legal framework

Romania ratified the United Nations Convention on the Rights of Persons with Disabilities through Law no. 221 from 11th November 2010 without any reservations. Regarding Article 12 and Article 13 CRPD, the concluding observations of the UN Committee on the rights of persons with disabilities on Romania are not yet available. Romania was obliged to submit at least 3 reports in almost 11 years[12]. The reports submitted would have highlighted factors and difficulties affecting the degree of fulfillment of obligations under the UN Convention, but Romania did not submit its initial report to the UN in 2013, nor its first periodic report in 2017. Eleven years after ratifying the Convention, Romania submitted its initial report on 3rd March 2022.[13]

[12] In order to meet the obligation set out in Article 35.

[13] Initial report submitted by Romania, available [here](#).

# POLITICAL AND LEGAL FRAMEWORK

## 01 Transposition of the international legal framework

### **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified by Romania through Law no. 19 from October 9th 1990.

In 2018, the CPT<sup>[14]</sup> delegation visited 5 prisons and 10 police detention centres to examine the treatment of detainees, including those with intellectual and/or psychosocial disabilities.<sup>[15]</sup> The CPT recommended that the Romanian authorities act in order to ensure that crime inspectors carry out their duties in accordance with the relevant provisions of Article 106<sup>[16]</sup> of the Criminal Procedure Code (hereinafter CPC). To this end, professional training for these officials should be provided regularly; it should cover professional and non-coercive interview and investigation techniques, as well as the prevention of ill-treatment.

During the 2021 visit<sup>[17]</sup>, the CPT delegation examined the treatment of persons detained in prisons and police units. The CPT recommended that all prison officers, as part of their basic education, must be trained in how to interact with and offer support to prisoners with disabilities or mental disorders.

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[14] Established by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, available [here](#).

[15] Periodic visit, announced.

[16] Article 106 Special rules regarding the hearing: (1) If, during the hearing of a person, such person shows visible signs of excessive fatigue or symptoms of a disease that affect their physical or psychological capacity to participate in the hearing, judicial bodies shall order cessation of the hearing and, if the case, shall procure that the person is examined by a physician. (2) A detained person may be heard at the detention facility through videoconference, in exceptional situations and if judicial bodies decide that this does not harm the proper conducting of the trial or the rights and interests of the parties. (3) In the situation set by par. (2), if a person subject to hearing finds themselves in any of the situations set by Art. 90, their hearing may be conducted only in the presence of their counsel at the detention facility.

[17] Report to the Romanian Government on the ad hoc visit to Romania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 May 2021, available [here](#).

# POLITICAL AND LEGAL FRAMEWORK

## 01 Transposition of the international legal framework

Regarding the **EU Directives on rights of defendants/accused, in connection to the articles listed in the Introduction**, the following directives were analyzed:

- **Right to interpretation and translation** (Directive 2010/64/EU) was incorporated into the Criminal Procedure Code (CPP) of 2014. The draft CCP was amended by Law no. 255/2013 explicitly for the transposition of this Directive. The final part of Law no. 255/2013 explicitly mentions the transposition of Article 1, Article 2.1-5, Article 3.1, 3-2, 3.5, 3.7 and 3.9 and Article 4 from the Directive which provides an interpreter for persons who do not speak or understand the language of the criminal proceedings, as well as appropriate assistance for persons with hearing or speech impediments; the right to translation of essential documents; interpretation and translation provided shall be of a quality sufficient to safeguard the fairness of the proceedings.
- **Right to information in criminal proceedings** (Directive 2012/13/EU) was transposed by the 2014 CPC. According to the final part of Law no. 255/2013, Articles 3, 4, 6, 7 and Article 8.2 from the Directive are transposed, which provides the right to information about rights; the Letter of Rights on arrest; the right to information about the accusation; the right of access to the materials of the case and the right to challenge the possible failure or refusal of the competent authorities to provide information. In addition, the final part of the Emergency Ordinance no. 18/2016 specifically mentions the transposition of Article 4.4 and Article 5.2 from the Directive which provides that the Letter of Rights shall be drafted in simple and accessible language.

# POLITICAL AND LEGAL FRAMEWORK

## 01 Transposition of the international legal framework

- **Right to information in criminal proceedings** (Directive 2012/13/EU) was transposed by the 2014 CPC. According to the final part of Law no. 255/2013, Articles 3, 4, 6, 7 and Article 8.2 from the Directive are transposed, which provides the right to information about rights; the Letter of Rights on arrest; the right to information about the accusation; the right of access to the materials of the case and the right to challenge the possible failure or refusal of the competent authorities to provide information. In addition, the final part of the Emergency Ordinance no. 18/2016 specifically mentions the transposition of Article 4.4 and Article 5.2 from the Directive which provides that the Letter of Rights shall be drafted in simple and accessible language.
- **Right of access to a lawyer in criminal proceedings** (Directive 2013/48/EU) was transposed into the domestic legislation by Law no. 236/2017 to amend Law no. 302/2004 on international judicial cooperation in criminal matters (explicitly transposed Article 10.4, 10.5 and 10.6 from the Directive which provides the right of access to a lawyer in European arrest warrant proceedings). The full transposition process of the Directive, as of 9th March 2023 (the last update), was announced to be “ongoing”.<sup>[18]</sup>
- **Legal aid** (Directive 2016/1919) In March 2021, Law no. 51/2021 amended Law no. 302/2004 and explicitly transposed Article 5 of the Directive allowing legal aid in European arrest warrant proceedings.
- **Strengthening of certain aspects of the presumption of innocence and on the right to be present at the trial in criminal proceedings** (Directive (EU) 2016/343). Article 8.4 from the Directive was transposed into the national legislation by Law no. 228/2020, allowing the possibility of holding trials in the absence of suspects or accused persons, because a suspect or accused person cannot be located despite reasonable efforts having been made.

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[18] For details see Status of implementation of Directive 2013/48 available [here](#).

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

### General Disability and Mental Health legislation

#### Right to participation / Recognition of legal capacity

The Romanian legislation provides medical confinement as a safety measure for persons without legal capacity who have committed a criminal offence. The CRPD Committee has recommended the removal of the safety measure of confinement into a psychiatric institution or compulsory medical treatment for persons who have been declared not criminally responsible on the grounds of "alienation" or incapacity (CRPD Committee (2015a, para. (20)).

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EVERYONE IS EQUAL  
BEFORE THE LAW.

# POLITICAL AND LEGAL FRAMEWORK

## **Insanity defense/ Incapacity to stand a trial (a complete exclusion from the criminal proceedings)**

If, on the basis of a forensic expert report, it is found that the suspect or defendant suffers from a serious illness that prevents him/her from taking part in the criminal proceedings, the CPC provides Art. 312[19], as a ground for suspending criminal investigation and Art. 367[20], as a ground for suspending the trial. In the first case, the criminal investigation body is under an obligation to check periodically, but no later than 3 months since the date of suspension, whether the cause persists that required suspension of the criminal investigation[21], if it's not persistent, the criminal investigations resume. In the second case, the criminal proceedings shall resume ex officio, as soon as the defendant is able to take part at the trial[22].

## **Compulsory treatment, institutionalisation, alternatives of incarceration**

The legislation that governs compulsory treatment, institutionalization, and alternatives to incarceration is: Law no. 487/2002 (on mental health and the protection of people with mental disorders,); Order no. 488/2016 for the approval of the Norms for the application of the Law on mental health and the protection of persons with mental disorders no. 487/2002; The Criminal Code (art. 110 Medical detention) and the Criminal Procedure Code (art. 247 Provisional medical detention).

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[19] Art. 312 para. (1) In case a forensic medical report establishes that the suspect or defendant is suffering from a serious medical condition that precludes them from taking part in the criminal procedure, the criminal investigation body shall submit to the prosecutor its proposals and the case file so they can order the criminal investigation suspended.

[20] Art. 367 para. (1) When based on a medical expert report, the court finds that the defendant is severely ill, which prevents him from participating at the trial, the court, in a report, shall order the stay of proceedings until the health of the defendant will allow him to take part at the trial.

[21] Art. 313 para. (4) CPC

[22] Art. 367 para. (6) CPC

# POLITICAL AND LEGAL FRAMEWORK

## Compulsory treatment, institutionalisation, alternatives of incarceration

The Criminal Code provides for two safety measures in cases of persons with disabilities[23] who "present a danger to society" and is enforced until the "condition gets improved and is no longer dangerous ", i.e. to order medical treatment[24] or medical confinement.

Medical confinement as a safety measure may be ordered regardless of whether the offender will be held criminally liable or not. The conditions that must be met in order for this measure to be imposed are:

- the commission of an act provided for by criminal law;
- the offender must be a natural person;
- the existence of a state of danger (either to society or to the offender);
- the belief that the state of danger and the possible commission of other acts provided for by criminal law can be removed or attenuated by imposing the medical confinement.

The forensic experts are in charge of recommending the maintaining, replacement or termination of the measure of compulsory medical treatment or medical confinement. Medical confinement shall be ordered if the prosecutor submits a reasoned application to temporarily admit a suspect or defendant to the judge, and shall last until the person recovers or until an improvement is obtained so that the state of danger is removed. If after enforcement of such measure, the suspect or defendant recovers or their health condition improves, thus eliminating any threat for public safety, the Judge for Rights and Liberties or the Preliminary Chamber Judge who enforced such measure, by a court resolution, upon notification by the prosecutor or the attending physician or upon request by the suspect or defendant or by a member of their family, may order the conducting of a psychiatric forensic medical examination so as to cancel the enforced measure[25].

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[23]Art. 110 – Hospital admission, CC uses the term “mentally ill”: When the offender is mentally ill, a chronic user of psychoactive substances or suffers from an infectious disease and presents a danger to society, the measure of confinement in a specialized health facility may be taken until he/she recovers or until an improvement is obtained that removes the state of danger.

[24] Art. 109 - Obligation to medical treatment: (1) If the offender, due to an illness, including that caused by chronic consumption of alcohol or other psychoactive substances, presents a danger to society, he may be obliged to undergo medical treatment until he recovers or until he obtains an improvement that removes the state of danger. (2) When the person against whom such a measure has been taken does not follow the treatment, medical internment may be ordered. (3) If the person obliged to undergo treatment is sentenced to a custodial sentence, the treatment shall also be carried out during the execution of the sentence.

[25] Art. 248 para. (11) CPC - Procedure to enforce and cancel such measure

# POLITICAL AND LEGAL FRAMEWORK

## Involuntary admission and treatment during the pre-trial and trial stage

It is important to make a distinction between provisional medical detention during criminal proceedings, which is necessary for the purposes of a forensic examination (and is ordered provisionally during criminal proceedings), and medical confinement as a safety measure, which is ordered at the end of criminal proceedings.

According to Article 184 of the Criminal Procedure Code on forensic psychiatric expertise provisional medical detention is ordered for a complex examination when the person, suspect or defendant, refuses to be admitted to a specialised health institution. This measure is ordered by the court for a maximum period of 30 days, with the possibility of an extension for a further 30 days. If the conditions set out in Article 247 of the CPC[26] are met, the forensic psychiatric expert commission shall refer the matter to the judicial authorities with a view to imposing the safety measure of temporary medical confinement.[27]

Provisional medical detention is ordered during the criminal proceedings by the court, in the presence of the lawyer, the prosecutor and on the basis of certain documents (forensic medical reports, documents from the attending physician), being carried out in a specialised unit. It lasts until the judgment becomes final or until the measure is lifted, due to recovery or considerable improvement of the condition (a regular check will be made every 12 months). At the end of the trial it can be replaced by medical treatment or another type of medical confinement.

Regarding the rights of suspects or defendants, as in the case of injured persons, if they have disabilities, legal assistance may or may not be compulsory. Thus, in the prosecution stage, the CPC provides that legal assistance for suspects or defendants is compulsory when the suspect or defendant is placed in medical confinement, when the judicial body considers that the suspect or defendant would not be able to defend himself or herself, or in cases where the law provides life imprisonment or imprisonment for more than five years for the offence committed.[28]

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[26] Art. 247 para. (1) CPC – the conditions set out for imposing temporary medical confinement, when dealing with a suspect or defendant who is mentally ill or a chronic user of psychoactive substances, are if such measure is needed to eliminate a concrete and present threat to public safety.

[27] Art. 184 para. (27) CPC

[28] Art. 90 para. (1) - Mandatory legal assistance provided to a suspect or defendant, CPC

# POLITICAL AND LEGAL FRAMEWORK

## National Disability Strategy

**The National Strategy for the Rights of Persons with Disabilities “An equitable Romania”**[29], 2022-2027, includes the following objective of interest to the report:

### **Increasing access to the procedural stages of the justice system**

- Accessibility of infrastructure and services specific to the justice system. Institutions in the justice system (such as police stations, prosecutor’s offices and courts) must be made accessible.
- Procedural accommodations inherent to the administration of justice, essential to ensure the access to justice for persons with disabilities. There is a need to change the way institutions in the justice system operate to include procedures appropriate to the needs of people with disabilities.
- Access to free or affordable legal assistance and representation for persons with disabilities. The state should provide free support in legal matters to people with disabilities who need it.
- Training of staff working in the justice system. It is necessary to train lawyers, prosecutors, judges, police officers and those in the administration of penitentiaries in the field of the rights of persons with disabilities.
- The collection of relevant statistical data at all the stages of the justice system, an essential step towards assessing the extent to which persons with disabilities have access to justice

One of the targets set out for the National Strategy is that in 2027 or the year before 2027 of the most recent inspection campaign, at least 4 out of 10 courts of appeal and law courts inspected by NAPSI[30] are physically accessible and provide accessible communications and information. (Reference value: 0 out of 10 in 2020).

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[29] National Strategy for the Rights of Persons with Disabilities “An equitable Romania”, 2022-2027, available [here](#).

[30] National Agency for Payments and Social Inspection

# POLITICAL AND LEGAL FRAMEWORK

## Procedural accommodations

Principle 3 of the International Principles on Access to Justice for Persons with Disabilities establishes that persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations, which should

- a) Facilitate effective communication to ensure understanding of their rights, case materials and participation in proceedings (e.g., guarantee of interpretation in Sign language, the use of augmentative and alternative modes of communication, transport and communication, the use of intermediaries);
- b) Provide full access to the physical environment (including access to judicial building, adjustments to the physical layout of the room);
- c) Adjustment to procedural rules (e.g., may include use of audio-video records, video-links, adjustments on questioning);
- e) Appropriate to Gender and whether person is deprived of liberty. As already mentioned, these are necessary modifications in the context of access to justice to ensure the participation of persons with disabilities on an equal basis with others.

Next, we will describe briefly situation regarding the provision of procedural accommodations In Romania:



# POLITICAL AND LEGAL FRAMEWORK

## Procedural accommodations

**Right to information** - Art. 108 para. (1) and (3) CPC, during the criminal investigation and before his first hearing, the suspect or the defendant is informed by the judicial body about the capacity in which he will be heard, the act provided by the criminal law for which he is suspected or for which the criminal action has been initiated, its legal status, as well as the rights and obligations deriving from this position.

The CPC does not specifically refer to the authorities' obligation to adapt the language and information transmitted to the accused's capacity to understand. This is compounded by the lack of internal regulations and procedures to ensure that the accused fully understand the information they receive.

Art. 108 para. (3) CPC stipulates that, during the criminal investigation, before the first hearing of the suspect or defendant, he shall be informed on the rights and obligations provided for in para. (2) and he is handed, under signature, a written form that includes these rights (art. 83 CPC), and in case he cannot or refuses to sign, a record will be drawn up. The text contained in the form is identical to that found in the CPC, the language not being adapted according to the disability.

In practice, the police inform defendants of their rights, but practices vary, from written to verbal information, including un-accessibilized leaflets, which can be difficult to understand. They must ensure that defendants understand their rights correctly and provide written and verbal information as soon as they become suspects.

### **Independent intermediaries and/or facilitators (Right to participation) -**

The institution of a facilitator or an intermediary is not regulated in Romania, though criminal justice professionals mentioned in the interviews that they sometimes seek the assistance of an intermediary when they see fit.

There are instances when the court may order that a psychologist (when dealing with a victim of a crime, also a specialist in victim counselling) be present during the hearing, but this possibility is specifically mentioned when dealing with a victim of a crime<sup>[31]</sup> or a minor<sup>[32]</sup> whenever they are a victim or a witness<sup>[33]</sup>.

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[31] Art. 111 (6) (b) CPC - In the case of injured persons for whom the existence of specific protection needs has been established by law, the judicial body may order one or more of the following measures, where possible and where it considers that the proper conduct of the proceedings or the rights and interests of the parties are not prejudiced: b) hearing them through or in the presence of a psychologist or other victim counselling specialist;

[32] Art. 111 (81) CPC - Hearing of the injured person up to 14 years of age shall take place in the presence of one of the parents, of the guardian or of the person or representative of the institution to which the minor is entrusted for raising and education, and in the presence of a psychologist, as determined by the judicial body. The psychologist will provide expert advice to the minor throughout the court proceedings.

[32] Art. 124 (1) CPC - Special cases of witness hearing (1) Hearing of underage witnesses up to 14 years of age shall take place in the presence of one of the parents, of the guardian or of the person or representative of the institution to which the minor is entrusted for raising and education, and in the presence of a psychologist, as determined by the judicial body. The psychologist will provide expert advice to the minor throughout the court proceedings.

# POLITICAL AND LEGAL FRAMEWORK

## Procedural accommodations

### **Allowing persons with disabilities to be accompanied by family, friends or others to provide emotional and moral support**

The CPC does not explicitly refer to the obligation or even the possibility of the authorities to allow suspects or defendants with disabilities to be accompanied by family, friends or other trusted persons who can provide them with emotional and moral support at all times of the proceedings, without replacing the role of intermediary or facilitator.

### **Requests for and offers of accommodations**

There are no regulations on requesting or offering accommodations in national legislations for defendants[34], but data from interviews with criminal justice professionals indicate that there are no provisions to restrict them in adopting procedural accommodations if they consider it necessary. Because there are no obligations to ensure procedural accommodations and/or examples of such accommodations, professionals in the criminal justice system act instinctively or not at all, depending on subjective matters.

### **Right to interpretation and communication support**

There is a lack of informational and communication accessibility. It is recognized in the National Disability Strategy as one of the targets set for 2027: “At least 4 out of every 10 appeal courts, tribunals and judges inspected by NAPSI[35] are physically, communicationally and informationally accessible.”

In the CPC there are provisions concerning certain procedural accommodations for some categories of persons, which may include persons with disabilities, even if they are not expressly mentioned. For example, Art. 105 of the CPC concerning the hearing by an interpreter, which is intended for persons who do not speak and express themselves well in Romanian, as well as persons with hearing or speech impairments for whom an interpreter in mimic-gesture language is required, as well as Art. 83 (f) CPC providing the same right during the course of criminal proceedings.[36] This provision can also be applied in extenso to people with intellectual and psychosocial disabilities to facilitate communication.

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[34] There are provisions of procedural accommodation when dealing with victims of crime, witnesses or minors.

[35] National Agency for Payments and Social Inspection

[36] Art. 83 (f) CPC - During the course of criminal proceedings, a defendant has the following rights: f) to an interpreter free of charge, when they cannot understand, cannot express themselves properly or cannot communicate in the Romanian language;

# POLITICAL AND LEGAL FRAMEWORK

## Procedural accommodations

### Adopting procedures for hearings

Art. 106 para. 1 of the CPC provides for special rules concerning the hearing of a person, namely: if during the hearing of a person, he/she shows visible signs of excessive fatigue or symptoms of an illness affecting his/her physical or mental capacity to participate in the hearing, the judicial body shall order the interruption of the hearing and, if necessary, arrange for the person to be seen by a doctor. Although we do not have data on the effectiveness of these provisions in reality, thus, we can not conclude decisively whether or not the justice system is adapted to ensure flexible hearing methods (for example, interruption or extending the time allocated to answers and formulating questions) or the possibility of the intervention of a doctor for consultation.

In civil matters, certain adaptations are provided for, but in criminal matters, these things are expressly provided for victims (hearing of a person of the same sex<sup>[37]</sup>, hearing without delay precisely to avoid secondary victimization<sup>[38]</sup>, re-hearing only if necessary for criminal proceedings<sup>[39]</sup>).

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[37] Art. 111 para. (7) - Hearing by criminal investigation bodies of injured persons who have been victims of the crime of domestic violence, the crimes of rape, sexual assault, sexual act with a minor and sexual corruption of minors, the crime of ill-treatment of a minor, stalking, and sexual harassment, and in other cases where, because of the circumstances of the offence, it is deemed necessary, shall be carried out only by a person of the same sex as the injured person, at his or her request, unless the judicial body considers that this would prejudice the proper conduct of the trial or the rights and interests of the parties.

[38] Art. 111 para. (9) - The hearing of the injured person by the judicial body which has registered a complaint about the commission of a criminal offence shall take place immediately and, if this is not possible, after the complaint has been lodged, without undue delay.

[39] Art. 113 para. (4) - The injured party is only heard a second time if this is strictly necessary for the criminal proceedings.

# POLITICAL AND LEGAL FRAMEWORK

## Procedural accommodations

### **Right to be present at trial**

If the person is detained, it is mandatory that the defendant is present during the trial. The court proceedings may take place in the defendant's absence, if the latter is missing, evades trial or changes their address without informing thereupon the judicial bodies (and, following the controls carried out, their new address remains unknown). The court proceedings may also take in the defendant's absence if, even though lawfully served the summons, the defendant provides no justification for their absence during the adjudication of the case. Throughout the court proceedings, the defendant, including the case when deprived of liberty, may apply, in writing, to be tried in absentia, represented by a public attorney or a chosen one. When the court deems it mandatory for the defendant to be present, it may order the former's presence including with a warrant.[40] These legal provisions state the general participation of defendants in the criminal proceedings and they apply to persons with disabilities as well.

### **Remote hearings**

Decree no. 195/2020 established that the holding of the court session can be carried out through a video-conference system, the communication of procedural documents being possible through electronic means or through other means that ensure confirmation of their receipt.

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[40] Art. 364 CPC.

# POLITICAL AND LEGAL FRAMEWORK

## Rights Monitoring

### Independent mechanism

- **National Mechanism for the Prevention of Torture in Places of Detention (NPM) Ombudsman Institution**

Romania undertook the obligation to establish the National Mechanism for the Prevention of Torture in Places of Detention (NPM).[41] The NPM[42] exercises primarily a preventive mandate, regularly monitoring the treatment of persons in places of detention.[43]

The UN Subcommittee on Prevention of Torture (SPT - OPCAT) recommended that the NPM should focus not only on visits to places of deprivation of liberty, but also on other preventive activities, such as the development of an annual work plan covering all preventive activities, including commenting on draft legislation, awareness-raising activities and training.[44]

Independent mechanisms take little part in monitoring and verifying how the Convention is implemented in Romania, and very few persons with disabilities or their organisations take part in monitoring the implementation process of the CRPD.

- **Equality Body**

The Equality Body in Romania is the National Council for Combating Discrimination[45] and on their webpage there is a section available where the decisions adopted by the Board of Directors of the NCCD in the period 2008 – present can be consulted.[46] No decision on procedural accommodation has been identified, nor any public information on training courses for their staff. Although, since 2016, a cooperation protocol has been signed between the NMI[47] and the NCCD, within the framework of which numerous training activities in the field of anti-discrimination have been organized annually in partnership.

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[41] Established by Government Emergency Ordinance no. 48/2014

[42] Overview webpage of the Department for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Places of Detention - NPM, available [here](#).

[43] Annual report for the year 2022 – NPM, available, only in Romanian language, [here](#).

[44] SPT visited Romania from 3 to 12 May 2016.

[45] More about NCCD [here](#).

[46] Decisions adopted by NCCD, available [here](#).

[47] National Institute of Magistrates.

# POLITICAL AND LEGAL FRAMEWORK

## 03 Training and awareness for criminal justice professionals

At present, there are no university or postgraduate courses or accredited training modules in Romania in the field of access to justice and equal recognition before the law for persons with disabilities.

When asked by CLR about their plan to introduce disability-related courses into the continuous education curriculum, the NIM[48] focused their response[49] on developing (starting with 2023) trainings in regard to the criminal court proceedings (such as Hearing techniques in criminal proceedings that involve vulnerable people or Carrying out the forensic medical expertise in cases involving vulnerable groups).

The Romanian Bar does not provide lawyers with any training activities regarding the work with people with intellectual and/or psychosocial disabilities.

The National Administration of Penitentiaries has used videos/materials to present the particular situation in which persons with disabilities find themselves, and these will be disseminated to all the staff of the penitentiary system by technical means. The aim is to make prison officers aware of the issues faced by people with disabilities and, with a better understanding of the situation, to be able to provide the assistance they need."[50]

CLR, in partnership with the Public Prosecutor's Office of the High Court of Cassation and Justice and with the support of the Ministry of Justice, is organising 20 training courses in the country aimed at strengthening the capacity of legal and psychosocial specialists (magistrates, lawyers, psychologists, social workers and psychiatrists) in order to implement the ECHR[51] decisions on the rights of persons with intellectual and/or psychosocial disabilities, as well as topics regarding procedural adaptations, deprivation of liberty and independent living in the community, hearing persons with intellectual and/or psychosocial disabilities, etc.

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[48] National Institute of Magistrates.

[49] NIM response no. 882/27.02.2023 to CLR's request for public information no. 60/15.02.2023.

[50] Response of the Romanian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its ad hoc visit to Romania from 10 to 21 May 2021, available [here](#).

[51] European Court of Human Rights

# POLITICAL AND LEGAL FRAMEWORK

## Training and awareness for criminal justice professionals

The need and willingness to participate in specialised training courses is reflected in the high number of registrations for AdaptJust courses from all professions working with and for people with disabilities, except judges. We note that out of 15 training courses that have taken place up to the time of writing this report, to which magistrates from 30 courts in 30 counties have been invited, an extremely small number of judges have attended, namely 24. The main concerns of lawyers who attended our courses are that there are no tools such as guides or manuals to help them develop communication skills with people with disabilities so that they can ensure that they understand the people's needs and thus provide them with the legal representation required.

However, the civil society cannot and should not replace the efforts and responsibility of the state in training professionals.

## 04 Statistics and data collection on access to justice

The situation of the collection of statistical data<sup>[52]</sup> on access to justice for people with disabilities, reported to the year 2021, is:

1. The Ministry of Justice does not have a system for collecting data from courts on: (i) court actions to which persons with disabilities are parties; (ii) the subject matter of the cases; (iii) the type of procedural accommodations provided to persons with disabilities; (iv) the procedural quality of persons with disabilities involved in the process; (v) the form of legal assistance they have received, if they did.

2. The Ministry of Internal Affairs does not collect data from police stations on: (i) petitioners with disabilities and their position in the case (e.g. victim, suspect or defendant); (ii) type of disability (physical, sensory, intellectual and/or psychosocial); (iii) procedural accommodations for the conduct of the hearing provided in the police station; (iv) type of crime; and (v) number of persons with disabilities detained or deprived of liberty.

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[52] According to " Diagnosis of the situation of people with disabilities in Romania ", 2021, [RO], available [here](#).

# POLITICAL AND LEGAL FRAMEWORK

## Statistics and data collection on access to justice

3. The Public Ministry has no record of the procedural accommodation provided in cases involving a person with disabilities.

4. The National Administration of Penitentiaries collects data on the number of inmates with a disability certificate and those with a personal assistant, but does not collect data on the number of inmates who received legal assistance and procedural accommodations to file a complaint while deprived of liberty

5. The National Authority for the Rights of Persons with Disabilities, Children and Adoptions does not collect data on the number of persons with disabilities who have interacted with the justice system, police, prisons, or psychiatric hospitals and required legal assistance, procedural accommodations, or counseling in support of legal claims.

## Forensic hospitalization

The Ministry of Health is responsible for four psychiatric and safety measures hospitals which provide medical services for persons deprived of their liberty, for whom the safety measures regime provided for in Article 110 of the Criminal Code (medical confinement) has been established.

Under the Ministry of Health, there are:

- 4 safety measures hospitals with 1,805 beds;[53]
- 36 psychiatric hospitals (chronic wards) with 8,841 beds;
- 91 psychiatric wards in county hospitals with 5,427 beds.

Thus, there are 16,073 psychiatric beds nationwide.

As of 1 June 2020, there were 1,424 people admitted to psychiatric and safety measures hospitals, of whom about 14% had a certificate of disability, mostly psychosocial. About 80% of the people admitted were reported as having a mental disability (even if not necessarily having a certificate of disability). Nearly 10% of the people admitted were placed under guardianship. [54]

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[53] Săpoca Psychiatric and Safety Measures Hospital (Buzău); Pădureni-Grajduri Psychiatric and Safety Measures Hospital (Iași); Jebel Psychiatric and Safety Measures Hospital (Timiș); Ștei Psychiatric and Safety Measures Hospital (Bihor).

[54] According to " Diagnosis of the situation of people with disabilities in Romania ", 2021, [RO], available [here](#).

# POLITICAL AND LEGAL FRAMEWORK

## 04 Main findings

By transposing the Convention on the Rights of Persons with Disabilities into national law in 2010, Romania undertook the obligation to harmonise national legislation and existing practices with the provisions of the Convention. However, procedural accommodations and facilitating the active participation of persons with intellectual and/or psychosocial disabilities in legal proceedings are not provided by the Government in a satisfactory manner. In reality, criminal legislation in Romania does not ensure access to justice for suspects and defendants with intellectual and/or psychosocial disabilities on equal terms with suspects and defendants without disabilities.

For example, the CPC provides that during the criminal investigation and before his first hearing, the suspect or the defendant is informed by the judicial body about the capacity in which he will be heard, the act provided by the criminal law for which he is suspected or for which the criminal action has been initiated, its legal status, as well as the rights and obligations deriving from this position. But, the CPC does not explicitly refer to the authorities' obligation to adapt the language and information transmitted to the accused's capacity to understand. This is compounded by the lack of internal regulations and procedures to ensure that the accused fully understand the information they receive. In the prosecution stage, the CPC provides that legal assistance for suspects or defendants is compulsory when the suspect or defendant is placed in medical confinement, when the judicial body considers that the suspect or defendant would not be able to defend himself or herself, or in cases where the law provides life imprisonment or imprisonment for more than five years for the offence committed.[55]

### **Main gaps in the legal framework regarding access to justice for defendants with disabilities**

There are no clear and effective procedures to be followed by the professionals whenever a person with intellectual and/or psychosocial disabilities faces the criminal justice system. The provisions that guarantee procedural accommodations when dealing with a victim of a crime or a minor whenever they are a victim of a crime or a witness should extend to defendants with disabilities.

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[55] Art. 90 para. (1) - Mandatory legal assistance provided to a suspect or defendant, CPC

# POLITICAL AND LEGAL FRAMEWORK

## Main findings

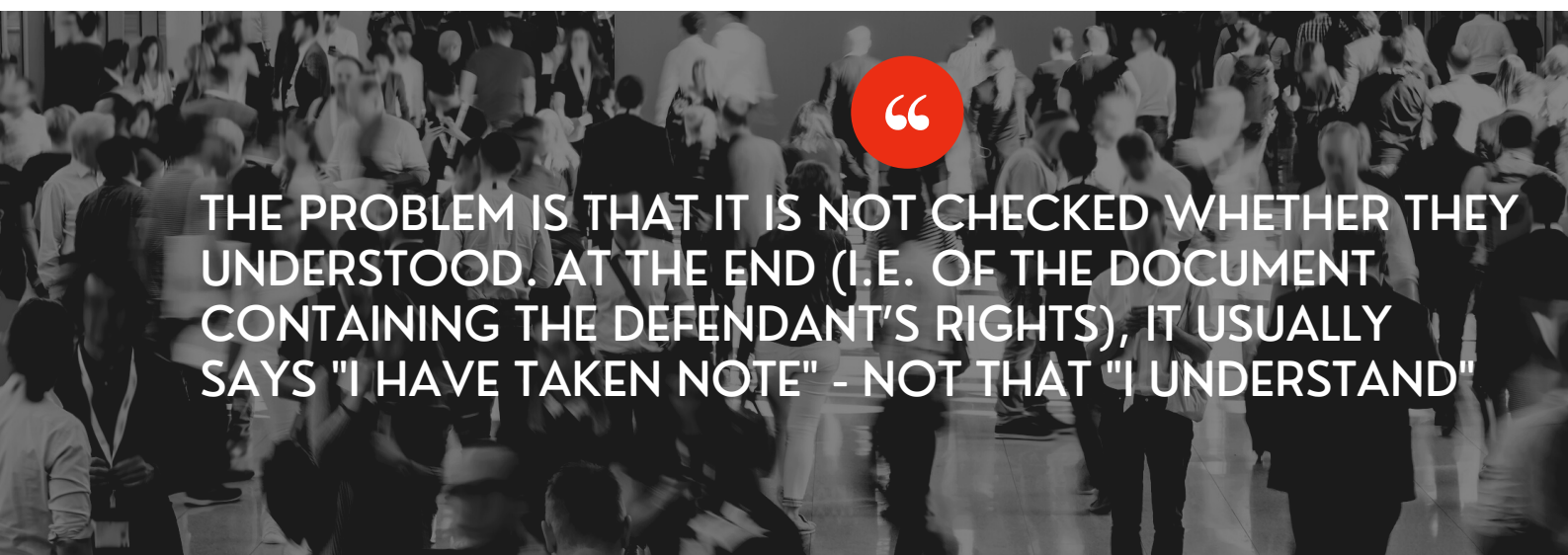
No data is collected on how many people with disabilities face the justice system. This data could highlight the barriers encountered and possible solutions for people with disabilities to access justice effectively. The CPC does not explicitly refer to the obligation or even the possibility of the authorities to allow suspects or defendants with disabilities to be accompanied by family, friends or other trusted persons who can provide them with emotional and moral support at all times of the proceedings, without replacing the role of intermediary or facilitator. Additionally, the institution of a facilitator or an intermediary is not regulated in Romania.

Regarding adapting the hearing of a person with disabilities, there is no data available on the effectiveness of the few provisions available in reality, thus, we can not conclude decisively whether or not the justice system is adapted to ensure flexible hearing methods (for example, interruption or extending the time allocated to answers and formulating questions) or the possibility of the intervention of a doctor for consultation.


There are no regulations on requesting or offering accommodations in national legislations for defendants[56], but data from interviews with criminal justice professionals indicate that there are no provisions to restrict them in adopting procedural accommodations if they consider it necessary. Because there are no obligations to ensure procedural accommodations and/or examples of such accommodations, professionals in the criminal justice system act instinctively or not at all, depending on subjective matters.

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[56] There are provisions of procedural accommodation when dealing with victims of crime, witnesses or minors.



“  
THE PROBLEM IS THAT IT IS NOT CHECKED WHETHER THEY UNDERSTOOD. AT THE END (I.E. OF THE DOCUMENT CONTAINING THE DEFENDANT'S RIGHTS), IT USUALLY SAYS "I HAVE TAKEN NOTE" - NOT THAT "I UNDERSTAND"



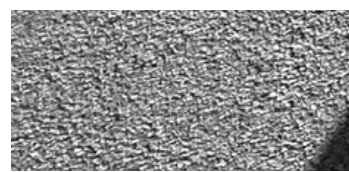
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**"PERSONS WITH DISABILITIES  
ARE INDIVIDUALS WITH  
PHYSICAL, PSYCHOLOGICAL,  
INTELLECTUAL OR SENSORY  
DEFICIENCY WHICH MIGHT  
WHILE IN CONTACT WITH THE  
OUTSIDE ENVIRONMENT  
HINDER THEIR FULL AND  
EFFECTIVE PARTICIPATION IN  
THE SOCIAL LIFE."**

DEFENDANTS WITH DISABILITIES  
ACCESS TO JUSTICE



EXPERIENCES  
ABOUT THE ACCESS  
TO JUSTICE OF  
DEFENDANTS WITH  
DISABILITIES





# DEFENDANTS WITH DISABILITIES ACCESS TO JUSTICE

- 01** Defendants' with disabilities experiences
  - 02** Criminal justice professionals' experiences
  - 03** NGOs, human rights institutions, and support service professionals' experiences
  - 04** Brief analysis of patterns
- 

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

In order to examine, in Romania, the experience of different stakeholders about the access to justice of defendants with intellectual and/ or psychosocial disabilities - identifying barriers, challenges and areas of improvement they envision in it - 16 semi-structured interviews were conducted (for detailed information see Annex 1) with:

- persons with intellectual and/or psychosocial disabilities (N=4),
- lawyers (N=2),
- judges (N=1),
- former prosecutors (N=2),
- former prison leader (N=1),
- police (N=1),
- support service professionals (N=2),
- National Human Rights Institution (N=1),
- NGO (N=2).

Next, we will present the main findings of these semi-structured interviews.



# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

## Experiences, challenges and areas of improvement identified

At the end of 2021 there were 4,333 inmates with psychiatric pathologies in the custody of the penitentiary system - out of a total of 22,989 inmates.[57] Two persons with intellectual disabilities that are currently deprived of liberty in a penitentiary have been interviewed. Additionally, one person with intellectual disabilities and one with psychosocial disabilities who are currently deprived of liberty in a psychiatric and safety measures hospital on the basis of Art. 110 CC have been interviewed.

### Legal aid and provision of procedural accommodations

#### » Right to information

There are mixed experiences regarding the information process of their rights, but neither person with intellectual disabilities remembers what information they were given by the police: "The policeman told me my rights." [58] "I don't remember a written form that included my rights, I just remember the document that listed the charges brought against me." [59] One interviewee states that the police did not inform them about their rights: "The police did not inform me of my rights. Only after about 4 hours the public defender came and informed me of my rights." [60]

[57] The response provided by the Romanian Government to the 2022 CPT report [RO], available [here](#).

[58] Excerpt from interview RO/DI/M/02

[59] Excerpt from interview RO/DI/M/01

[60] Excerpt from interview RO/DI/M/03

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THE POLICE OFFICERS STARTED TO MAKE FUN OF ME AND LAUGH AT THE SITUATION (AT THE ACT I HAD COMMITTED). THEY CALLED ME CRAZY.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 01 Defendants' with disabilities experiences

"There was no one to explain anything to me, they just put me in the room and that's it, at the central arrest." [61] "I had a psychologist at the central arrest and he told me that what I was doing was wrong (referring to the crime I was arrested for)". [62] "There was no one to help me understand immediately what was going on." [63] One interviewee stated that he received help from a police officer in understanding what was happening: "Someone from the police helped me understand what was going on. I knew what my rights were." [64]

### » **Person of trust or other support**

A person with psychosocial disabilities said he was allowed to call his mother [65] and a person with intellectual disabilities said he was not allowed to call a support person [66].

### » **Legal aid and right to access to a lawyer**

The law provides for free legal aid when a person cannot defend themselves, but in one of the cases the person did not have a lawyer at any point between hearings, at the time and during incarceration, even though he has a very high difficulty in understanding information: "They told me I could have a lawyer, but I didn't have a lawyer. I never had a lawyer." [67] In another case, the person was provided with free legal aid, but for every judicial term in the criminal proceedings a different lawyer was assigned: "A lawyer came, they made a record of what they found at home. At every judicial term for extending the preventive warrant I had a different lawyer. I am disabled, I don't have money for a lawyer. At the moment I don't have a lawyer, I'm waiting to meet them at the next term. I meet them directly at the court, not before." [68] "But there was nobody to help me understand." [69] As opposed to one case where the person with disabilities had a chosen lawyer: "A lawyer helped me. My family also helped me with financial support for the lawyer." [70] In some cases, the lawyer played an important role in helping the persons with disabilities to understand what was happening in the proceedings: "The lawyer helped me to understand what I should do and what happens. The lawyer was nice to me. There was no one else to help me." [71]

[61] Centre for Detention and Preventive Arrest

[62] Excerpt from interview RO/DI/M/01

[63] Excerpt from interview RO/DI/M/03

[64] Excerpt from interview RO/DPS/M/04

[65] RO/DPS/M/04

[66] RO/DI/M/03

[67] Excerpt from interview RO/DI/M/02

[68] Excerpt from interview RO/DI/M/01

[69] Excerpt from interview RO/DI/M/01

[70] Excerpt from interview RO/DPS/M/04

[71] Excerpt from interview RO/DI/M/03

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 01 Defendants' with disabilities experiences

### » Requests for and offers of accommodations

Neither person with disabilities was informed of the possibility to request adaptations to make the procedure easier to follow.

### » Right to interpretation and communication support

#### Contact with police

Regarding the contact with the police: "At first it was okay. They were nice to me. The moment they took me to the station they started to make fun of me and laugh at the situation (at the act I had committed). They called me crazy. I wasn't really asked what happened. There were only 2 policemen and one of them was writing what he wanted." [72] Another interviewee had a different experience with the police: "They were kind and professional at the police station. I was asked about the fact, how it happened." [32]

#### Psychiatric hospital/institution

During the criminal investigations and trial, two of the interviewees stated that they were sent to a psychiatric hospital: "I was arrested and stayed 30 days under arrest and then sent to a Psychiatric Hospital. I didn't know what was going on. My lawyer did not visit me, nor did my relatives, friends or people I trusted." [74] "I was arrested and taken straight to the psychiatric ward after 5 hours at the police station. After the trial was over I was informed that I would be transferred to a psychiatric hospital and safety measures." [75]

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[72] Excerpt from interview RO/DI/M/03

[73] Excerpt from interview RO/DPS/M/04

[74] Excerpt from interview RO/DI/M/03

[75] Excerpt from interview RO/DPS/M/04

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 01 Defendants' with disabilities experiences

### **During the trial/ contact with judges**

All 4 participants had a trial, some of their experiences are: "I didn't like that they lied a lot (the police segment). They didn't really listen to me and they wrote what they wanted anyway. At court they lied to me as well. They told me I was going for a psychological consultation and in fact they brought me here (psychiatric hospital and for safety measures)."[76] "Decisions were taken too lightly, with little time allocated."[77]

Some interviewees also stated that they understood the questions asked by the judge and prosecutor.[78]

When they communicated with the judge or the prosecutor people either: "felt that they were talking the same as with any other person. They have a function and that's it"[79], or "felt obliged to be honest."[80]

### **» Right to be present at trial**

In one case in which the person was present at court, he did not understand what was happening: "I did not understand what was said in court. The hospital said in court that "from these seizures he won't recover". The judge asked me what I understood and what I didn't understand, I told them what I didn't understand and they repeated."[81]

### **» Remote hearing**

Remote hearing has its disadvantages and being present at court is preferred: "I was heard by video-conference, but I would have preferred to go to court. I couldn't hear what the judge was saying and I told them I couldn't hear. I will even tell them at the next hearing to speak louder because I can't hear well and I couldn't understand what the judge/ prosecutor/ lawyer were saying."[82]

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[76] Excerpt from interview RO/DI/M/03

[77] Excerpt from interview RO/DPS/M/04

[78] Excerpt from interview RO/DI/M/01

[79] Excerpt from interview RO/DI/M/03

[80] Excerpt from interview RO/DPS/M/04

[81] Excerpt from interview RO/DI/M/02

[82] Excerpt from interview RO/DI/M/01

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

## Experiences, challenges and areas of improvement identified

### Voices heard and positive and/or negative experiences

Persons with intellectual and psychosocial disabilities mostly felt ignored: "I did not feel that my voice was heard. They didn't listen to me. I felt I was discriminated against on the basis of ethnicity."<sup>[83]</sup> "I felt that my voice was partly heard."<sup>[84]</sup> "I told them I was sick (disabled) and they didn't take it into account. They could have helped me get house arrest."<sup>[85]</sup>

They would have liked: for "a lawyer to be present exactly where the act was committed"<sup>[86]</sup> and "a more careful anamnesis. No press notification about the case. Explain the procedure, from arrest to compulsory admission, to all persons present at the investigations."<sup>[87]</sup>

In terms of what would have made them feel more in control, persons with disabilities stated: "I wish there had been someone to tell me what was going on."<sup>[88]</sup> I would have liked to have been listened to more."<sup>[89]</sup> "I don't know what would have helped. I don't know if a psychologist would have helped me."<sup>[90]</sup>

[83] Excerpt from interview RO/DI/M/03

[84] Excerpt from interview RO/DPS/M/04

[85] Excerpt from interview RO/DI/M/01

[86] Excerpt from interview RO/DI/M/03

[87] Excerpt from interview RO/DPS/M/04

[88] Excerpt from interview RO/DI/M/03

[89] Excerpt from interview RO/DPS/M/04

[90] Excerpt from interview RO/DI/M/02

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 01 Defendants' with disabilities experiences

### Main recommendations and lessons learned

Persons with intellectual and psychosocial disabilities suggested that a lot of changes need to be made in the criminal proceedings: "Everything should change. No more discrimination. Let people be heard and understood." [91] "There should be clear explanations of procedures. I consider access to justice to be superficial. For example, if I, as a patient, ask for a forensic psychiatric expertise in a specific place like Bucharest, Cluj, Timisoara, let this wish be respected." [92]

Because the criminal justice system is not adapted to the needs of people with intellectual disabilities, there are cases when they do not understand the crime they have committed or the repercussions, and in the case of incarceration, they may be confused as to why they are there:

"I was supposed to serve half of my sentence, 2 years and a half, then they gave me a 6-month deferment, then I found myself serving another 3 months and I don't know why, because I had no misconduct. I had no problems with people anywhere. I don't know anything about the case because I don't have a lawyer. I ended up a nobody's man." [93]

[91] Excerpt from interview RO/DI/M/03

[92] Excerpt from interview RO/DPS/M/04

[93] Excerpt from interview RO/DI/M/02

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I DON'T KNOW ANYTHING ABOUT THE CASE BECAUSE I DON'T HAVE A LAWYER. I ENDED UP A NOBODY'S MAN.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### Main challenges

The main challenges for suspects and defendants with intellectual and/or psychosocial disabilities are access to legal representation and assistance, access to interpreters, therapists, and psychologists who can facilitate their communication with the criminal justice professionals. Also, the lack of specialization in this area is a critical aspect. The judicial authorities rarely know how to deal with cases of this nature and effective support is needed to facilitate communication.

Interview with a former prosecutor: "The big challenge that these people face is that they cannot make themselves understood and the judicial authorities, who are dealing with a person with psychosocial and intellectual disabilities, do not know how to deal with such a situation, because there is no specialization." [94]

Interview with a judge: "Mainly, the suspects and defendants need, and should, understand what happens to them at any stage of the criminal proceedings from the beginning to the end. There are no means of communication for them implemented at the justice level." [95]

[94] Excerpt from interview RO/J/F/11

[95] Excerpt from interview RO/J/M/09

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### Process of identification of disability

When it comes to the identification of disability, from the interviews conducted, it emerged a general consensus that it is quite rare for a person's disability to go unnoticed. Interview with a judge: "I don't think they go unnoticed. The vast majority can be identified, but there is no real support and no specialised procedure. But they are seen and identified in most cases." [96]

There are situations when the disability is not easily recognized. Therefore, there can be two situations, according to a lawyer: "The first one is when the suspect or the defendant does not say anything about their disability, and in this situation, from my experience, there is no investigation whether the person has a disability or not and here measures have to be taken in this regard to verify the discernment to the slightest doubt. The second situation is when the person says that they have a guardian, at which point there is again a division. There are some people who take this into account and have an inclination to try to adapt the process for these people, but here are very few that I have met." [97]

### Contestation of the assessment

In Romania, a person's disability degree is determined by the Commission for the Evaluation of Adults with Disabilities. There is a possibility to contest this evaluation, however, this constitutes an administrative case, not a criminal case [98]. When it comes to an assessment in which the determination of disability must be made a posteriori to the commission of a criminal act, we can no longer speak of a contestation procedure similar to the one mentioned above. For example, regarding the procedure to enforce a safety measure, either temporary compulsory medical treatment [99] or temporary medical admission [100], the prosecution submits a reasoned application to the judge, accompanied by a forensic expert report confirming the need of the safety measure. Afterwards, the judge shall rule on a proposal by a court resolution, which can be challenged within 5 days of delivery. The challenge does not suspend the enforcement of the safety measure.

[96] Excerpt from interview RO/J/M/09

[97] Excerpt from interview RO/L/F/05

[98] Art. 87 para. (5) Law no. 448/2006 – which states that the certificate may be challenged by their holders, within 30 calendar days of notification, to the competent administrative court.

[99] Art 245-246 CPC

[100] Art. 247-248 CPC

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### **Information about accommodations**

There is little to no communication between the actors participating in the criminal proceedings, as one of the lawyers interviewed illustrated:

"Personally, I would have benefited from a channel of communication with the prosecutor or the judge, outside the courtroom. It would have helped me if they had been involved in investigating the person's disability and obtaining documents to that effect, because we had to investigate on our own. The prosecutor has to give evidence both in favour and against." [101]

No electronic case management tools are being used and no data is being collected regarding the cases involving suspects and defendants with disabilities in order to identify the proper accommodations for present and future cases.

Interview with a former prosecutor: "Having a lawyer, he has to make sure that the person really understands what is happening to him and that all his rights are respected. Of course, the prosecutor has this interest too. Now it also depends on how effective the defence is, it depends on the professionalism of each person." [102]

### **Use of force or coercion**

Both lawyers have encountered instances of use of force or coercion based on disability:

"There have even been cases that were made public through the media. They come, generally, also from the lack of information about the fact that the person has certain disabilities, and should be discussed more carefully and tactfully with that person." [103]

"I think in the case I worked on, when the person was coerced and taken away by the police. I don't know if force was used, but from what he said, he was threatened with a gun and they used coercion. Without him showing any dangerousness, this was their way of communicating that he had to come and give a statement." [104]

[101] Excerpt from interview RO/L/F/05

[102] Excerpt from interview RO/J/F/11

[103] Excerpt from interview RO/L/M/06

[104] Excerpt from interview RO/L/F/05

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### Provision of procedural accommodations

Interview with a lawyer:

"I think that procedural adaptations exist only at a minimum level. Lately, they have come to the attention of professionals and public opinion, but at this moment they are at an embryonic level. Only a micro-field has been created for these people, but there is still a lot of room for development and evolution. Some adaptations are even regulated. I think that it is necessary to make them more procedural and to raise awareness among professionals in order to facilitate communication and access to justice for these people."  
[105]

Interview with a lawyer: "The procedural adaptations in the case I handled came about because I worked with the CLR team to ensure that communication was accessible to him. This seemed essential to me and was a constant communication adapted to his needs throughout the criminal process, taking into account his intellectual disability. Other than procedurally, we provided him with a lawyer which, again, criminal justice failed to provide." [106]

Interview with a judge: "In one case, because the police did not take the responsibility to bring the suspect to the courtroom, when taking the safety measure of involuntary confinement, I administered the evidence without having a person in the courtroom, with a lawyer, hearing witnesses - I organized a trial session in the police station for hearing the suspect." [107]

#### » Right to information

Interview with a lawyer: "Any person who becomes a suspect or a defendant is immediately informed of their rights. At legislative level, there is no discrimination either in a negative or positive sense regarding people with disabilities. Information must be given immediately. All this, however, through the same valid general process." [108]

There are no obligations for the criminal justice professionals to ensure that the suspect or the defendant understands what is happening and what to do throughout course of proceedings. The only obligation regards the task of carrying out the information.

[105] Excerpt from interview RO/L/M/06

[106] Excerpt from interview RO/L/F/05

[107] Excerpt from interview RO/J/M/09

[108] Excerpt from interview RO/L/M/06

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### **Interview with a lawyer:**

"I would tend to estimate that there are extremely few professionals who make sure that the other person understands what is going on, and those who do exist are the result of personal concerns. Self-taught. Besides these self-taught people, to my knowledge, besides magistrates, police officers have no training whatsoever. If there were, they were extremely closed (hidden) training campaigns on such branches. In any case, I tend to believe that there are no such training activities." [109]

### **Interview with a former prison director:**

"Only maximum security prisons have specific measures for people with mental disabilities: special sections, isolation from other inmates and access to medical treatment. But they are presumed to have had discernment at the time of the offence. There is no special protocol about informing them of their rights. However the procedure is not generally understood by detainees, let alone those with intellectual/psychosocial disabilities." [110]

### **Interview with a former prosecutor:**

"No matter what kind of person they are, they are made aware of their rights at the first hearing. There is no clear legal method where you know exactly the steps you need to take for the person to understand their rights and position." [111]

### **Interview with a former prosecutor:**

"In the case of people with disabilities, if you don't meet an officer, a police worker with a lot of patience to translate in the person's understanding, sometimes even for people with average education some clarification is needed. However, it depends on the flair of the investigator in charge of carrying out the information procedure." [112]

[109] Excerpt from interview RO/L/M/06

[110] Excerpt from interview RO/P/M/08

[111] Excerpt from interview RO/J/F/11

[112] Excerpt from interview RO/J/F/10

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### » **Right to interpretation and communication support – general**

Interview with a former prosecutor: "The problem is that it is not checked whether they understood. At the end (i.e. of the document containing the defendant's rights), it usually says "I have taken note" - NOT that "I understand". "[113]

Interview with a former prosecutor: "Either a person in the family, who is familiar with the person's way of communicating, or a psychologist, who although not specialized in this section, can help and facilitate the communication. This type of support is sought out because it is also in the interest of the investigation to find out the truth." [114]

The information provided in the criminal proceedings is not accessible for persons with disabilities.

There are information and communication difficulties owing, in part, to a lack of accessible materials in forms such as braille, sign language, easy-to-read or electronic formats. An accommodation available is the possibility of conducting hearings via video-conference.

In civil matters, certain adaptations are provided for, but in criminal matters, these things are expressly provided for victims (hearing of a person of the same sex, hearing with delay precisely to avoid secondary victimization, re-hearing only if necessary for criminal proceedings). But there is nothing to prevent the prosecutor from "using this principle of equality of arms with regard to the suspect/defendant who has a disability." [115]

Interview with a lawyer: "There is a big difference in treatment between victims of crime, where there are police officers or people experienced in hearing victims, in adapting the communication with victims of crime in certain situations and the position towards a suspect or defendant with disabilities where there are no such people. With victims with disabilities we have heard of people trying to communicate in accessible language in hearings or at various stages and using language that is easy to understand." [116]

[113] Excerpt from interview RO/J/F/10

[114] Excerpt from interview RO/J/F/11

[115] Excerpt from interview RO/J/F/10

[116] Excerpt from interview RO/L/M/05

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

Interview with a lawyer: "I would say that it is rather an ad-hoc adaptation, in the sense that the policeman's speech adapts according to the person he interacts with. For example, if we are talking about a person with intellectual disabilities with a low level of understanding, versus a person with a higher education. As well as adapting the language, the message needs to be adapted, hence the need for training to ensure that the suspect/defendant fully understands what is happening and what is being conveyed." [117]

### » **Right to interpretation and communication support – questioning**

Interview with a lawyer: "This organisation is also carried out at police level. I suspect, without having concrete information, that it is a routine activity, and almost reflex. I don't know how exactly and how exactly a space is adapted for questioning a person with disabilities." [118]

Interview with a judge: "The interpreter must be registered in the list of accredited interpreters. Here we have, as far as I know, mime-gesture interpreters, or interpreter-translators, but in our case, we are talking about interpreters who are neither very many nor very available." [119]

Interview with a former prosecutor: "The procedure provides for this by video-conference hearing. Regardless if they are in a detention center or not. the procedure provides for this possibility. Now it depends if there is a technical possibility." [120]

### » **Requests for and offers of accommodations**

There are no concrete provisions regarding the possibility or impossibility of requesting procedural accommodations. However, the defendant can ask for certain changes in the procedure, and when it comes to adopting them, "It's up to each investigator, each individual's judgement. There is no obligation to answer in the affirmative and in the related case. It also depends on the seriousness of the crime. It is one thing to deal with a person suspected of having committed a murder and another to deal with a person who has stolen an apple. It depends very much on the context." [121]

[117] Excerpt from interview RO/L/M/06

[118] Excerpt from interview RO/L/M/06

[119] Excerpt from interview RO/J/M/09

[120] Excerpt from interview RO/J/F/11

[121] Excerpt from interview RO/J/F/11

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### **Insanity defence**

"After it is certified by a professional expertise that a person is not criminally responsible, the prosecutor issues a closure order and refers the case to the court for the application of a safety measure (medical confinement in a psychiatric unit / compulsory treatment). The court then makes an address to the Bar to appoint a lawyer and the chances of it being the same prosecutor are 20-30% and exceptions are very rare." [122]

Interview with a former prosecutor: "When it is concluded that a person suffers from an intellectual and/or psychosocial disability and there are documents to prove it, there is a standard procedure. A safety measure is taken with regard to that person, which can be compulsory treatment or temporary medical internment, where an expert examination is ordered to establish whether or not he or she has had discernment. It seems to me that we go too easily on the standard procedure and order the immediate confinement of the person with psychosocial disabilities to determine whether or not he has discernment, although perhaps we should reconsider this procedure." [123]

### **Compulsory treatment**

Interview with a former prosecutor: "If the act was committed without discernment, the case is dismissed on the grounds of irresponsibility, because there is a cause of non-liability. In this situation, the prosecutor may ask the judge to maintain the measure of provisional confinement, which will become final, to lift it, or modify it with compulsory treatment. And the only criterion he has to take into account is the public danger posed by the person who is "mentally ill". But sometimes they stay in the psychiatric hospital for years and are perhaps punished more than if they had been tried for the acts for which they were investigated." [124]

[122] Excerpt from interview RO/J/F/10

[123] Excerpt from interview RO/J/F/11

[124] Excerpt from interview RO/J/F/11

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# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### Attitudes and training/awareness

Interview with a lawyer: "The State. In concrete terms, each structure is responsible for the accessibility of the part or the procedural stage that falls to it. Here we start from the social system and the health system and end up with the police, public prosecutors, courts, etc."  
[125]

Some of the interviewees are of the opinion that a good percentage of professionals do not know, even at a rough level, the CRPD. There are few who are really interested in this domain and who found out through their own means. More awareness is definitely needed.

Interview with a lawyer: "I think it's rather a mix between an element of humanity, compassion and care, coupled with an element of difficulty, because (I like to think that) all professionals seek to provide adaptability and effectiveness of procedures, often running up against an immobile system, a lack of infrastructure, and even professional training. There's no point in wanting to help someone as a judge if no one ever taught you how to talk to that person."  
[126]

Interview with a former prosecutor: "I don't think it's stigma, it's ignorance and people are afraid of what they don't know. It's a more hasty retention. And there's the idea that being "mentally ill" is dangerous. Everyone thinks that way, because the legislation is that way. That's where the discrimination starts."  
[127]

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[125] Excerpt from interview RO/L/M/06

[126] Excerpt from interview RO/L/M/06

[127] Excerpt from interview RO/J/F/11

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

Professionals say that the whole chain of the justice system and all the interaction with all sorts of elements along the way influences the final outcome, and one of the main reasons is the mentality and perspective of how people with disabilities are perceived by people, in general.

Interview with a lawyer: "There is no collaboration with people who understand and assess the person's situation at the time and along the way. In practice these situations happen, even if there are procedural safeguards." [128]

Interview with a former prosecutor: "The only program is the one I participate in, namely AdaptJust. I don't know of any other program." [129]

The lawyers interviewed claim that access to justice for persons with disabilities can be improved by training lawyers and other stakeholders on disability inclusion in the justice system. Such training will improve the level of awareness of laws and policies on disability rights amongst the stakeholders, as well as foster effective personal and professional interactions between them and persons with disabilities.

There are extremely few professionals who make sure that the other person understands what is going on, and those who do exist are the result of personal concerns.

### Best practices

Apart from CLR's AdaptJust multidisciplinary courses, there is no knowledge of any other approaches to support effective access to justice for people with disabilities.

Interview with a lawyer: "The level of state structures, the activity is extremely timid, not to say non-existent. Rather, the steps forward are ensured by means that are supposed to be collateral and complementary to a state system, but at this moment in Romania we can say that they are the main ones. Specifically, the intervention of NGOs that compensate for the inaction or absence of the state." [130]

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[128] Excerpt from interview RO/L/F/05

[129] Excerpt from interview RO/J/F/11

[130] Excerpt from interview RO/L/M/06

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### Main recommendations

The state is responsible for regulating this area and making its procedures more accessible with tools such as:

- a specialist to ensure safe communication between the professionals in the judicial system and the person with disabilities;
- a platform for communication between professionals that includes the INML;
- an interdisciplinary team;
- express regulation of legal assistance in the CPC for persons diagnosed with mental disorders;
- obligatory specialization of lawyers to work with people with disabilities.

Interview with a lawyer: "I would recommend modifying the legislation to make it more accessible for people with disabilities and creating a separate chapter. Providing more detailed provisions for persons to assist suspects or defendants in the criminal process, including mandatory assistance provided by them. And an inter-institutional communication in this sense between the Ministry of Justice, the Ministry of Health and the SCM.[131] I don't think you have to be a specialist in psychiatry and in law, you have to have at least some basic knowledge explained by some specialists. Especially if you are a judge, a prosecutor or a lawyer who works with people with disabilities and on whom people's well-being and needs depend. Including the formation of specialised sections for working with people with disabilities, where only police officers, lawyers, prosecutors who have gone through more intensive courses specialising in working with people with disabilities are present. Just as there are for the military or senators and deputies. If they don't want to allocate resources to train all the people in justice, at least train 30 people to do it. Need to provide a person specialized in communicating with people with disabilities on various types of intellectual or psychosocial disabilities, who would constantly collaborate with the criminal or civil justice system, and this person would be present throughout the process with the judge, prosecutor, investigating body, suspect or defendant. To make sure that the person understands absolutely everything that is happening there and to communicate with the lawyer and the prosecutor to explain what is going on and to have transparency in communication. This is also necessary for a person without a disability." [132]

[131] Superior Council of Magistrates.

[132] Excerpt from interview RO/L/F/05

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### Main recommendations

Interview with a former prosecutor: "I would be very happy if the simplest search on a search engine would find, at least for basic institutions, pictograms, simple explanations, with the simplest possible words. Because after all, the legislator has established that the content of a law must be perceived by a person with average education, but we are not discussing people who are diagnosed with a mental disability. And then, if even the person with an average education does not understand, the person with a disability is even less likely to understand. Forming a database of resources, application templates with readable/accessible language, pictograms. Joint interdisciplinary teams." [133]

Interview with a lawyer: "I have a rather dark view on the justice system for people with disabilities and, in general, on the Romanian institutional system for people with disabilities. A drastic change is needed." [134]

Interview with a former prison director: "We need the procedural adaptations to be mandatory, monitored and reported. Not recommendations." [135]

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[133] Excerpt from interview RO/J/F/10

[134] Excerpt from interview RO/L/F/05

[135] Excerpt from interview RO/P/M/08

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

03 NGOs, human rights institutions, and support service professionals' experiences

## Equality Perception's

Interview with an NGO representative: "I can say that there is no interest in the person with disabilities. In general, one is very quick to overlook a person's disability, to say that one cannot communicate with that person, and that's where it all stops. In any case, if we only think of the idea of court, we think of something intimidating. When you get there, you know there can be repercussions. There is no comfort for any person, let alone people with disabilities." [136]

Interview with a National Human Rights Institution representative: "Courtrooms, access to the court, access to the website should be adapted for all types of disabilities. This is a process that starts from the person to the judge. Thus, it involves not only the judge, but also the society in which he or she is institutionalised." [137]

## Complaints

Interview with a social worker: "There have been situations where there have been complaints that we are not able to resolve anyway and these complaints have gone on to the appropriate bodies. In general, when people have a grievance they know very clearly what they have to do and they follow the legal channels, and whoever has the ability to solve their problems will definitely solve them." [138]

Interview with a National Human Rights Institution representative: "We have a preventive warrant, so we do not receive petitions, and during our monitoring visits we have not been informed by detainees that they will not have access to justice. I cannot tell you about petitions from people with disabilities. From my knowledge, what I can tell you is that I have heard from my colleagues from other departments, people with disabilities do not turn to state institutions when they consider that their rights are not respected. First of all, because they do not have the necessary skills, there is no accessibility, unlike prisoners, and I do not mean those with mental disorders." [139]

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[136] Excerpt from interview RO/HR/F/15

[137] Excerpt from interview RO/HR/F/14

[138] Excerpt from interview RO/S/F/12

[139] Excerpt from interview RO/S/M/13

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

03 NGOs, human rights institutions, and support service professionals' experiences

## Procedural accommodations

### » Accessible information

Interview with a psychiatrist: "Not enough. There are people who understand, but in most cases there is a "cheating" of the patient. He is told that you will be in hospital for a week or two. A lot of patients in safety measures hospitals don't understand why they are there. They blame the police/court, saying they are the reason they are there." [140]

Instructing and advising the suspect or defendant with intellectual and/or psychosocial disabilities through an online audio-video system can be difficult and does not always allow the person with disabilities to express themselves clearly and coherently, nor as invisible disabilities can be identified. These difficulties can be augmented by the poor quality of the video image or sound, with echo or delay, or by the fact that the person with disabilities cannot read the lips or face of the judge, lawyer or prosecutor and understand the words addressed to him.

Interview with a psychiatrist: "It is not known how to deal with a person with a physical disability, let alone a person with an intellectual disability or mental disorder. One case I know of is with a person who has been institutionalised all his life, never lived outside a centre. His first connection to the outside was his very interaction with the police. No one told him what was happening to him, he was not prepared at all for the interaction with the judge, prosecutor, etc. On top of that, he was not even accompanied by a staff member in the centre for all these procedures. If we are to analyse, we have to look at the extremely low number of accessible materials in general in institutions. Really, almost none". [141]

[140] Excerpt from interview RO/S/M/13

[141] Excerpt from interview RO/S/M/13

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

03 NGOs, human rights institutions, and support service professionals' experiences

## » Support services

Interview with a social worker: "Detainees with disabilities are seen from the moment they enter the prison by a psychologist, social worker, educator. Plus, staff from the operational sector who work closely with them. They are then informed about regulations, rights, obligations, sanctions, rewards. When they enter the penitentiary they receive all the assistance they need." [142]

Interview with a psychiatrist: "Many times, patients even draw up requests, often for the termination of the safety measure, and they are each time expertly examined and the request submitted to the competent bodies." [143]

## Identification of disability

Interview with a social worker: "I remember a case with a person deprived of liberty who was suspected of having mental problems. He was not classified as disabled, but every time he had to be brought before the courts he was very problematic: he was not cooperating, he was doing everything backwards. We tried to convince him. He was very difficult to move, he didn't want to and you couldn't pick him up. We couldn't deny him the right to justice. We had an obligation to bring him before the court and yet he just didn't want to go." [144]

Interview with a National Human Rights Institution representative: "Here I can think of prisons where people with disabilities, with mental disorders, self-harm. And I don't know if you know, but self-harm is punished. The European Committee against Torture has recommended that prisoners who self-harm should no longer be punished, regardless of whether they have a mental disorder or not. Because on the one hand it could be a cry for help for them and they should benefit from psychosocial assistance, not be sanctioned with isolation, as we have encountered." [145]

[142] Excerpt from interview RO/S/F/12

[143] Excerpt from interview RO/S/M/13

[144] Excerpt from interview RO/S/F/12

[145] Excerpt from interview RO/HR/F/14

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

03 NGOs, human rights institutions, and support service professionals' experiences

## Awareness and attitudes

Interview with a National Human Rights Institution representative: "There are people who see them as objects of nursing. You know there has been a paradigm shift and they are no longer objects, they are subjects of law. There are people who understand that there is that convention on the rights of people with disabilities that they are people just like everybody else, we just have to make the space accessible." [146]

Interview with an NGO representative: "I don't think they (i.e. NGOs, support service professionals) are the main professionals we need to worry about. I think the disregard comes more from the justice sector. Very many people behave as if people with disabilities are not present, or are not actually human beings. And nobody suffers from this but the person with disabilities." [147]

An example of how the criminal justice system treats people with disabilities is shown in a recent case in Romania, in which a person with intellectual disabilities (Mr. M.S.), a former beneficiary of residential and adult centres for people with disabilities, with no criminal record, tried in absentia, unlawfully summoned to the home where he declared he did not live, without a defence counsel, was sentenced to serve 1 year in prison for having left the hospital before knowing the negative result for the test with the new type of coronavirus. He was denied legal representation and was incarcerated in a room with 44 people [148]. After a month of incarceration, Mr. M.S. received legal representation and filed an appeal. After two months of detention, the Court found that Mr. M.S.'s summons had been carried out illegally and ordered that the sentence of conviction be quashed and the criminal proceedings reopened. Nothing that happened in this case was to Mr. M.S.'s understanding.

All interviewees stated that there is a complete lack of training regarding the communication/work with persons with disabilities.

Interview with an NGO representative: "This subject is hardly dealt with in universities either. There is too little continuous training and training is needed at all levels. Personally, I am not aware of any training courses on this topic, on communication and adaptation of justice for suspects and defendants with disabilities." [149]

[146] Excerpt from interview RO/HR/F/14

[147] Excerpt from interview RO/HR/F/15

[148] CLR articles about the case, available at: <https://www.crj.ro/un-nou-triumf-al-justitiei-penale-primul-condamnat-la-inchisoare-pentru-zadarnicirea-masurilor-anti-covid-este-o-persoana-cu-dizabilitate/> (in Romanian) and <https://www.crj.ro/en/what-did-the-big-people-in-the-room-say-strugurel-matei-was-released/> (in English)

[149] Excerpt from interview RO/HR/F/16

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

03 NGOs, human rights institutions, and support service professionals' experiences

## Best practices

There is a lack of programs on the topic of disability overall, let alone on the interaction with suspects/defendants with disabilities. The AdaptJust courses were mentioned, as well as the Council of Europe's project "Strengthening Medical and Mental Health Services in Romanian Prisons".

Interview with a social worker: "Different representatives come and check how the rights of people with disabilities are granted, check if they have access to different activities, if they are listened to, if they have problems. So there is an involvement from civil society towards us and it matters a lot. It also motivates us as an institution to carry out different activities with them or to give them due importance." [150]

## Main recommendations

The main recommendations were mainly related to support in communication for both the professionals and suspects/defendants and the need of training for the legal experts:

- make information accessible and train the civil society through a national program;
- there should be a qualified lawyer, alongside the doctors, in psychiatric hospitals for safety measures;
- programmes and procedures should be drawn up to provide correct information to people with disabilities, and adapted according to the types and degrees of disability;
- training professionals in the system on how to approach a person with a disability;
- for penitentiaries, additional specializations or an outside person who has experience and specialization in working with people with disabilities.

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[150] Excerpt from interview RO/S/F/12

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## Brief analysis of patterns

The primary barriers to accessing justice for suspects and defendants with intellectual and/or psychosocial disabilities are:

- inaccessibility of court buildings and processes;
- the formality of judicial proceedings;
- the negative perceptions held by criminal justice professionals about people with intellectual and psychosocial disabilities;
- a person with an undetected intellectual or psychosocial disability may go through a trial that she/he has little to no understanding of;
- a person with an intellectual or psychosocial disability may not understand why they must appear in court or that there are consequences if they don't;
- a person with an intellectual or psychosocial disability may not be able to communicate effectively and facilitators are not provided to assist.

Most individuals find going to court to be a tense experience, especially when they are accused of committing an offense. Many individuals find the presence of courts, courtrooms, and judges to be daunting, and they frequently struggle to comprehend and adhere to the rules and customs that govern them. The experience of having to appear in court after being charged with a crime can be confusing or intimidating for persons with intellectual and psychosocial disabilities.

The absence of effective communication-related accommodations procedures leads to people with intellectual and psychosocial disabilities frequently not understanding why they are there, possibly realizing they have committed an offense, and possibly not understanding the repercussions if they reoffend.

# 04

## CONCLUSIONS AND RECOMMENDATIONS

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# CONCLUSIONS AND RECOMMENDATIONS

## 01 Conclusions

Since the ratification of the CRPD in 2010, Romania has committed itself to ensuring effective access to justice and appropriate procedural accommodations for persons with disabilities. These include measures to protect persons with disabilities during pre-trial, trial and post-sentencing periods or the imposition of a custodial sentence or a safety measure.

The general aim of this national briefing paper was to provide an overview of the main national barriers- and best practices to overcome the main gaps – regarding access to justice and provision of procedural accommodations to defendants with intellectual and/or psychosocial disabilities in Romania. The study was based, among others, in the International Principles on Access to Justice for Persons with Disabilities (UN, 2020) (Principles 1, 3, 4, 5, 6 and 10). The main barriers to participation identified will be presented according to the principles analyzed:

Principle 1. All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability.

The Romanian legislation provides medical confinement as a safety measure for persons without legal capacity who have committed a criminal offence.



I HAVE A RATHER DARK VIEW ON THE JUSTICE SYSTEM FOR PEOPLE WITH DISABILITIES AND, IN GENERAL, ON THE ROMANIAN INSTITUTIONAL SYSTEM FOR PEOPLE WITH DISABILITIES. A DRASTIC CHANGE IS NEEDED.

# CONCLUSIONS AND RECOMMENDATIONS

## 01 Conclusions

Principle 3. Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.

People with disabilities face additional barriers to accessing the justice system because of the lack of appropriate physical, informational and communications accessibility of legal services and institutions, also because of proceedings that are not adapted to their type and level of disability, of prejudices among judicial staff about persons with disabilities. There are no specific provisions on the conditions for accommodating persons with disabilities who have been remanded in custody or sentenced to imprisonment with a custodial sentence, which must be adapted to their special needs.

Principle 4. Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others.

Very often, defendants receive minimal or unclear information about the charges against them, making it difficult for them to defend themselves. The police must inform suspects as soon as possible, properly, clearly and fully about the crimes committed and the reason for their arrest.

Principle 5. Persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process.

Institutions in the justice system are not adapted to ensure: sign language interpreters, legal information in accessible formats, flexible hearing methods (for example, extending the time allocated to answers and formulating questions) or the possibility of submitting testimonies through audio-video means.

Legal aid is not always available, especially for people who have been imprisoned. Not all defendants have prompt, direct and confidential access to a lawyer before their interrogation.

Some people with disabilities cannot access a lawyer, unfortunately the fees and costs of legal services are unaffordable for many people with disabilities who have financial difficulties.

# CONCLUSIONS AND RECOMMENDATIONS

## 01 Conclusions

Hiring a lawyer in Romania at the moment is a privilege for the people with above-average incomes. NGO's have resources and the possibility to provide this legal assistance pro bono through collaborators or from the funds of the projects they run. Even though the persons with disabilities do have access to a public defender, most of the times the legal assistance is not effectively provided, the public defenders are assigned randomly, therefore there are no guarantees to provide the person with disabilities with a lawyer with expertise in the field.

Principle 6. Persons with disabilities have the right to free or affordable legal assistance.

People with disabilities do not always get free legal aid (support and representation in a legal matter) when they need it. Thus, at the prosecution stage, the CPC provides that legal assistance for suspects or defendants is compulsory when the suspect or defendant is placed in medical confinement, when the judicial body considers that the suspect or defendant would not be able to defend himself or herself, or in cases where the law provides life imprisonment or imprisonment for more than five years for the offence committed.[151]

Principle 10. All those working in the justice system must be provided with awareness-raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice.

Professionals in the justice system are not trained to ensure access to justice for people with disabilities.

[151] Art. 90 para. (1) - Mandatory legal assistance provided to a suspect or defendant, CPC



# CONCLUSIONS AND RECOMMENDATIONS

## 02 RECOMMENDATIONS

1. Harmonise national legislation and practices with European standards on creating an environment of equal conditions for people with intellectual and/or psychosocial disabilities with all citizens and to give them the opportunity to understand and be understood, so that access to justice is guaranteed to all. Support and accommodation rather than discriminatory assessment of capacity to understand and ability to be judged is also essential. The national legislation should be amended with express regulation of legal assistance in the CPC for persons diagnosed with intellectual and psychosocial disabilities.

2. More attention should be paid to training courses for all professionals who may come into contact with persons with disabilities during criminal proceedings, from police officers to prosecutors or judges, involving psychologists, social workers, personal assistants as well as persons with disabilities or their legal representatives. There must be an obligatory specialization of lawyers to work with people with disabilities. The State must ensure sufficient funding to create a system of ongoing training for justice and medical professionals who interact with people with intellectual and/or psychosocial disabilities.

3. Creation of a platform for communication between professionals, that includes the INML[152], and the presence of a specialist to ensure safe communication between the professionals in the judicial system and the person with disabilities. For penitentiaries, there needs to be an outside person who has experience and specialization in working with people with disabilities and be available for collaborations.

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[152] Institute of Forensic Medicine

# CONCLUSIONS AND RECOMMENDATIONS

## 02 RECOMMENDATIONS

4. State institutions must make procedural accommodations available and provided free of charge to ensure inclusive and accessible court systems for all persons with disabilities, as well as reasonable accommodations in detention situations. Accessibility and procedural accommodations contribute to the creation of transformative equality practices. Adopt clear and effective procedures to be followed by the professionals whenever a person with intellectual and/or psychosocial disabilities faces the criminal justice system. Criminal justice professionals recommended the creation of guides and manuals, in order to facilitate the professional's approach to people with disabilities. In practice, the police inform defendants of their rights, but practices vary, from written to verbal information, including un-accessibilized leaflets, which can be difficult to understand. They must ensure that defendants understand their rights correctly and provide written and verbal information as soon as they become suspects. Programmes and procedures should be drawn up to provide correct information to people with disabilities, and adapted according to the types and degrees of disability.

For the purposes of Article 13 of the CRPD, equal and effective access to justice for persons with disabilities entails the following obligations for States Parties:

- recognition of the legal capacity of persons with disabilities;
- ensure physical and information accessibility of justice sector institutions;
- ensuring procedural and age-appropriate adjustments for participants with disabilities;
- recognition of the status of persons with disabilities as direct and indirect participants in all justice procedures;
- granting persons with disabilities free or affordable legal assistance;
- training of justice professionals on the rights of persons with disabilities.

However, we can conclude that procedural accommodations and facilitating the active participation of persons with intellectual and/or psychosocial disabilities in legal proceedings are not provided by the Government in a satisfactory manner. In reality, criminal legislation in Romania does not ensure access to justice for suspects and defendants with intellectual and/or psychosocial disabilities on equal terms with suspects and defendants without disabilities.

# 05

## REFERENCES

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# REFERENCES

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# ANNEXES

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# ANNEXES

## Annex 1 - Profile of the interviewees

ID	Interviewee*	Sex	Age	Duration of the interview	Years when had contact with the justice system	Type of interview (remote, on-site, other)	Other relevant information
RO/DI/M/01	Person with intellectual disability	Male	46	40 minutes	2018-present	On-site	Has a severe disability certificate since the ages of 15-16. In prison since 2019. The prison did not allow recording, so we took notes.
RO/DI/M/02	Person with intellectual disability	Male	71	25 minutes	2020-present	On-site	A high degree of difficulty in understanding the information. In prison since 2020. The prison did not allow recording, so we took notes.
RO/DI/M/03	Person with intellectual disability	Male	27	35 minutes	2022-present	In writing (recording was not possible)	Medical confinement at a psychiatric and safety measures hospital (art. 110 CC). Has no awareness of his mental illness or intellectual disability.
RO/DPS/M/04	Person with psychosocial disability	Male	36	40 minutes	2018-present	In writing (recording was not possible)	Medical confinement at a psychiatric and safety measures hospital (art. 110 CC). Is aware of his mental illness and psychosocial disability.

# ANNEXES

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RO/L/F/05	Lawyer	Female	29	60 minutes	Since 2017	Remote	Lawyer of a defendant with an intellectual disability
RO/L/M/06	Lawyer	Male	-	45 minutes	Since 2006	On-site	Lawyer working for the Ministry of Justice
RO/P/M/07	Police officer	Male	-	32 minutes	Since 2013	Remote	10 year experience as a police officer, of which 2 years in the investigative body of the judicial police
RO/P/M/08	Former prison leader	Male	-	85 minutes	Working in prisons since 1994	Remote	27 year experience in the correctional field; 6 year experience as a prison director

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RO/J/M/09	Judge	Male	47	98 minutes	Since 2001	On-site	22 year experience as a judge and 15 years of experience in criminal court
RO/J/F/10	Former Prosecutor	Female	56	97 minutes	Retired 3 years ago	Remote	30 year experience as a prosecutor
RO/J/F/11	Former Prosecutor	Female	51	59 minutes	Retired 3 years ago	Remote	25 year experience as a prosecutor
RO/S/F/12	Social worker	Female	34	42 minutes	Since 2013	Remote	10 year experience as a social worker in a penitentiary

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RO/S/M/13	Psychiatrist	Male	-	35 minutes	Since 2008	On-site	Psychiatrist at Ştei Psychiatric and Safety Measures Hospital
RO/HR/F/14	National Human Rights Institution	Female	-	52 minutes		Remote	Counselor at the People's Advocate Institution
RO/HR/F/15	NGO	Female	-	63 minutes	Since 2003	Remote	Clinical psychologist with 20 years of experience working in an NGO for pwd; goes in monitoring visits with CLR since 2007
RO/HR/F/16	NGO	Female	-	57 minutes	Since 2009	Remote	Clinical psychologist with 14 years of experience working with pwd, currently working in an NGO for pwd