



CZECH

BENCHBOOK

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“THE ONLY THING SHE SAID TO ME WAS – I AM YOUR LAWYER. AND I KEPT WAITING FOR HER TO TELL ME SOMETHING ELSE, BUT SHE DIDN’T TELL ME ANYTHING ELSE. (...) IT WAS ALL A FARCE BECAUSE THE LAWYER DIDN’T SPEAK TO ME.”



01

ABOUT THE BENCH BOOK

A. Background

Irrespective of whether they are victims, witnesses or alleged perpetrators of crime, persons with mental health conditions and various disabilities have significant difficulties in accessing justice and engaging with criminal justice professionals: police officers, lawyers, prosecutor authorities and judges. At the same time, while reported to be four to ten times more likely to be abused (including sexually) than their peers without disabilities², individuals with psychosocial and intellectual disabilities - especially those placed in residential settings³ - face severe exclusion from justice processes and violations of their fair trial rights⁴. Outdated laws which do not recognise their legal capacity and standing, omission to detect the disability and provide the needed support to access information and communicate, lack of procedural accommodations, lack of access to effective legal advice and attitudinal barriers of the CJA, their lack of specialisation, trainings⁵ are among the systemic challenges faced by persons with intellectual and psychosocial disabilities that are participating in criminal proceedings in the EU.⁶

At the same time, the UN Convention on the Rights of Persons with Disabilities⁷ (*CRPD*), which was ratified by the European Union⁸ and all its Member States without reservations⁹, places significant obligations on states to identify and eliminate obstacles or barriers and take proactive, systemic measures to ensure that all persons with disabilities can equally exercise their right to access to justice. Nevertheless,

² Disability Justice, 'Justice Denied: Abuse and Exploitation' <https://disabilityjustice.org/justice-denied/abuse-and-exploitation>.

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

⁴ Smith, T. (2023). *Autism and Criminal Justice. The Experience of Suspects, Defendants and Offenders in England and Wales*. Routledge.

⁵ Validity Foundation, [Fair Trial Denied: Defendants with Disabilities Face Inaccessible Justice in the EU](#), 2024.

⁶ Ibid,

⁷ UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, A/RES/61/106, 24 January 2007, <https://www.refworld.org/legal/resolution/unga/2007/en/49751>.

⁸ The European Union ratified the CRPD on 23 December 2010.

⁹ With some exceptions mentioned here:

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

although the relevant EU Directives¹⁰ and Member-states' legal frameworks recognise the need to support the access to justice of the people with hearing, sensory or physical disabilities, the legislation remains silent on the specific needs and barriers of persons with intellectual and psychosocial disabilities¹¹. This is despite that – very often - the same type of measures are provided throughout the criminal proceedings to other vulnerable groups, such as minors or women-victims of domestic or sexual violence.¹² For those few states that *have* put in place support mechanisms, the measures extend only to persons with intellectual and psychosocial disabilities who participate in proceedings as victims and exclude other participants.¹³ There are also countries that have gone ahead to regulate some of these vitally important support mechanisms, allowing CJA to use the services of a professional facilitator who assesses their needs and carries out the accommodation tasks¹⁴ or uses procedural documents written in accessible language¹⁵.

Despite these setbacks, we see that many CJA from all assessed countries continue to provide support measures to the participants in criminal proceedings with intellectual and psychosocial disabilities, including defendants. Despite the lack of legislation and necessary national regulations, the CJA use accessible language, or speak at a slower

¹⁰ Directive on the right to interpretation and translation in criminal proceedings (2010/64/EU); Directive on right to information in criminal proceedings (2012/13/EU); Directive on the right of access to a lawyer in criminal proceedings (2013/48/EU); Directive on strengthening of certain aspects of the presumption of innocence and on the right to be present at the trial in criminal proceedings (2016/343/EU); Directive on legal aid for suspects and accused persons in criminal proceedings (2016/1919/EU); Directive on procedural safeguards for children suspected or accused in criminal proceedings (2016/800/EU).

¹¹ e.g. the Directive 2010/64/EU on the right to interpretation and translation guarantees the right to a foreign language interpreter and assistance for people with hearing or speech disabilities in criminal proceedings. Cognitive barriers—difficulties understanding procedures and providing accommodations — are left out. Similarly, the Directive 2012/13/EU on the right to information in criminal proceedings ensures defendants with hearing or speech disabilities have access to information about their rights, accusations, and case materials. The directive as well does not require this information to be accessible for defendants with cognitive barriers.

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

¹³ Validity Foundation, [Fair Trial Denied: Defendants with Disabilities Face Inaccessible Justice in the EU](#), 2024.

¹⁴ Spain National Study, Enable project, April 2023, p.29.

¹⁵ Lithuania National study, Enable project, April 2023, p.9.

pace to allow information to process; they also collaborate with specialized NGOs to assess accommodation needs and allow family members to support the participants with intellectual and psychosocial disabilities throughout the criminal process.

The purpose of this Bench Book is to inform CJA and other relevant Czech stakeholders about best practices to ensure the effective participation of the defendants with intellectual and psychosocial disabilities in criminal proceedings. The findings are the result of a thorough analysis of the situation in eight EU countries, including Bulgaria, Czechia, Lithuania, Portugal, Romania, Slovakia, Slovenia, and Spain, while the solutions proposed are based on relevant international and regional standards and reflect best practices collected globally.

B. Who is this Bench Book for?

The key audience for this Bench Book is judges, prosecutors, lawyers, law enforcement officers and other professionals (broadly referred to as “*criminal justice actors*”) working on criminal cases involving defendants with intellectual and/or psychosocial disabilities. While the focus of this Bench Book is on defendants in criminal justice settings, the principles, standards, and recommendations made herein may apply to other participants of the criminal process, experiencing these types of disabilities, such as victims and witnesses, as well as in broader contexts including in civil proceedings.

C. How to use this Bench Book?

The Bench Book is designed to be a practical guide for the CJA from the Czech Republic in their work on cases involving persons with intellectual and/or psychosocial disabilities, which experience multiple barriers – legal, environmental, informational, attitudinal – and require additional support to realise equally their right to access to justice.

The Bench Book offers the CJA some practical tools to tackle each of those systemic barriers, in order to enable defendants with intellectual and/or psychosocial disabilities to participate equally in proceedings.

D. Bench Book Overview

This Bench Book is structured as follows:

Chapter 2 - Rights of Persons with Disabilities: International and EU Legal Framework - provides an overview of the main fair-trial rights and guarantees granted to the defendants with disabilities.

Chapter 3 - Persons with intellectual and psychosocial disabilities and the justice system - provides an overview of the barriers that people with disabilities face in realizing their right to access justice.

Chapter 4 – Implementing procedural rights for defendants with disabilities- identifies practical tools to enable defendants with intellectual and/or psychosocial disabilities to overcome these barriers, including identification of disability and support needs, provision of procedural accommodations, accessible information, etc.

Chapter 5 of the Bench Book includes a few annexes that aim to:

- ✓ explain most common barriers and adjustments required by people with intellectual disabilities (Annex 1)
- ✓ offer a step-by-step guide for criminal justice actors to assess needs and provide accommodations during the criminal process (Annex 2)
- ✓ share contacts of the relevant resource organizations in your country to support you in the implementation of the right to access to justice for people with disabilities (Annex 3)
- ✓ provide you a structured approach to ensure equitable inclusion of individuals with disabilities in legal proceedings (Annex 4)
- ✓ provide you with useful sources of information for further reading (Annex 5).

E. Methodology

The content of this bench book was developed by Forum for Human Rights, based on the findings of the national research on barriers of defendants with intellectual and psychosocial disabilities in accessing criminal justice services¹⁶, carried out within the ENABLE project¹⁷. The presented information, including the practical

¹⁶ ENABLE Project, National Briefing Papers: <https://validity.ngo/projects-2/enabling-inclusion-and-access-to-justice-for-defendants-with-intellectual-and-psychosocial-disabilities/national-briefing-papers/>

¹⁷ Full name of the project: Enabling inclusion and access to justice for defendants with intellectual and psychosocial disabilities (101056701 – ENABLE – JUST-2021-JACC). More information can be accessed here: <https://validity.ngo/projects-2/enabling-inclusion-and-access-to-justice-for-defendants-with-intellectual-and-psychosocial-disabilities/>

recommendations, was gathered through extensive consultations with representatives of disability organizations, groups of judges, prosecutors, lawyers, and other relevant stakeholders who attended multidisciplinary meetings organized by Forum for Human Rights from March 2023 to June 2024. It also relies on the intensive research conducted within the National Briefing Paper, which included desk research and utilized interviews with CJA, medical professionals, civil society organizations, and persons with disabilities who were charged with committing a crime. Therefore, through the National Briefing Paper, the main challenges and experiences of individuals in the Czech Republic were identified to expand on in this bench book.

F. Main definitions and terminology

- **Equity vs Equality** – The words equity and equality are often used interchangeably, but they have a different meaning. Equality means that each individual or group of people is given the same resources or opportunities. Equity recognizes that each person has different circumstances and allocates the exact resources and opportunities they need to reach an outcome equal to others. In other words, it's not giving everyone the exact same thing. If we give everyone the exact same thing, expecting that will make people equal, it assumes that everyone started out in the same place - and this can be vastly inaccurate because everyone isn't the same.¹⁸
- **Access vs Accessibility** – Access means the opportunity or right to do something or enter a place. For example, if you have a work badge, you have access to your work premises. Accessibility refers to the design of products, devices, services or environments so as to be usable by everyone and includes information and communications. For persons with disabilities, for example, physical accessibility, involves the creation of a barrier-free environment where they can move freely (think of systemic solutions for stairs and heavy doors for persons using a wheelchair) or can independently access information freely (think of availability of documents in Braille or Easy Read format)¹⁹

¹⁸ International Women's Day, <https://www.internationalwomensday.com/Missions/18707/Equality-versus-Equity-What-s-the-difference-as-we-EmbraceEquity-for-IWD-2023-and-beyond>.

¹⁹ UN Disability Inclusive Language Guidelines:

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

- **Intermediaries (/facilitators)** – They are “(...) persons who work, as required, with justice system personnel and persons with disabilities to ensure effective communication during legal proceedings.” Such intermediaries may “support persons with disabilities to understand and make informed choices, making sure that things are explained and talked about in ways that they can understand, and that appropriate accommodations and support are provided.”²⁰
- **Legal capacity** – legal capacity includes the capacity to be both a holder of rights and an actor under the law²¹. Legal capacity to be a holder of rights entitles a person to full protection of his or her rights by the legal system. Legal capacity to act under the law recognizes that person as an agent with the power to engage in transactions and create, modify or end legal relationships. Please see more detailed information on this in Annex 4.
- **Person with disabilities** – “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”²². Persons with psychosocial and intellectual disabilities refer to diverse communities, particularly those who face human rights violations based on their actual or perceived mental disabilities. This evolving concept includes among others, people who self-identify as or are perceived or treated as persons with neurological impairments, including age-related and degenerative impairments; etc.

Procedural accommodations – refer to all necessary and appropriate “modifications and adjustments in the context of access to justice, where needed in a particular case, to ensure the participation of persons with

²⁰ International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020), Glossary of Terms.

²¹CRPD Committee GC No 1, para 12, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>.

²² UN Convention on the Rights of Persons with Disabilities, Article 1.

disabilities on an equal basis with others.”²³ Most of the measures described in this Bench Book amount to “procedural accommodations.”

- **Reasonable accommodations** – represent the necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.” Please see more detailed information on this in Annex 4.
- **Supported decision-making vs Substituted decision-making** - Supported decision-making is a model entailing that persons with disabilities are provided with a range of support options, including the support of people they trust (e.g. family, friends, peers, advocates, lawyers, interpreters, facilitators/intermediaries), so that they enhance their ability to make decisions for themselves. Conversely, substituted decision-making is a model that delegates to others the right to make decisions on behalf of persons with disabilities (most often someone is appointed to be “guardian” by law). The latter system is prevalent in legal systems across the world, even if it violates the autonomy and legal capacity of persons with disabilities and infringes the CRPD.
- **The Medical model vs the Human rights model of disability** - the Medical model of disability places the focus on the person’s condition, which is understood to directly cause their disability; on the other hand, the Human rights model places the focus on the individual and their inherent dignity acknowledges that it is the barriers created by society that prevent individuals with disabilities from enjoying human rights on an equal basis with others.²⁴ CRPD embraces the Human rights model, defining disability as an evolving concept that “results from the interaction between persons with impairments and attitudinal and environmental

²³ International Principles and Guidelines for Access to Justice for Persons with Disabilities https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf, p 9.

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

barriers that hinders their full and effective participation in society on an equal basis with others.”²⁵

²⁵ The CPRD preamble, e).

02

RIGHTS OF PERSONS
~~WITH DISABILITIES~~ —

The fair trial guarantees are granted to persons with disabilities by the main following instruments:

The UN Convention on the Rights of Persons with Disabilities (*CRPD/the Convention*): Regarded as a key instrument in the international legal framework, it promotes respect for the persons with disabilities and ensures that they enjoy their human rights and fundamental freedoms fully and equally with others.²⁶ The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity.²⁷

The Czech Republic ratified the *CRPD* in 2009 and committed to implementing its provisions without any reservations. It is important to note that the context of rights enshrined in the *CRPD* are typically explained in General Comments, which are authoritative interpretations of the Convention issued by the Committee on the Rights of Persons with Disabilities (*the Committee*)²⁸. Among the most relevant General Comments (GC) to the topic of this Bench Book are GC on Article 12 (Equal recognition before the law)²⁹, Article 9 (Accessibility)³⁰, Article 19 (Right to live independently and

²⁶ The *CRPD* Convention and the Optional Protocol entered into force on 3 May 2008. It is the first comprehensive human rights treaty to be open for signatures by regional integration organizations. The *CRPD* was adopted on 13 December 2006 and was opened for signature on 30 March 2007. There were 82 signatories to the Convention, which was the highest number of signatories in history to a UN Convention on its opening day. United Nations Department of Economic and Social Affairs. "Convention On The Rights Of Persons With Disabilities (CRPD)." Accessible [here](#).

²⁷ UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, Art. 1, available [here](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_61_106.pdf) https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_61_106.pdf.

²⁸ The Committee on the Rights of Persons with Disabilities, established by the Convention (Article 34), monitors the implementation of the Convention by states parties. The Committee overseeing the implementation of the *CRPD* issues General Comments and concluding observations on states' that are party to the Convention regarding their progress on implementation.

²⁹ Committee on the Rights of Persons with Disabilities, 'General Comment no. 1', <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-1-article-12-equal-recognition-1>.

³⁰ Committee on the Rights of Persons with Disabilities, 'General Comment no. 2' <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-2-article-9-accessibility-0>.

be included in the community)³¹, Article 5 (Equality and non-discrimination)³². *The Committee* and Special Rapporteur on the Rights of Persons with Disabilities also issued further important guidelines for implementing the CRPD, including, for example, the Guidelines on Article 14 on the right to liberty and security of persons with disabilities³³, as well as the International Principles and Guidelines on Access to Justice for Persons with Disabilities (*the International Principles*).³⁴

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

The most important fair trial guarantees as enshrined by CRPD and the International Principles on Access to Justice for Persons with Disabilities, respectively, are the following:

- Equal recognition before the law (article 12 CRPD)
- Access to justice (article 13 CRPD)
- All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability (Principle 1)
- Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations (Principle 3)
- 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 4)
- 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 5)

³¹ Committee on the Rights of Persons with Disabilities, 'General Comment no. 5' <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no5-article-19-right-live>.

³² Committee on the Rights of Persons with Disabilities, 'General Comment no. 6' <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-non-discrimination>.

³³ The *Guidelines on the right to liberty and security of persons with disabilities* are contained in the Annex to A/72/55, the Committee's Bi-Annual Report 2016

³⁴ United Nations, Special Rapporteur on the Rights of Persons with Disability, International Principle and Guidelines on Access to Justice for Persons with Disabilities (2020).

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

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 (Principle 10).

EU Instruments: The greater part of these rights, including the right to information, right to interpretation and translation, right of access to a lawyer and legal aid are also protected within the European Union by relevant EU legislation, such as Directives and Recommendations of the European Commission.³⁵

Czech legislation: All of the above-mentioned international conventions are part of the legal order of the Czech Republic in accordance with Article 10 of the Constitution. Article 10 also establishes the primacy of application of international regulations in the case where an international treaty provides for something different from the law.

Act No. 141/1961 Coll., on Criminal Procedure (Criminal Procedure Code), as amended, then imposes on the law enforcement authorities the obligation to try criminal cases with full respect for the rights and freedoms guaranteed by the Charter of Fundamental Rights and Freedoms and the international treaties on human rights and fundamental freedoms to which the Czech Republic is bound. When carrying out criminal proceedings, the law enforcement authorities may interfere with these rights of the persons concerned only in cases justified by law and only to the extent necessary to ensure the purpose of the criminal proceedings.³⁶

³⁵ Recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (2013). Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions (2022).

³⁶ See Article 2(4) of Act No 141/1961 Coll., on Criminal Procedure (Criminal Procedure Code), as amended.

03

PERSONS WITH
INTELLECTUAL AND
PSYCHOSOCIAL
DISABILITIES IN THE
JUSTICE SYSTEM

In the Czech Republic, justice and equality are core values, however, systemic challenges persist for marginalised groups, such as individuals with disabilities. This overview of disability rights highlights key issues, with more details available in the full document *Briefing paper on barriers faced by defendants with intellectual and/or psychosocial disabilities in the criminal justice system in the Czech Republic*.³⁷

Transposition of the international legal framework

The Czech Republic ratified the **United Nations Convention on the Rights of Persons with Disabilities** (CRPD) in 2009 without reservations. However, the Optional Protocol to the CRPD was ratified only in August 2021.

The **United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (hereinafter referred to as "UN CAT") was ratified by the Czech Republic in 1993.³⁸

Regarding the **EU Directives on rights of defendants/accused**, the following directives were analysed: Directive 2010/64/EU (Right to interpretation and translation); Directive 2012/13/EU (Right to information in criminal proceedings), Directive 2013/48/EU (Right of access to a lawyer in criminal proceedings), Directive (EU) 2016/343 (Strengthening of certain aspects of the presumption of innocence and on the right to be present at the trial in criminal proceedings); Directive 2016/1919 (Legal aid); Commission Recommendation of 27 November 2013 (Procedural safeguards for vulnerable persons suspected or accused).

There have not been explicitly transposed into national laws any explicit disability friendly provisions transposed into national laws concerning the EU directives implementation, neither for example concerning the Directive (EU) 2016/1919 on legal aid, or Directive (EU) 2016/800 on procedural rights for children. In general, there are no disability-friendly provisions concerning defendants and only general rules apply.

³⁷ Kristýna Šulková, Denisa Kramářová & Maroš Matiaško, 'Briefing Paper On Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities In The Criminal Justice System in The Czech Republic', 2024 https://validity.ngo/wp-content/uploads/2023/06/FORUM_National-Briefing-Paper_CZ_English.pdf.

³⁸ Previously ratified by Czechoslovakia in 1988.

Attitudes towards access to justice for people with disabilities

Despite procedural rule changes, people with disabilities, especially visual and psychosocial disabilities, still struggle to access legal processes.

The UN Committee against Torture raised issues about the lack of free legal aid and inadequate communication of detainees' rights, including access to a lawyer and notifying family members of detention.³⁹

The European Committee for the Prevention of Torture noted problems like delayed legal representation, insufficient briefing on detainees' rights by police, and inadequate medical examination procedures.

The Criminal Procedure Code requires legal representation for disabled persons in specific cases, but access to legal aid remains an issue, lacking special provisions for free legal representation for those with disabilities.

Primary Areas for Targeting

Enhancing access to justice for persons with disabilities requires addressing key areas. This involves properly identifying disabilities for necessary support, ensuring equal participation in legal proceedings, recognizing legal capacity through supported decision-making, and reevaluating the insanity defence for fairness.

Denial of legal capacity (violation of Article 12 of the CRPD) remains the most common reason in Czech Republic for the denial of the right to a fair trial and the exclusion of defendants with intellectual and psychosocial disabilities from criminal proceedings based on "incompetency" to stand trial.⁴⁰ This practice represents a human rights violation with a serious negative impact on the defendants at stake, both from the procedural participation and fair criminal process outcomes points of view, undermining the purpose of the criminal process in general.⁴¹

³⁹ Committee against Torture (CAT): Concluding observations on the sixth periodic report of Czechia[online]. www.undocs.org, 6 June 2018 [cited 8 April 2024]. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/171/17/PDF/G1817117.pdf?OpenElement>. See paras. 10-11.

⁴⁰ *Briefing paper on barriers faced by defendants with intellectual and/or psychosocial disabilities in the criminal justice system in the Czech Republic*, April, 2023, p. 30 ff.

⁴¹ Which, in most jurisdictions, is to protect the person, society and the state from crime, as well as to protect the person and society from wrongdoing by persons in positions of power in their work related to the investigation of alleged or committed crimes, so that any person who has committed a crime is punished according to his guilt and no innocent person is held criminally responsible and convicted.

The Czech Republic lacks mechanisms to identify people needing accommodations early in criminal proceedings. Disabilities are often discovered only when individuals are already in detention.⁴² If someone is found to have an intellectual or psychosocial disability, they're usually evaluated for "incompetence" to stand trial rather than assessing support needs for effective participation. Those deemed "incompetent" are often forcibly institutionalised, sometimes indefinitely.

Furthermore, ensuring procedural accommodations like accessible courtrooms and aids for communication is crucial. Providing information and communication services, including interpretation, is also essential. Access to legal representation and aid from the beginning of proceedings ensures fair defence. Upholding the right to be present at trial and the presumption of innocence is fundamental for fairness. Addressing these areas comprehensively promotes inclusivity and upholds the rights of individuals with disabilities in the justice system.⁴³

These circumstances cast doubt on equal participation in justice processes, trial fairness, and the ability of criminal justice participants to fulfil their duties diligently. Insufficient disability awareness among justice actors, often due to lack of specialisation and training, is a primary concern.

Moreover, persons with disabilities are more likely to be victims of other forms of discrimination and exclusion, which can impede their access to justice. Discrimination on the basis of disability may be compounded by simultaneous discrimination on the basis of other identities or bases such as gender, ethnicity, religion, poverty, sexual orientation or citizenship status.⁴⁴

⁴² *Briefing paper on barriers faced by defendants with intellectual and/or psychosocial disabilities in the criminal justice system in the Czech Republic*, April, 2023, p. 36 ff.

⁴³ For more information on national regulation, the national plan and practical issues, see *Briefing paper on barriers faced by defendants with intellectual and/or psychosocial disabilities in the criminal justice system in the Czech Republic*, April, 2023.

⁴⁴ UN OHCHR, 'Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities' (December 2017), A/HRC/37/25, para 16. As clarified by the CRPD in its General Comment No 6: "[d]iscrimination can be based on a single characteristic, such as disability or gender, or on multiple and/or intersecting characteristics. 'Intersectional discrimination' occurs when a person with a disability or associated to disability suffers discrimination of any form on the basis of disability, combined with, colour, sex, language, religion, ethnic, gender or other status. Intersectional discrimination can appear as direct or indirect discrimination, denial of reasonable accommodation or harassment." CRPD GC No 6, para 19.

04

IMPLEMENTING
PROCEDURAL RIGHTS
FOR DEFENDANTS WITH
INTELLECTUAL AND
PSYCHOSOCIAL
DISABILITIES

Under Article 12(3) of the UN Convention on the Rights of Persons with Disabilities (CRPD), national authorities are mandated to establish an actionable and enforceable right to receive individually determined procedural accommodations, including support, necessary to enable persons with disabilities to participate effectively in all proceedings in any court, tribunal, or forum. The CRPD Committee consistently emphasizes that procedural accommodations should be provided based on the free choice and preference of the person concerned.⁴⁵ Specifically regarding judges, the UN Office of the High Commissioner for Human Rights (OHCHR) has indicated that the judge or responsible entity should prioritize the request of the individual with a disability, as they are best positioned to identify their own accommodation needs.⁴⁶

A. Right to equal participation in the criminal process

As recognized by the CRPD Committee in its General Comment No.6, in reality, persons with disabilities do not enjoy their rights on an equal basis with others because of various factors such as “*deprivation of legal capacity, forced institutionalization, exclusion from general education, pervasive negative stereotypes, prejudices, and lack of access to employment.*”⁴⁷

Various international human rights treaties incorporate the principle of “*equality before the law,*” ensuring that individuals receive fair treatment in the application of laws. To fully realize this right, it's imperative that judiciary and law enforcement officials refrain from discriminating against persons with disabilities during the administration of justice.⁴⁸

The CRPD Committee advocates for an “*inclusive equality*”⁴⁹ approach, which represents a new model of equality outlined in the Convention. This approach goes

⁴⁵ UN OHCHR, ‘Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (December 2017), A/HRC/37/25, para 26.

⁴⁶ UN OHCHR, ‘Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (December 2017), A/HRC/37/25, para 26.

⁴⁷ CRPD, General Comment No 6, para. 8.

⁴⁸ CRPD, General Comment No 6, para 14.

⁴⁹ In the draft of the General Comment No.6, the Committee adopted the concept of equality suggested in the submission made by Sandra Fredman and other scholars. Fredman’s model of equality pursues four main objectives: “redressing the social and economic disadvantage associated with disability; addressing stigma, stereotyping, prejudice and violence; enhancing participation; and accommodating difference by achieving structural change.” See: Sandra Fredman, Meghan Campbell, Shreya Atrey, Jason Brickhill, Nomfundo Ramalekana, Sanya Samtani, Achieving Transformative Equality for Persons with Disabilities: Submission to the CRPD Committee for General Comment No.6 on Article 5 of the UN Convention on the Rights of Persons with Disabilities, available at [CPRD-Submission-1.pdf \(ox.ac.uk\)](#).

beyond traditional notions of equality by incorporating various dimensions: a fair redistributive aspect to address socioeconomic disparities, a recognition dimension to combat stigma and recognize human dignity, a participative dimension emphasizing inclusion in society, and an accommodating dimension to respect differences as essential to human dignity. The Convention underscores the principle of inclusive equality as its foundation.⁵⁰

Article 20 of the EU Charter of Fundamental Rights recognises that “*everyone is equal before the law,*” while Article 21 prohibits discrimination based on a range of grounds including disability. The CRPD definition of discrimination has been directly adopted and incorporated into EU law.⁵¹

Insanity defence

The CRPD Committee has clarified that the CRPD strongly rejects the application of concepts and standards such as “unfitness to stand trial” and “insanity defences” as discriminatory and in violation of the Convention. The Committee has therefore called for the removal of all such standards from criminal justice systems in States Parties to the CRPD.⁵² Declarations of unfitness to stand trial or non-responsibility or incapacity in criminal justice systems are not only discriminatory but lead to the detention of persons based on their disabilities contrary to Article 14 of the CRPD.⁵³

In case C-467/2018⁵⁴, the CJEU highlighted flaws in judicial proceedings allowing for the “*insanity defence,*” leading to the confinement of a person with a disability in a psychiatric hospital for purported therapeutic reasons. The Court deemed this impermissible without confirmation from a court that the individual's procedural rights

⁵⁰ GC No 6, Para 11.

⁵¹ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, COM(2010) 636 final (2010).

⁵² UN OHCHR, ‘Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (December 2017), A/HRC/37/25, para 35.

⁵³ Committee on the Rights of Persons with Disabilities, ‘Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities – The right to liberty and security of persons with disabilities’ (September 2015), para 16.

⁵⁴ Ruling dated 19.09.2019 of the CJEU, case C-467/2018, available here:

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

had been upheld.⁵⁵ Despite the closure of criminal proceedings by the Public Prosecutor's Office and his placement in a psychiatric hospital, there was an issue of a lack of interrogation, access to legal representation, or judicial review, raising significant procedural concerns.⁵⁶

In its comments to Belgium, the CRPD Committee recommended changes to laws to guarantee that persons with disabilities “who have committed a crime ... be tried under the ordinary criminal procedure, on an equal basis with others and with the same guarantees, although with specific adjustments to ensure their equal participation in the criminal justice system.”⁵⁷ In 2009, the High Commissioner for Human Rights wrote that recognition of the legal capacity of persons with disabilities requires replacing criminal defences based on “mental or intellectual disability” with “disability-neutral” doctrines.⁵⁸

Instead, States are required by the CRPD to provide the support necessary to enable persons with disabilities to make decisions that have legal effect.⁵⁹ Such support measures “must respect the rights, will and preferences of persons with disabilities and should never amount to substitute decision-making.”⁶⁰

Deprivation of legal capacity, whether formal or informal, results in exclusion from legal processes, significantly affecting the right to a fair trial for persons with disabilities. The CRPD Committee has criticized common limitations on their rights, such as the inability to participate in proceedings, present evidence, or challenge witnesses.⁶¹ Instruments for protecting disability rights should not involve removing legal capacity or hindering access to justice.⁶²

⁵⁵ Interpretation by the CJEU on Art. 47 of the Charter of Fundamental Rights of the European Union as well as Art. 8, para 2 of Directive 2012/13/EU and Art. 12 of Directive 2013/48/EU, point 2 of the Ruling.

⁵⁶ Ruling dated 19.09.2019 of the CJEU, case C-467/2018, available here:

<https://curia.europa.eu/juris/document/document.jsf?docid=217905&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=2144006>, para. 21-31.

⁵⁷ SDEU, C-467/2018, Rayonna prokuratura Lom v. EP, 19. 9. 2019, bod 76.

⁵⁸ United Nations Office of the High Commissioner for Human Rights. (2009). Thematic study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities; A/HRC/10/48, p. 15.

⁵⁹ CRPD, GC No 1, para. 16.

⁶⁰ CRPD, GC No 1, para. 17.

⁶¹ UN OHCHR, ‘Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (December 2017), A/HRC/37/25, para 34.

⁶² GC No 6, para 49 (c).

The CRPD Committee has further stated, in relation to the right to health, that “[i]n conjunction with the right to legal capacity on an equal basis with others, States parties have an obligation not to permit substitute decision-makers to provide consent on behalf of persons with disabilities.”⁶³ In its Guidelines on Article 14 (right to liberty), the CRPD Committee generalises this statement to emergency and crisis situations in the context of deprivation of liberty.⁶⁴

Supported decision-making⁶⁵ is a model which means requires that persons with disabilities are provided with a range of support options, including the support of people they may trust (e.g. family, friends, peers, advocates, lawyers), to support and enhance their ability to make decisions for themselves.⁶⁶ Under Article 12 of the CRPD, States are required to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.⁶⁷ That support can be reinforced by intermediaries/facilitators, who attempt to enhance the communication with the person with disability throughout the proceedings.

In *Medina Vela v. Mexico* (No. 32/2015)⁶⁸, the CRPD Committee found a violation of Article 12 of the CRPD. The state denied the person with a disability the right to plead not guilty, challenge evidence, appoint a defence lawyer, and contest decisions.⁶⁹ The state applied a special procedure, declaring the applicant "unfit to testify."⁷⁰ The Committee reminded states of their obligation to recognize equal legal capacity for persons with disabilities and provide necessary support for exercising that capacity⁷¹.

In its views in the communication *Marlon James Noble v. Australia* (No. 7/2012), the CRPD Committee focused on the denial of legal capacity of persons with intellectual disabilities. The applicant was an individual with intellectual disability who was charged for two criminal offences but was declared unfit to stand trial and put into custody. The

⁶³ Committee on the Rights of Persons with Disabilities, ‘General Comment No. 1 (2014) Article 12: Equal recognition before the law’, CRPD/C/GC/1 (19 May 2014), para 41.

⁶⁴ Committee on the Rights of Persons with Disabilities, ‘Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities – The right to liberty and security of persons with disabilities’ (September 2015), para 22.

⁶⁵ See also the glossary above for substituted decision-making and supported decision-making.

⁶⁶ World Health Organization, “Supported decision-making and advance planning: WHO QualityRights Specialized training,” 1 January 2019, accessible [here](#).

⁶⁷ Status of the Convention on the Rights of Persons with Disabilities (2006), accessible [here](#).

⁶⁸ Views adopted by the Committee under article 5 of the Optional Protocol concerning communication in *Medina Vela v. Mexico*, no 32/2015, 15 October 2019.

⁶⁹ Ibid. para. 10.6.

⁷⁰ Ibid. para. 10.4.

⁷¹ Ibid. para. 10.6.

applicant complained a violation of various rights, including his right to liberty and the right to access justice. The Committee found a violation of these rights and highlighted that States shall “(e)nsure that adequate support and accommodation measures are provided to persons with mental and intellectual disabilities to enable them to exercise their legal capacity before the courts whenever necessary (...).”⁷²

The CRPD Committee has strongly underlined that denial of legal capacity on the basis of a functional approach is discriminatory. Indeed, such a functional approach presumes that the decision-making skills of a person with a disability are deficient in a way that applies solely to persons with disabilities and “presumes to be able to accurately assess the inner-workings of the human mind”, leading to the denial rights.⁷³ The general assumption must be, in each and every case, that all people are capable of making, and thus being responsible for, their own decisions and actions.⁷⁴

In *Stanev v Bulgaria*⁷⁵, the ECHR found violations of several ECHR articles, including Article 6(1) (Right to a fair trial), 3 (Prohibition of torture), 5 (Right to liberty and security), and 13 (Right to an effective remedy). Mr. Stanev, under partial guardianship, was placed in a poor social care institution but couldn't challenge his placement without his guardian's consent. The Court highlighted the importance of individuals' right to challenge their incapacity declaration, citing Articles 12 and 14 CRPD⁷⁶. It clarified that even in open-access psychiatric hospitals, deprivation of liberty exists if the person hasn't consented. The Court ruled that Mr. Stanev's situation constituted an unlawful deprivation of liberty under Article 5(1) ECHR, emphasising states' obligations to protect liberty.⁷⁷

Presumption of innocence

Practices labelling individuals with disabilities as "unfit to stand trial" and detaining them indefinitely in mental health facilities without due process are common. These practices violate the presumption of innocence and due process rights guaranteed by

⁷² CRPD Committee, Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 7/2012, UN Doc. CRPD/C/16/D/7/2012 (2016).

⁷³ Committee on the Rights of Persons with Disabilities, 'General Comment No. 1 (2014) Article 12: Equal recognition before the law', CRPD/C/GC/1 (19 May 2014), para 15.

⁷⁴ Ibid

⁷⁵ *Stanev v Bulgaria*, Application No. 36760/06, judgment 17 January 2012, (2012) 55 EHRR 22, § 241.

⁷⁶ *Stanev v Bulgaria*, Application No. 36760/06, judgment 17 January 2012, (2012) 55 EHRR 22, § 241 and para. 5.

⁷⁷ Paras 121-132.

international law. The CRPD Committee urges an immediate end to these practices and the repeal of laws enabling them.

Directive 2016/343/EU mandates that suspects and accused persons are presumed innocent until proven guilty and places the burden of proof on the prosecution. It grants individuals the right to remain silent and not incriminate themselves.

The Directive lacks specific provisions for defendants with disabilities, contrary to international standards outlined in the CRPD. National legislation, such as the Code of Criminal Procedure, discontinues proceedings for individuals with mental illness, contradicting CRPD principles.⁷⁸

Recommendations for justice professionals

1. Ensure familiarity with and, when possible, draw attention to any legislation that contravenes the CRPD.
2. Avoid using deficit language when referring to witnesses, victims, or defendant with disabilities, opting instead for the terms outlined in Section 1.6 of this Bench Book.
3. Recognize and assume the full legal capacity and right of defendants with disabilities to participate in all stages of the proceedings in all courts. This includes:
 - a) Provide persons with disabilities the support and accommodations necessary to exercise their legal capacity. For more examples, please see section 4.4 below.
 - b) Ensure that defendants who have been previously declared to be without legal capacity to participate in court proceedings have the right to appeal or otherwise seek restoration of their legal capacity and have access to procedural accommodations and supports, as well as legal assistance to participate in court proceedings.
 - c) If a defendant with a disability lacks the necessary intent (*mens rea*) within the usual meaning of the term, the defendant should be treated the same way as any other defendant who lacks intent.

⁷⁸ Section 11(1)(g) of the Criminal Procedure Code.

4. Ensure safe, fair, and effective engagement of the persons with disabilities in the proceedings and the opportunity to fully participate in proceedings.
 - a) Ensure the provision of adjustments and accommodations and supports, including intermediaries/facilitators, wherever and whenever needed, to enable clear communication among and between persons with disabilities and courts; and – support services or person.
5. Review policies, guidelines and practices
 - a) Review all policies, guidelines and practices that directly or indirectly restrict the legal capacity of persons with disabilities, including those that establish and apply doctrines of “unfitness to stand trial” and “incapacity to plead”, which prevent persons with disabilities from participating in legal processes based on questions about or determinations of their capacity;
 - b) Review all policies, guidelines and practices that authorize medical professionals to be the sole or preferred “experts” in determining how and to what extent and with what support persons with disabilities can participate in legal proceedings;
 - c) Review legislative framework to remove the use of deficit language when referring to a witness, victim or defendant with disabilities.
 - d) Review policies, guidelines and practices, including court orders, that subject defendants with disabilities to detention (whether in a prison, a mental health facility or any other institution) for a definite or indefinite term based on perceived dangerousness or need for care.

Promising Practise

Sweden abolished the insanity defence in 1965. Swedish law recognizes mens rea (meaning intent or “guilty mind”) as an element of a crime but provides that a defendant’s mental status may not be considered in determination of guilt. Rather, a person’s mental disability may be considered in sentencing.

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

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

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

B. Right to procedural accommodations

Procedural accommodations are essential for ensuring access to justice for persons with disabilities, but these accommodations vary widely based on individual needs and circumstances. The CRPD Committee has “consistently indicated that procedural accommodations should be provided based on the ‘free choice and preference’ of the person concerned.”⁷⁹ According to the UN OHCHR, judges or the responsible should “give primary consideration to the request of the individual with disability, as they know best what their own accommodation needs are.”⁸⁰

The CRPD Committee has addressed the importance of granting procedural accommodations in its views in the communication *Gemma Beasley v. Australia* No. 11/2013.⁸¹ In this case, the applicant was deaf and was summoned to be a juror in criminal jurisdiction. However, she was denied the assistance of a sign-language interpreter or other procedural accommodation that would allow her to exercise her role.⁸² The Committee reminded the State of its duty to provide such accommodations for full participation.⁸³

⁷⁹ UN OHCHR, ‘Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (December 2017), A/HRC/37/25, para 26.

⁸⁰ UN OHCHR, ‘Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (December 2017), A/HRC/37/25, para 26.

⁸¹ CRPD Committee, Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 11/2013, UN Doc. CRPD/C/15/D/11/2013 (2016).

⁸² *Ibid.* para. 1-2.3.

⁸³ *Ibid.* para. 9.

States should enact legislation and guidelines allowing persons with disabilities to request procedural accommodations, protecting their privacy⁸⁴, and informing all participants of these accommodations' availability.⁸⁵ The CRPD Committee in General Comment No. 6 emphasizes a dual duty: a reactive duty to provide accommodations upon request and a proactive duty to offer them even without a request.⁸⁶ The UN Principles highlight that states must ensure procedural accommodations and support are available to allow full participation in justice processes, avoiding undue burden on individuals with disabilities.⁸⁷ States must consult with individuals to determine necessary accommodations, even if not requested.⁸⁸

B.1. Individual assessment

An individual assessment is essential, alongside input from the individual, to ensure full participation of persons with disabilities in criminal proceedings. These assessments should be used to “identify the particular barriers that a person with disability experiences (...) and their specific support needs. It determines how to remove or overcome the barriers, what support and procedural accommodations are necessary, and how to provide these. Ideally, it should take place from the first contact with the relevant authorities in the administration of justice.”⁸⁹

In EU law, the Recommendation on vulnerable persons, states that it is important to identify and recognize vulnerability.⁹⁰ The Recommendations suggest that:

⁸⁴ International Principles, para 32(k).

⁸⁵ Ibid, para 32(l).

⁸⁶ GC No 6, para 24(b), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/119/05/PDF/G1811905.pdf?OpenElement>.

⁸⁷ Ibid para 24(b).

⁸⁸ International Principles, para. 5.2 f.

⁸⁹ Validity Foundation, Voices for justice, Toolchest for professionals, p.22, see: <https://validity.ngo/wp-content/uploads/2023/01/Voices-for-Justice-TOOLCHEST-for-professionals- EN.pdf>.

⁹⁰ Recital 6, Commission Recommendation 2013/C-378/02 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings.

“an initial assessment should be carried out by police officers, law enforcement or judicial authorities. The competent authorities should also be able to ask an independent expert to examine the degree of vulnerability, the needs of the vulnerable person and the appropriateness of any measures taken or envisaged against the vulnerable person. 116 The persons concerned (suspects or accused) should have the right to challenge such assessment.”⁹¹

Analogy with the individual assessment for children with disabilities

Similar individual assessments are provided for in EU law, for example, the assessment required by Article 7 of Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

The Directive acknowledges the “right to individual assessment” as one of the elements of the rights of children in conflict with the law. In terms of Article 7(4) of the Directive, such an individual assessment serves the purpose of determining whether any specific measures to the benefit of the child are to be taken; assessing the appropriateness and effectiveness of any preliminary measures; and assisting in taking any decisions in criminal proceedings, including sentencing. The assessment can be used to determine if, and to what extent, a child would need procedural accommodations during the criminal proceedings, the extent of their criminal responsibility, and the appropriateness of a particular penalty or educative measure.⁹²

Similarly, individual assessments tailored to the needs of adult persons with disabilities are crucial for adapting criminal proceedings. Responsibility for these assessments typically lies with a range of criminal justice actors and authorities in charge of the different phases of criminal proceedings from police to prosecuting authorities and legal to the judicial officers. However, in practice, the individual assessment process can be initiated, implemented and coordinated through support services, social workers, law enforcement, court officials, court-appointed experts, and other professionals. A specific type of qualified institution or professional can be legally

⁹¹ Ibid, Recital 7.

⁹² International Commission of Jurists, Recommendations on the main principles governing the individual assessment of children in conflict with the law, see: <https://icj2.wpenginepowered.com/wp-content/uploads/2021/12/ENGL-Recommendations-Individual-assessment.pdf>.

mandated or court-ordered to systematically conduct and update individual assessments in criminal proceedings.⁹³ Overall, justice actors must ensure these assessments occur and lead to fair measures for persons with disabilities, consistent with CRPD obligations.

Recommendations for justice professionals

1. A practical mechanism to identify disability and individual needs and barriers early in the procedure (individual assessment) should be developed and implemented, ensuring that all necessary measures are taken to ensure that the person with a disability can go through the criminal procedure on an equal basis.
 - a) Identification, for example through an individual assessment, should occur early in the criminal justice process at the very beginning of the proceedings, and prior to any actions undertaken as part of the criminal justice proceedings, for instance prior to police interview.
 - b) Police and law enforcement authorities, as well as any other justice actor or individual involved in disability identification, must determine whether someone has a disability and related needs and provide assistance, accommodations, and support from the start of the proceedings. These actors should receive adequate training for these duties and be able to identify disability early on.
 - c) Assessment and communication in this regard should not be used to diagnose or identify disability, but rather to obtain the information required for the competent authority to determine, in consultation with the person with a disability, and decide the provision of procedural accommodations.
2. Identify and disseminate best practices regarding the identification of disability and develop training actions focusing on the human rights model of disability and which adjustments should be made so that persons with disabilities can participate on an equal basis.
3. Information sharing rules and safeguards should be in place when individual assessment is being conducted by justice actors.
4. The defendants should be involved in the development of the individual assessment, should receive it when finalised and should have the right to comment on it, with communication and other support as necessary.
5. Judges and other justice actors should verify that the individual assessment has been completed early in the process.

⁹³ Validity, toolchest, p. 24.

Promising Practise

In some, countries, such as UK and Spain, this assessment can be done by intermediaries. In Spain, facilitators can be provided freely by NGOs like Plena Inclusion.⁹⁴ When prison's officers suspect that the person has an intellectual disability, they contact Plena Inclusion that conducts an assessment and provides assistance in obtaining the official recognition.⁹⁵

In Bulgaria, the courts use an "NGO assessment of the social functioning of persons with disabilities and their special needs."⁹⁶ This assessment is designed to be used in all courts addressing cases with persons with disabilities. It aims to increase the effective participation in the trial and to improve the protection of the person's rights and interests.⁹⁷

B.2. Provision of procedural accommodations

The CRPD Committee and UN OHCHR state that procedural accommodations should be based on the free choice of the person concerned⁹⁸, with judges prioritizing the individual's request as they best know their own needs.⁹⁹

Independent intermediaries (or facilitators)

Intermediaries, also known as "facilitators", assist justice personnel and persons with disabilities in effective communication during legal proceedings. Similar roles may be called Communication Assistants (Australia) or Communication Support Specialists (US).¹⁰⁰

Intermediaries are typically appointed and employed by the court¹⁰¹ and they aim to facilitate communication in legal proceedings, ensuring defendants understand

⁹⁴ Spain National Paper, Section 3.1.2.2 /page 20.

⁹⁵ Ibid. Section 3.2.1.1/page 30.

⁹⁶ Bulgaria national paper, para. 3.2.6/ page 31.

⁹⁷ Ibid.

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

⁹⁹ UN OHCHR, 'Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities' (December 2017), A/HRC/37/25, para 26.

¹⁰⁰ JISK – Module 2 defining the justice intermediary, p.3, See: <https://justiceintermediary.org/modules/>

¹⁰¹ For instance, in the United Kingdom, the Criminal Procedure (Amendment) Rules 2021, Article 18.27 clarifies that intermediaries are appointed by the Court.

questions and can be understood by justice actors. They are not support persons but aid communication, starting ideally from police interviews. They help individuals with disabilities make informed choices and recommend accommodations for effective participation.¹⁰² Additionally, intermediaries can represent third parties, such as specialized civil society organizations. Their role varies across jurisdictions, but they're essentially officers of the court, accountable to the justice system.

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

While not directly provided by the CRPD, the right to be accompanied by a support person, like a relative, is crucial for equal access to justice for persons with disabilities. Article 12(3) requires states to ensure access to the support they need to exercise legal capacity, which can include accompaniment. The CRPD Committee interprets "support" broadly, allowing persons with disabilities to choose trusted individuals to assist them in exercising their legal capacity.¹⁰³ The third principle of the UN International Principles and Guidelines explicitly refers to the obligation of States to guarantee the right to be accompanied. Support persons play a distinct role from intermediaries. While intermediaries aid communication and accommodations, support persons, like family or friends, offer moral and emotional support.¹⁰⁴

Procedural adjustments and modifications

Article 13 of the CRPD mandates states to provide equal access to justice for persons with disabilities, including procedural and age-appropriate accommodations. The CRPD Committee's General Comment No. 1 clarifies that persons with disabilities may need support to access justice and this support "could take various forms, including recognition of diverse communication methods, allowing video testimony in certain situations, procedural accommodation, the provision of professional sign language interpretation and other assistive methods."¹⁰⁵

¹⁰² Ibid

¹⁰³ CRPD Committee, GC No.1 para 17.

¹⁰⁴ UN International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 3.2.d.

¹⁰⁵ CRPD Committee, General Comment No.1 on Article 12: Equal Recognition before the Law, CRPD/C/GC/1 (2014), para. 39.

1. The defendant's right to a fair trial on an equal basis with others must be respected from the first contact with law enforcement officers and throughout all processes, through access to procedural accommodations
 - a) All justice actors must ensure that accommodations are available for persons with disabilities to allow for their participation in each procedure, from the first contact with law enforcement authorities and through all processes.
 - b) Persons with disabilities should be consulted regarding the experienced barriers and accommodation needs. A disclosure from an individual that they have a disability is enough to place an obligation on the authorities to make a full determination, taking into account the individual's views.
 - c) Adequate support services should be made available within the criminal justice system to ensure the provision of procedural accommodations for persons with disabilities.
 - Where identification of needs for procedural accommodations needs to be in place, it has to be done at the beginning of the proceedings, at the earliest moment possible.
 - Preparations for procedural accommodations and other adjustments in the hearing must be made prior to the hearing/trial.
2. All participants, including defendants with disabilities, should be informed about their rights and the availability of procedural accommodations throughout the course of the proceedings.
 - a) Ensure that defendants are aware of the possibility to have procedural accommodations throughout the proceedings and know that they can request them at any time.
 - b) It should not be the sole obligation of the defendant to request the accommodations. All justice actors have a proactive duty to initiate the provision of accommodations.
3. A comprehensive procedure for recognising, requesting, assessing, and providing individual support for persons with disabilities should be developed and implemented.
4. Clear and effective procedures on procedural accommodations must be developed and implemented by all justice actors whenever a person with disabilities, in particular intellectual and/or psychosocial disabilities, faces the criminal justice system.
 - a) A guide on procedural accommodations for the administration of justice should be approved to facilitate justice actor's approach to persons with disabilities.
 - b) All relevant actors must cooperate to establish a more uniform and efficient framework for providing appropriate procedural accommodations for defendants with disabilities. Efficient coordination is

- necessary among the agents of justice at the state, regional, and local levels.
- c) Lawyers of persons with disabilities should be provided with procedural accommodations, such as interpreters, assistive technology and intermediaries /facilitators, or the resources necessary to support effective communication with clients, witnesses and other persons with disabilities.
 - d) All procedural accommodations should be gender- and age-appropriate.
5. An intermediary should be called to assist in communication during police interviews with the person with disability suspected of the crime.
6. As a form of procedural accommodation, intermediaries/facilitators should be provided to defendants with disabilities wherever and whenever needed, to enable clear communication between them and the courts, to ensure safe, fair and effective engagement, and to provide the opportunity to fully participate in all stages of proceedings.
- a) A sufficient number of trained intermediaries/facilitators should be made available for persons with disabilities from the start of the proceedings, and at all stages of the administration of justice.
 - b) Systematic training on the role of intermediaries/facilitators should be in place.
 - c) The use of intermediaries/facilitators should not generate any costs for persons with disabilities. Otherwise, it would be discriminatory.
 - d) In the absence of sufficient and qualified court-appointed intermediaries/facilitators, courts should work collaboratively with stakeholders who provide such support to persons with disabilities;
7. Since the first contact with the authorities, persons with disabilities should be informed of their right to be accompanied by a support person of their choice, that could include a family member.
- a) Ensure that the trusted person can be present during all stages of the proceeding.
 - b) Identify a procedure to indicate the support person and provide adequate legal provisions to regulate the procedure.
 - c) Allow persons with disability to choose their support person. Do not assume that the support person will necessarily be a family member or that a person with disability will necessarily want to make use of a support person.
 - d) Do not replace the intermediary/facilitator with the support person. The facilitator and the support person have different roles and where needed, they should both be guaranteed at all stages of the proceeding.
8. There should be the possibility to have face-to-face contact with the trusted person. Contact only via phone call might especially not be adequate for some

persons and circumstances, for instance for persons with sensory disabilities or deaf persons. As well as make available service animals services to support persons with disabilities when waiting for court or when giving evidence.

9. Ensure that the venue in the justice system, including waiting areas, is always sufficiently adapted and accessible for persons with disabilities – and appropriate to the specific needs of the person.

- a) For instance, limit exposure to others when necessary.
- b) Consider seating and positioning to be adapted when needed (for instance lawyers sitting with their back to the defendant in court, may need adaptation)
- c) Ensure the contact with the justice system is not intimidating – for instance remove wigs or cloaks in meetings or uniforms by police officers, it may be helpful to make the setting less formal and intimidating.

10. Language needs to be adapted to the individual communication needs.

Promising Practise

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

C. Right to information and communication in accessible formats

Right to information in accessible formats

According to Article 21 of the CRPD, states must ensure persons with disabilities can freely express themselves and access information equally. This includes providing information in accessible formats without extra cost and facilitating the use of various communication methods like sign language and Braille.¹⁰⁶ Article 9(2)(f) obliges states to offer appropriate assistance and support for access to information. The CRPD Committee highlights barriers faced by persons with intellectual, and psychosocial

¹⁰⁶ Article 21(a),(b) CRPD.

disabilities, and deaf-blind individuals in accessing information due to a lack of suitable formats.¹⁰⁷

According to **Directive 2012/13/EU on the right to information in criminal proceedings** mandates Member States to inform suspects or accused persons of their procedural rights, including access to a lawyer, free legal advice, being informed of the accusation, interpretation and translation services, and the right to remain silent. Article 3 of this Directive imposes an obligation on States to ensure that suspects and accused persons are informed of their rights “orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons”. Furthermore, the EU Procedural Directives require that “(p)ersons with disabilities should receive upon request information concerning their procedural rights in a form accessible to them.”¹⁰⁸

In case *C-467/2018*¹⁰⁹, the CJEU clarified that Directive 2012/13 requires suspects of criminal offenses to be informed of their rights as soon as possible, especially before their first official police questioning, if their liberty is restricted due to suspicions.

At the national level, The Criminal Procedure Code, in its Section 2(13), relies only in general terms on the principle that “the person against whom criminal proceedings are brought must be informed in an appropriate and comprehensible manner at every stage of the proceedings of the rights enabling him to exercise his defence fully and that he may also choose his own lawyer; all criminal proceedings authorities are obliged to enable him to exercise his rights.” However, this principle is not specifically expanded upon. Furthermore, Section 33(5) of the Criminal Procedure Code stipulates that all criminal law enforcement authorities are obliged to inform the accused of his or

¹⁰⁷ Committee on the Rights of Persons with Disabilities, ‘General Comment No. 2 (2014) Article 9: Accessibility’, CRPD/C/GC/2 (22 May 2014), para 7.

¹⁰⁸ Commission Recommendation 2013/C-378/02 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, Section 3 – Rights of vulnerable persons, right to information.

¹⁰⁹ CJEU, C-467/2018, *Rayonna prokuratura Lom v EP*, 19.09.2019, para 76.

her rights at all times. Pursuant to section 33(6) of the Criminal Procedure Code, the accused must be given a written notice of his rights, which he can keep with him throughout restriction or deprivation of liberty. Thus, the same rights apply to defendants with disabilities as to any others. However, there is no rule requiring that the indictment must have an easy-to-read version or that other forms of accommodation must be provided. Thus, no particular accommodation is provided for defendants with disabilities.

1. Every person with disability has the right to make choices for themselves and should have access to all the relevant information and support required to do so, from the first contact with law enforcement authorities.
 - a) Information should be shared with defendants at all stages of the proceedings, including but not limited to the pre-trial phase, during the trial, and post-trial information.
 - b) Information on existing support resources and accommodations for persons with disabilities, as well as on how to access and use them, should be available – and clearly communicated to persons with disabilities.
 - c) An appointment of an intermediary / facilitator should be considered, who can significantly help in communication and ensuring that all relevant information is transmitted to the defendant.
2. The police and other justice professionals must ensure that the person with disability understand their rights and procedures.
3. Justice professionals must ensure that at all stages of the proceedings, defendants with disabilities are provided with accessible and understandable information about their rights,
 - a) including the right not to incriminate oneself;
 - b) including in relation to what will happen in any legal procedure,
 - c) the rules of the places of detention, and
 - d) that they can rely on the support of organisations, starting with their first contact with the justice system.
4. When sharing with the defendant, ensure that it is being communicated in a way that is accessible to him/her, with regard to their specific communication needs.
 - a) Justice professionals should have access to a list of concrete tools (tools from the International principles) and clear guidance and examples on how to use them.

b) Where necessary, information should be presented in an accessible and comprehensible, easy-to-understand manner (for instance leaflets) – more examples in the section on communication below.

Right to communication

Communication support ensures that all individuals can understand and be understood in legal proceedings, guaranteeing access to justice for everyone. The CRPD defines communication broadly to include various forms such as languages, Braille, and accessible technology.¹¹⁰ States are obligated to make information and communication technology accessible to persons with disabilities. Additionally, Article 9 of the CRPD requires support services in public buildings, including clear signs and communication assistance.¹¹¹

All processes in the justice system must provide the technical and other support necessary for the defendants with disabilities to use any form of communication as necessary¹¹² for their full participation, including:

- (i) Assistive listening systems and devices (useful in case of hearing impairments);¹¹³
- (ii) Open, closed and real-time captioning, and closed caption decoders and devices (useful in case of hearing impairments);¹¹⁴
- (iii) Voice, text and video-based telecommunications products (useful in case of hearing impairments);
- (iv) Videotext displays (useful in case of hearing impairments);
- (v) Computer-assisted real-time transcription (useful in case of hearing impairments, cognitive or learning impairments);¹¹⁵

¹¹⁰ Status of the Convention on the Rights of Persons with Disabilities (2006), accessible [here](#).

¹¹¹ Committee on the Rights of Persons with Disabilities, 'General Comment No. 2 (2014) on Article 9: Accessibility', CRPD/C/GC/2 (2014), accessible [here](#).

¹¹² International principles, p 16.

¹¹³ For instance see: <https://www.nidcd.nih.gov/health/assistive-devices-people-hearing-voice-speech-or-language-disorders>.

¹¹⁴ For instance, see: <https://www.washington.edu/doit/what-difference-between-open-and-closed-captioning>.

¹¹⁵ <https://nationaldisabilitynavigator.org/ndnrc-materials/disability-guide/computer-aided-real-time-transcription-cart/>.

- (vi) Screen reader software, magnification software and optical readers (useful in case of visual impairments);¹¹⁶ and
- (vii) Video description and secondary auditory programming devices that pick up audio feeds for television programmes (useful in case of hearing impairments).

The **suitability of telephone and video conferencing** varies case by case for persons with disabilities.¹¹⁷ Sometimes they're unsuitable, sometimes they need adjustments, and sometimes they greatly improve participation in legal processes.

In addition to intermediaries/facilitators and trusted persons discussed above, other support persons may assist individuals with disabilities. Such persons might include: note-takers (useful in case of hearing impairments, intellectual and psycho-social disabilities, cognitive or learning impairments); qualified sign language and oral interpreters (useful in case of hearing impairments, speech disabilities),¹¹⁸ relay services (useful in case of hearing impairments, speech disabilities)¹¹⁹ or tactile interpreters (useful in case of hearing or visual impairments).¹²⁰

Also, legal language can be a barrier¹²¹ to participation for individuals with disabilities, such as those with acquired brain injury, autistic spectrum disorder, or intellectual disability. Assumptions about understanding should be avoided, and difficulties should be assessed on a case-by-case basis.¹²²

At the national level, apart from the possibility of carrying out criminal proceedings by means of videoconferencing¹²³ and the use of an interpreter¹²⁴, no other communication support is available. In general, the communication issues and needs of people with disabilities in criminal proceedings are left out of the national legislation. Only in civil court proceedings the law guarantees the use of one of the communication

¹¹⁶ <https://www.afb.org/blindness-and-low-vision/using-technology/using-computer/part-ii-experienced-computer-user-new-0>.

¹¹⁷ International Commission of Jurists, "The Courts and COVID-19" (5 May 2020), p. 5.

¹¹⁸ <https://nationaldisabilitynavigator.org/ndnrc-materials/disability-guide/sign-language-interpreters/>

¹¹⁹ <https://nationaldisabilitynavigator.org/ndnrc-materials/disability-guide/telecommunications-relay-service-2/>.

¹²⁰ <https://wfdb.eu/interpretation/>

¹²¹ UK Equal Treatment Benchbook, p 35.

¹²² Australian Disability Access Bench Book, available at [Disability Access Bench Book \(judicialcollege.vic.edu.au\)](http://Disability Access Bench Book (judicialcollege.vic.edu.au)).

¹²³ Section 52a of the Criminal Procedure Code.

¹²⁴ Section 28 of the Criminal Procedure Code.

systems for deaf and deafblind persons.¹²⁵ There is especially no legislation establishing easy-read, sign language, braille, or other accessible forms of communication.

Right to interpretation and translation

Interpretation and translation is a right closely linked to accessible communication. Persons with disabilities have the right to access these services to participate effectively in the justice process, which is especially vital for those with visual or hearing disabilities.¹²⁶ Article 9(2)(h) of the CRPD requires States to promote accessible information and communication technologies. The UN OHCHR provides examples of procedural accommodations, including sign language interpretation, accessible legal information, multiple communication methods, easy-to-read documents, Braille, and video link testimony.¹²⁷

The **Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings** mandates that suspects or accused persons who don't understand the language of criminal proceedings must receive interpretation, including assistance for those with hearing or speech impairments and written translation of essential documents.¹²⁸ Article 2 ensures interpretation without delay for proceedings before investigative and judicial authorities, including services for persons with disabilities such as sign language interpretation. Communication technology like videoconferencing may be used to ensure fairness¹²⁹, and a register of qualified interpreters should be established.¹³⁰

At the national level, section 28 of the Criminal Procedure Code provides for an interpreter in the following cases: 1. to a person who can be communicated with only through one of the communication systems of deaf and deaf-blind persons, 2. if it is necessary to translate the content of a document, a statement or another procedural act, and 3. if the accused declares that he does not know the language in which the proceedings are conducted.

¹²⁵ Section 18(2) of the Criminal Procedure Code.

¹²⁶ See Article 13 of the Convention on Persons with Disabilities.

¹²⁷ UN OHCHR, 'Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities' (December 2017), A/HRC/37/25, para 24.

¹²⁸ Directive 2010/64/EU of the European Parliament and of the Council – Articles 1, 2, 4 and 5.

¹²⁹ Directive 2010/64/EU Art. 2.6.

¹³⁰ Ibid. Art. 5.2.

Recommendations for justice professionals

1. Provide support for communication and access to information through communication facilitators /intermediaries
2. Ensure that all communication support persons are able to interpret effectively, accurately and impartially, both receptively (i.e. understanding what persons with disabilities are saying) and expressively (i.e. having the skill necessary to convey information back to those persons), while using any necessary specialized vocabulary (e.g. legal or medical) and respecting professional and ethical standards;
3. Written information should be available in a range of accessible formats: justice actors must ensure the elaboration of and provision of access to easy-to-read documents
 - a) Ensure that information about court procedures, including notices that require a response or an action to be taken (e.g. summonses, subpoenas, writs, orders and sentences), is provided in accessible format.¹³¹
4. Ensure adequate training on communication tools and methods for all justice professionals. Ensure the language barrier is overcome through training of justice actors.
5. At all stages of the proceedings ensure that all court processes provide the technical and other support necessary for defendants with disabilities to use any form of communication as necessary for their full participation.¹³² These include
 - a) Assistive listening systems and devices;
 - b) Open, closed and real-time captioning, and closed caption decoders and devices;
 - c) Voice, text and video-based telecommunications products;
 - d) Videotext displays;
 - e) Computer-assisted real-time transcription;
 - f) Screen reader software, magnification software and optical readers;

¹³¹ Accessible formats include: Sign language; Video and audio guides; Telephone line advice and referral services; Accessible websites; Induction loop, radio or infrared systems; Closed captioning; Braille; Easy Read and plain language; Facilitated communication; and amplification devices and document magnifiers.

¹³² These include- Assistive listening systems and devices; Open, closed and real-time captioning, and closed caption decoders and devices; Voice, text and video-based telecommunications products; Videotext displays; Computer-assisted real-time transcription; Screen reader software, magnification software and optical readers; Video description and secondary auditory programming devices that pick up audio feeds for television programmes.

- g) Video description and secondary auditory programming devices that pick up audio feeds for television programs.
6. Provide communication support, including through third-parties, for example:
- a) Note-takers;
 - b) Qualified sign language and oral interpreters;
 - c) Relay services;
 - d) and Tactile interpreters, where and when necessary.
7. Provide justice professionals with communication tools to use in communication with persons with disabilities. For instance:
- a) The AAC pictograms browser¹³³ and an example of use.¹³⁴
 - b) An example of a “communication board”¹³⁵
 - c) Easy to read guidelines¹³⁶
 - d) How to write a social story¹³⁷ and an example of use.¹³⁸

Promising Practise

According to the Australian Disability Access Bench Book, an easy way to avoid the language barrier is to avoid using legal terminology and to use instead concrete and

¹³³ Aragonese Center of Augmentative and Alternative Communication (ARASAAC) website available at AAC Symbols and shared resources - ARASAAC; the Augmentative and Alternative Systems of Communication (AAC) are ways of expression different from spoken language, that aim at increasing and/or compensating for the difficulties of communication and language of many people with disabilities. For instance, they can be used to better communicate with persons presenting cerebral palsy (CP), intellectual disability, autism spectrum disorders (ASD), neurological diseases such as amyotrophic lateral sclerosis (ALS), multiple sclerosis (MS) or Parkinson’s disease, muscular dystrophies, traumatic brain injuries, aphasia.

¹³⁴ OHCHR, Making sure people with disabilities get justice - EasyRead version of: International Principles and Guidelines on access to justice for persons with disabilities, available at ISL133 20 ER UN Access to Justice (ohchr.org).

¹³⁵ Access Ability Australia (AAA), Communication Board. Workshops and Meetings, available at City-of-Mandurah-Workshops-and-Meetings-Communication-Board-V1.pdf (accessabilityaustralia.com); Communication boards use symbols to share ideas, wants, needs, and thoughts, assisting individuals with communication challenges. They are typically used with persons with intellectual disabilities, autism spectrum, learning disabilities, traumatic brain injuries, dementia, or deafness.

¹³⁶ Mencap, Am I making myself clear? Mencap’s guidelines for accessible writing (2002) available at guidelines_for_accessible_writing.pdf (funding4sport.co.uk); For instance, they can be employed to communicate with people with intellectual disabilities, learning disabilities, or autism spectrum.

¹³⁷ Autism Services, Education, Resources and Training (ASERT) website, available at How to Create a Social Story — PAAutism.org, an ASERT Autism Resource Guide; Social stories help people to react to social situations that may be challenging like appearing in court, being detained or being arrested. They are typically used to communicate with people with autism spectrum.

¹³⁸ Access Ability Australia (AAA), The Capital. Social Story, available at A-visit-to-The-Capital-Social-Story-V1.pdf (accessabilityaustralia.com).

*plain language. For instance, the judges and legal representatives should use the verb “to follow” instead of the verb “to comply”. Judges and legal practitioners should also explain particular terms and check during the hearing whether the defendant understands the meaning of specific words.*¹³⁹

D. Right to access to a lawyer and legal aid

Every arrested or detained person and anyone facing a criminal charge has the right to legal counsel.¹⁴⁰ This assistance is crucial for protecting the human rights of individuals accused of crimes and ensuring a fair trial. The presence of a lawyer often determines the meaningful participation of individuals in legal proceedings.¹⁴¹

Article 47 of the EU Charter guarantees legal aid by a qualified lawyer, acting as a crucial link for persons with disabilities. With proper knowledge and experience, the lawyer's representation can significantly ensure their effective participation.¹⁴²

Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings sets out the minimum standards concerning the rights of suspects and accused persons. These include access to a lawyer, informing a third party of any deprivation of liberty, and the ability to communicate with third persons and consular authorities without undue delay while deprived of liberty. As pointed out by the European Commission, “if a vulnerable person is unable to understand and follow the proceedings, the right to access to a lawyer in accordance with Directive 2013/48/EU should not be waived.”¹⁴³

At the **national level**, the Criminal Procedure Code establishes four types of circumstances when of necessary defence for persons with disabilities, in which they will be mandatorily represented by a lawyer. Firstly, there is the necessary defence by operation of law under Section 36(1)(a) of the Criminal Procedure Code, which applies to persons deprived of their liberty and therefore also to defendants placed under protective measures or observed in a health institution under Section 116 of the

¹³⁹ Australian Disability Access Bench Book, available at [Disability Access Bench Book \(judicialcollege.vic.edu.au\)](http://disabilityaccessbenchbook.judicialcollege.vic.edu.au).

¹⁴⁰ Article 14 ICCPR, Article 13 CRPD, HRC General Comment 32, para 34.

¹⁴¹ HRC General Comment 32, §10.

¹⁴² Validity Foundation, [Humanising Justice: International report from Voices for Justice: Communicating with Victims of Crime with Disability](#), 2022, p. 68.

¹⁴³ Commission Recommendation 2013/C-378/02 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, Section 3 – Rights of vulnerable persons, Right of access to a lawyer, para 11.

Criminal Procedure Code. The second case is also a necessary defence by operation of law under Section 36(1)(b) of the Criminal Procedure Code, and this applies to all persons of diminished capacity. In such cases, it is mandatory for the accused to have a defence lawyer already in the pre-trial proceedings and there are no exceptions to the said rule. Thirdly, if the court and the public prosecutor consider it necessary in the pre-trial proceedings because "in view of the physical or mental defects of the accused, they have doubts as to his capacity to defend himself adequately." In practice, this is very problematic, as there is no certainty that a person with a disability will always have access to legal aid. Fourthly, "in proceedings in which it is decided to impose or modify preventive detention or to impose or modify protective treatment, except of Forensic treatment for abuse of alcohol."¹⁴⁴

Otherwise, all defendants have the right to choose their lawyer. If the accused fails to do so, his guardian, "a relative in the direct line of descent, his sibling, adoptive parent, spouse, partner, companion, as well as an interested person" may do so for him. In the case of persons whose legal capacity has been limited, the lawyer may be chosen even against his/her will.¹⁴⁵ In cases when defence is necessary, the accused is given a period to choose a lawyer. If this does not happen, a lawyer will be automatically appointed by the court.¹⁴⁶

Recommendations for justice professionals

1. The right to access to a lawyer must be guaranteed from the pre-trial stages of the proceeding, before the first actions in criminal proceedings, and throughout the trial.
 - a) Afford defendants with disabilities the right to legal assistance from the first contact with the law enforcement, regardless of the nature of the crime they are accused of, and on terms that are no less favourable than those for persons without disabilities.
 - b) Inform the defendants of their right to have access to a lawyer.
 - c) The public defence system should ensure equal access to lawyers that provide high-quality services to all defendants, including those with disabilities;
 - d) Draft and regularly update a list of legal representatives with expertise in disability, who are knowledgeable of the rights and procedural accommodation requirements of persons with disabilities;

¹⁴⁴ Section 36(4) b) of the Criminal Procedure Code.

¹⁴⁵ Section 37(1) of the Criminal Procedure Code.

¹⁴⁶ Section 38(1) of the Criminal Procedure Code.

- e) Make procedural accommodations, such as interpreters, assistive technology and intermediaries/facilitators, or the resources necessary to obtain such accommodations, available to lawyers to support effective communication with persons with disabilities in the discharge of their professional duties;
- f) To ensure the quality of lawyers' work and create a controlling mechanism by the national Bar Associations, emphasis should be put also on lawyers' supportive role, being sufficiently proactive, also maintaining personal and sufficiently frequent contact with clients.¹⁴⁷
- g) Provide basic training on the rights of persons with disabilities to all lawyers.
- h) When a person is detained, including placed under forensic detention/security measures they need to have effective access to a lawyer.
- i) How to write [a social story](#)¹⁴⁸ and an [example of use](#).¹⁴⁹

Right to Legal aid

Free legal aid should be available to those unable to afford legal services. Persons with disabilities often face financial barriers to accessing legal services, underscoring the need for free accessibility to legal assistance. States must enact laws and policies ensuring that information needed by persons with disabilities to defend their rights is accessible, and that free or affordable legal aid is provided in all legal matters.¹⁵⁰ The CRPD Committee emphasizes that legal aid is fundamental to a fair and efficient justice system, enabling the enjoyment of other rights and ensuring fundamental fairness and public trust in the administration of justice.¹⁵¹ The ICCPR allows accused persons to choose their lawyer and ensures they are informed of their right to legal aid. Free legal

¹⁴⁷ ENABLE Project, Czech National Briefing Papers: <https://validity.ngo/projects-2/enabling-inclusion-and-access-to-justice-for-defendants-with-intellectual-and-psychosocial-disabilities/national-briefing-papers/>.

¹⁴⁸ Autism Services, Education, Resources and Training (ASERT) website, available at How to Create a Social Story — PAAutism.org, an ASERT Autism Resource Guide; Social stories help people to react to social situations that may be challenging like appearing in court, being detained or being arrested. They are typically used to communicate with people with autism spectrum.

¹⁴⁹ Access Ability Australia (AAA), The Capital. Social Story, available at A-visit-to-The-Capital-Social-Story-V1.pdf (accessabilityaustralia.com).

¹⁵⁰ UN OHCHR, 'Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities' (December 2017), A/HRC/37/25, para 63.

¹⁵¹ Report of the UN Special Rapporteur on the independence of judges and lawyers, Legal aid, UN Doc. A/HRC/23/43 (9 April 2013) 3.

assistance must be provided when the interest of justice requires it and individuals cannot afford a lawyer.¹⁵²

In its General Comment 6, the CRPD Committee noted that effective enjoyment of the rights to equality and non-discrimination calls for the adoption of enforcement measures, such as: “[s]ufficient and accessible provision of legal aid to ensure access to justice for the claimant in discrimination litigation.”¹⁵³ Affordable quality legal aid should also be accessible to persons with disabilities in relation to effective redress mechanisms and to ensure access to justice.¹⁵⁴ The CRPD Committee has therefore recommended that “appropriate and [...] affordable quality legal aid” be offered to persons with disabilities, on a means- and merits-tested basis.¹⁵⁵

Elsewhere, The CRPD Committee stresses the importance of training justice actors to apply procedural accommodations effectively, ensuring equal access to legal representation for persons with disabilities. They also highlight the need for awareness regarding practices within the criminal system that may amount to torture or ill-treatment against persons with disabilities.¹⁵⁶

In the case of *Nenov v Bulgaria*, involving an applicant with schizophrenia, the ECtHR held that failure to provide legal aid to persons with disabilities may violate their right to a fair trial where such an individual has difficulty understanding the judicial proceedings, thus preventing them from adequately ensuring the protection of their interests.¹⁵⁷

Article 47 of the EU Charter guarantees the right to effective remedy and fair trial, including access to legal aid for those lacking resources.¹⁵⁸ EU Directive 2016/1919 mandates that suspects and accused persons without sufficient resources have the right to legal aid when justice demands it.¹⁵⁹ Recital 29 emphasizes the importance of respecting these rights without discrimination, including on the basis of disability.¹⁶⁰

¹⁵² ICCPR Art. 14.3d.

¹⁵³ CRPD, GC No 6, para 31.g

¹⁵⁴ Ibid, para 73 h.

¹⁵⁵ Committee on the Rights of Persons with Disabilities, “General Comment No. 6 (2018) on equality and non-discrimination”, CRPD/C/GC/6 (26 April 2018), para 73(h).

¹⁵⁶ Observations on the Standard Minimum Rules for the Treatment of Prisoners prepared by the Committee on the Rights of Persons with Disabilities, 2013, para 3.

¹⁵⁷ *Nenov v Bulgaria*, App no. 33738/02 (ECtHR 2009), para 52.

¹⁵⁸ EU Charter on Fundamental Rights.

¹⁵⁹ Article 4.1

¹⁶⁰ Recital 29 (to add full citation).

When a person is detained, or there is any risk of a legal proceeding leading to their detention, there is a particular urgent need for them to have effective access to a lawyer and legal aid.

Concerning the costs of legal aid, Czech law does not grant any special regulation of free legal representation for persons with disabilities. The following general conditions must be met for the accused to be entitled to free legal aid: the accused (/persons specified above) must apply for it (in the pre-trial proceedings through the public prosecutor and in the trial proceedings via the judge), the accused must prove that he or she lacks sufficient financial means, and the court must decide on the entitlement to free legal aid.¹⁶¹ If the evidence indicates that the accused does not have sufficient means to secure legal

representation, a judge may decide on free legal aid even without an application by the accused.¹⁶²

Recommendations for justice professionals

1. Legal aid should be provided for all persons who do not have the means to afford legal assistance.
 - a) This has to be considered for all persons with disabilities, who may more often find themselves in such a situation.
 - b) And it has to be guaranteed from the pre-trial stages of the proceeding – before the first actions in criminal proceedings – and throughout the trial.
2. The presence of the same lawyer at every stage of the proceedings is highly preferable.
3. Create a list of specialized lawyers to represent persons with disabilities
4. Inform persons with disabilities of their right to legal aid and other possibilities, such as to access representation through civil society organizations
5. Initial training for lawyers who would be providing legal aid to persons with disabilities should be provided.

¹⁶¹ Section 33(3) of the Criminal Procedure Code.

¹⁶² Section 33(3) of the Criminal Procedure Code.

E. Right to be present at trial and the right to presumption of innocence

The international legal framework guarantees the right to be present at trial. Article 14.3 of the ICCPR and the ECHR affirm this right.¹⁶³ The EU Charter on Fundamental Rights, specifically Article 47, also recognizes the right to an effective remedy and fair trial. Directive 2016/343/EU on strengthening of certain aspects of the presumption of innocence and on the right to be present at the trial ensures suspects and accused persons have the right to be present at their trial. However, a trial may proceed in their absence if they have been informed of the trial and its consequences or if they are represented by a mandated lawyer.¹⁶⁴

Remote hearings

Remote hearings may not be suitable for certain persons with disabilities, which risks violating their right to a fair trial.¹⁶⁵ Where remote hearings are regulated, they do not often have specific provisions for persons with disabilities. This is exactly the case in Lithuania, where the recommendations of the Judicial Council of Lithuanian Judges concerning remote hearings,¹⁶⁶ presented in 2021, do not include any reference to this service being applied to ensure accessibility for persons with disabilities.¹⁶⁷

In the United Kingdom, the UK Equality and Human Rights Commission has recommended that defendants in video hearings are given information explaining their right to raise any issues they may face with the nature of such participation, and are given the means to do so. It has also recommended that justice actors consider individuals for whom video hearings would not be suitable.¹⁶⁸

¹⁶³ Council of Europe, ECHR, Art. 6.3 c).

¹⁶⁴ Article 8.2 Directive 2016/343/EU.

¹⁶⁵ Equality and Human Rights Commission (UK), 'Inclusive justice: a system designed for all. Interim evidence report – Video hearings and their impact on effective participation' (2020), available at [EHRC Inclusive justice a system designed for all \(equalityhumanrights.com\)](https://www.equalityhumanrights.com/en/interim-evidence-report-video-hearings-and-their-impact-on-effective-participation), page. 8-13.

¹⁶⁶ Judicial Council of Lithuanian Judges, Recommendations on remote judicial hearings/Rekomendacijos dėl nuotolinių teismo posėdžių patvirtinta Teisėjų Tarybos 2021 m. rugpjūčio 27 d. (2021) available at [rekomendacijos-del-nuotoliniu-posedziu-patvirtintos_skelbimui.pdf \(advokatura.lt\)](https://www.advokatura.lt/rekomendacijos-del-nuotoliniu-posedziu-patvirtintos-skelbimui.pdf).

¹⁶⁷ Lithuania national study, Enable, April 2023, p.10.

¹⁶⁸ Equality and Human Rights Commission (UK), 'Inclusive justice: a system designed for all. Interim evidence report – Video hearings and their impact on effective participation' (2020), available at [EHRC Inclusive justice a system designed for all \(equalityhumanrights.com\)](https://www.equalityhumanrights.com/en/interim-evidence-report-video-hearings-and-their-impact-on-effective-participation), p. 13.

For instance, during the COVID-19 pandemic, the English and Welsh courts mostly used online video platforms to conduct hearings. In this context, the UK Equality and Human Rights Commission highlighted that there was a **heightened risk for persons with disabilities to suffer from a violation of their right to a fair trial**.¹⁶⁹ The Commission observed that elements like bad connections, low-quality images and sounds, and delays, have affected negatively the trials. In particular, persons with mental health conditions, cognitive impairments, and neuro-diverse conditions like autism and ADHD were, according to the Commission, at particular risk of not understanding or actively participating in proceedings to their detriment.¹⁷⁰ Indeed, the defendants might have problems in connecting, getting instructions and communicating, and the identification of possible cognitive impairment is more difficult.¹⁷¹

Regarding the remote hearings in the Czech Republic, in general, e-justice measures concern dominantly that they are available. Under Section § 52a of the Criminal Procedure Code videoconferencing equipment may be used in the performance of criminal proceedings, if it is necessary for the protection of the rights of persons, in particular due to their age or state of health; or if security or other compelling reasons so require. The applicability of this provision is not limited to court sessions but can be extended to pre-trial proceedings.

Recommendations for justice professionals

1. **Ensure the right to be present in trial and to defend themselves in person, to be respected for defendants with disabilities.**
 - a) The exceptions according to the right to be present at trial apply equally to persons with disabilities.
 - b) Where applicable, ensure the contact with the justice system is not intimidating considering the special circumstances of the hearing – for instance, removing wigs or cloaks in meetings or uniforms by police officers, it may be helpful to make the setting less formal and intimidating.
2. **Identify and carefully consider for whom the remote hearing might be (un)suitable, respecting the person's will and preferences or pursuing the**

¹⁶⁹ Ibid. p. 2.

¹⁷⁰ Ibid. p. 8-10.

¹⁷¹ Ibid. p. 8.

‘best interpretation of the will and preference’ when the person cannot express them directly.

- a) If using remote hearings, ensure adequate training, IT tools, and good internet connection for justice professionals and equally such access to the person with disability.
- b) Ensure access to procedural accommodations, in remote hearings,
 - I. including where applicable the participation of intermediaries,
 - II. provide communication support also in remote hearings, including through third parties, for example: note-takers, qualified sign language and oral interpreters, relay services and tactile interpreters, where and when necessary.
- c) Ensure that during a remote hearing, the role of each person taking part in the online hearing is clear, to all, including to the defendant with disability.
- d) Ensure the pace of the proceedings is well adjusted – ensure for instance rather short sessions, and frequent breaks.

Right to be presumed innocent

International human rights law guarantees the right to be presumed innocent until proven guilty in fair proceedings. Article 13 of the CRPD ensures equal access to justice for persons with disabilities¹⁷², while Principle 5 of the UN International Principles and Guidelines mandates equal application of all procedural safeguards, including the presumption of innocence and the right to remain silent, for persons with disabilities.¹⁷³

Practices of deeming persons with disabilities "unfit to stand trial" and placing them in mental health facilities, which may be for an indefinite duration, violate their right to presumption of innocence and due process. The CRPD Committee urges the immediate cessation of these practices and the repeal of laws enabling them.¹⁷⁴

¹⁷² Article 11 of the Universal Declaration, Article 14(2) of the ICCPR, Article 40(2)(b)(i) of the Convention on the Rights of the Child, Article 8(2) of the American Convention, Article 6(2) of the European Convention,

¹⁷³ UN International Principles and Guidelines para. 5.1.

¹⁷⁴ UN OHCHR, ‘Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (December 2017), A/HRC/37/25, para 39.

Directive 2016/343/EU on strengthening of certain aspects of the presumption of innocence and on the right to be present at the trial mandates that suspects and accused persons are presumed innocent until proven guilty, with the burden of proof on the prosecution. It grants the right to remain silent and not incriminate oneself. However, it does not specifically address defendants with disabilities. As the EU is party to the CRPD, a broad interpretation is necessary, in line with the CRPD and the jurisprudence of the Committee.¹⁷⁵

The Czech legal system ensures procedural safeguards recognised by international law, such as the presumption of innocence and the right to remain silent. However, no procedural accommodations for persons with disabilities are mentioned in the Czech legal framework, nor specifically for accused or defendants with intellectual and/or psychosocial disabilities.

Recommendations for justice professionals

1. Ensure that all suspects and accused persons with disabilities are presumed innocent until proven guilty under the law
 - a) Already during the pre-trial stage of the proceedings, the presumption of innocence might be affected
2. Train police officers on accommodating different types of disabilities and on the rights of people with disabilities to avoid stereotypes or misunderstanding of some behaviours.
3. Ensure that compulsory treatment is not adopted without a court examining the case. Any form of coercive treatment may be considered unlawful under the CRPD and should be carefully evaluated.

¹⁷⁵ Article 3 Directive 2016/343/EU.

05

ANNEXES

A. Understanding disability: Examples of impairments and possible adjustments

The CRPD itself describes disability as an “evolving concept” and indicates that, among other persons with disabilities include “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”¹⁷⁶

The current annex provides a list of impairments that may constitute a disability in a specific case and specific context. It should not be read as exclusive nor prescriptive list of disabilities. It is rather intended to provide general information about some disabilities, and it can constitute a useful tool for justice actors to ensure the effective participation of individuals with disabilities in proceedings.

A contextual analysis and evaluation need to be done in each and every individual case in order to consider whether specific adjustments, procedural or other accommodations are needed in each specific case.

- **Acquired Brain Injury**

The term Acquired Brain Injury (ABI) refers to any damage to the brain that occurs after birth. ABI may be caused by various circumstances (e.g., accident, stroke, tumours, or disorders such as Parkinson’s disease). Acquired Brain Injury may lead to changes in physical and sensory abilities, or to changes in the ability to think and learn (e.g., memory loss, lack of concentration, difficulty with abstract thinking). It may also cause changes in behaviour and personality (e.g., lack of motivation, mood swings, feeling flat or depressed, impulsive or uninhibited behaviour). Finally, ABI may create communication difficulties (e.g., slow or slurred speech, difficulty following conversations) and medical difficulties (e.g., epilepsy, seizure).¹⁷⁷

Some reasonable adjustments should be made to assist persons with ABI who have difficulties in communication. Examples of these adjustments are the use of technologies, the use of clear and concise language, the repetition of some indications and concepts, and the allowance of extra time to answer.¹⁷⁸ During the hearing, other

¹⁷⁶ CRPD, Preamble, (e).

¹⁷⁷ Australian Disability Access Book, Section 7.2.

¹⁷⁸ Ibid. Section 7.2.

useful adjustments are regular breaks, late start times, shortened days, and a quiet environment.¹⁷⁹

- **Agoraphobia**

Agoraphobia is a phobia that usually consists of the fear of traveling away from a person's safe space -e.g., home- or of being trapped somewhere. This phobia can manifest in various ways and with varying severity. A person with agoraphobia might fear being distant from home but also being in unfamiliar routes and places, in wide open spaces, in crowded places, in confined spaces -e.g., trains or lifts-. Sometimes people might also fear standing in long lines or being left alone. When persons with agoraphobia are in the feared places, they might experience a panic attack. These persons might also become anxious even thinking about going to these places and tend to avoid them.¹⁸⁰

Possible adjustments for the hearing include choosing a location for the venue in a place close to the person's house and on the ground floor, taking evidence in written form or through electronic means, limiting the number of persons in the courtroom, and allowing the defendant to sit next to the door, having a companion, and taking breaks when needed.¹⁸¹

- **Attention Deficiency Hyperactivity Disorder (ADHD)**

Attention Deficiency Hyperactivity Disorder (ADHD) is a disorder characterized by inattentiveness, impulsiveness, and hyperactivity that show up from the age of seven years and it might continue in adulthood. This disorder might affect a trial because the person might struggle to focus and listen to the judge.¹⁸²

For this reason, reasonable accommodations can consist of giving management instructions or orders one at a time, not asking for over-complex particulars or schedules, and writing down what actions need to be taken. Moreover, breaks, summing up the current stage of the process, or using short sentences can be useful. Finally, these persons should be allowed to provide written answers to written

¹⁷⁹ UK's Equal Bench Book, 388.

¹⁸⁰ Ibid. 389.

¹⁸¹ Ibid. 389.

¹⁸² Ibid. 392.

questions and to have the hearing in a room with minimal outside noises and reduced distractions.¹⁸³

- **Autism spectrum condition**

Autism spectrum condition (ASC) is a lifelong developmental disability, and it affects the relationships and interactions of the person with the environment and other people. ASC is a spectrum condition so people can experience it in very different ways. For instance, not all persons with ASC have some degree of a learning disability. People with ASC may experience delayed or impaired language comprehension and expression. They may also have difficulties using and understanding the social context of language and impaired social skills. For example, they may interpret words literally, avoid eye contact, or have difficulties understanding their own or other people's emotions. Some persons with ASC may also have repetitive, ritualistic, or unusual behaviours, and they may be sensitive to sounds, touch, light, or other sensory perceptions.¹⁸⁴

In these cases, reasonable adjustments include the use of clear, concise and plain language, a calm voice tone, extra time to answer and avoidance of sarcasm, and too many gestures or distractions. The questions should be precise and direct, and the judge should start the questions with the person's name to avoid misunderstandings. Also, allowing extra time for processing each question and providing an answer. The judge should also be careful to not consider avoiding eye contact or other behaviours as a lack of respect.¹⁸⁵ Other possible adjustments are clear explanations about the procedural stages, circulation of written indications, schedules, and chronologies of deadlines, allowance of regular breaks, and patience. The courtroom should be quiet and with low lights, and the person should be allowed to choose where to seat.¹⁸⁶

- **Blindness and Visual Impairment/Low vision**

Blindness is a complete, or almost complete, loss of vision and it affects the person's ability to see. While some people may perceive light, shadows, and/or shapes, other persons see nothing at all. Colour Blindness is an inability to distinguish between colours. Some persons do not distinguish between red and green; others see

¹⁸³ Ibid.392.

¹⁸⁴ Australian Disability Access Book, Section 7.3.

¹⁸⁵ Ibid. Section 7.3.

¹⁸⁶ UK's Equal Access Bench Book, 398.

everything in black, white, and grey. Visual Impairment/Low Vision is a partial loss of vision that cannot be corrected through glasses.¹⁸⁷

Reasonable adjustments include ensuring documents are in accessible formats (e.g., Braille), requiring general support and guidance from the support staff when this is needed, making necessary physical adjustments in the courtroom, allowing support persons to be present, and guaranteeing access to the assistance dog. The persons should also be allowed to familiarise themselves with the physical environment, and they should not be asked to recall information or events based on their vision. Finally, good practices for judges and legal professionals are announcing themselves before speaking and asking the defendants about their specific needs.¹⁸⁸

- **Cerebral palsy**

Cerebral Palsy is a group of disorders affecting a person's ability to move including muscle control, coordination, tone, posture, and balance.¹⁸⁹ It is usually the result of one or more non-progressive abnormalities in the brain happening before the growth and development are complete. It can be caused by insufficient oxygen getting to the brain at birth, toxins, or genetic factors. Language therapists or someone familiar with the speech patterns of the individual can be helpful to communicate. Some persons also use communication aids like speech synthesizers or word boards.¹⁹⁰

Reasonable adjustments are guaranteeing physical access to the courtroom, the toilet, and all the tribunal's facilities, and allowing the use of communication aids and devices in case cerebral palsy affects communication abilities. Good practices also include organizing frequent breaks, allowing support persons to participate, and discussing with the defendants their needs.¹⁹¹

- **Deafness and hearing loss**

Deafness is the complete or almost incomplete inability to hear. Deaf people communicate in various ways. Some persons within the deaf community do not

¹⁸⁷ Australian Disability Access Book, Section 7.4.

¹⁸⁸ Ibid. Section 7.4.

¹⁸⁹ Australian Disability Access Book, Section 7.5.

¹⁹⁰ UK's Equal Treatment Bench Book, 403.

¹⁹¹ Australian Disability Access Book, Section 7.5.

consider deafness as a disability but regard themselves as a cultural and linguistic minority group.¹⁹²

Possible reasonable adjustments are providing interpreters of the sign language, allowing the presence of a support person, facing the deaf persons, keeping eye contact, and giving the needed time to answer.¹⁹³ Other possible good practices involve choosing a quiet room with good lighting, allowing the use of induction loop, or writing information and indications. When the judge and the other professionals in the court speak, they should not shout or exaggerate with hand gestures or facial expressions, but they should speak in a steady rhythm, make a little pause after every sentence to allow the translation, look at the deaf person, and use full sentences. It is important to remember that there is no universal sign language, but there are many national sign languages. For this reason, being aware of the language spoken by the person is important.¹⁹⁴

- **Deafblindness**

Deafblindness consists of a loss of vision and hearing. Deafblindness varies from person to person. For instance, some persons may be fully blind and hard of hearing, and other individuals may be deaf with some sight. Some people may also experience of complete or nearly complete loss of both sights.¹⁹⁵

Persons who are deafblind may require the presence of interpreters who are expert in tactile sign language.¹⁹⁶

- **Dissociation**

Dissociation is a way that the mind copes with too much stress and it can be linked to trauma, or to a mental health problem or it can be a side effect of alcohol or medication. Persons who experience dissociation feel detached from their body and the world around them. This feeling can last from hours to up to months. Persons may be unable to remember information about themselves or they may experience the world as foggy or unreal. They may feel like they are seeing their emotions from outside, or they may feel disconnected from their body. They may also switch from different parts of their

¹⁹² Australian Disability Access Book, Section 7.6.

¹⁹³ Ibid. Section 7.6.

¹⁹⁴ UK's Equal Treatment Bench Book, 421-424.

¹⁹⁵ Australian Disability Access Book, Section 7.7.

¹⁹⁶ Ibid. Section 7.7.

personality, use different names, or shift identity. People who have regular experiences of dissociation may be diagnosed with a dissociative disorder.¹⁹⁷

Reasonable adjustments can consist of recording evidence when the person is not experiencing dissociation, providing an intermediary, allowing a support person, and allowing the person to give evidence in several different identities.¹⁹⁸

- **Dementia and Alzheimer's Disease**

Dementia is not a specific disease, but it is a collection of symptoms that are caused by disorders affecting the brain. Alzheimer's Disease is one form of dementia. Dementia has impacts on thinking, memory, behaviour, visuospatial awareness, senses, and the ability to perform everyday tasks.¹⁹⁹

Dementia can affect people in different ways and with different intensity. For this reason, good practice consists of assessing each situation and establishing the adjustments considering the specific kind of dementia and the personal circumstances of the defendant. Examples of reasonable adjustments are allowing regular breaks, letting a support person participate in the hearing, and adjusting pace and tone when speaking.²⁰⁰ Possible adjustments in the case of Alzheimer's Disease involve providing an intermediary, allowing a support person in the hearing, and recording evidence when the person is lucid.²⁰¹

- **Down Syndrome**

Down Syndrome is a genetic condition resulting in an extra chromosome. Down Syndrome is characterized by a range of physical, health, characteristics, and developmental effects. A common characteristic of Down Syndrome is some degree of intellectual disability.²⁰²

Some persons with Down Syndrome may need communication adjustments like the use of communication aids, or the help of a support person.²⁰³

- **Dyslexia**

¹⁹⁷ Ibid. 407.

¹⁹⁸ Ibid. 407-408.

¹⁹⁹ Australian Disability Access Book, Section 7.10.

²⁰⁰ Ibid. Section 7.10.

²⁰¹ UK's Equal Treatment Bench Book, 395-396.

²⁰² Australian Disability Access Book, Section 7.9.

²⁰³ Ibid. Section 7.9.

Dyslexia manifests itself as a difficulty with reading, writing, and spelling. The core challenges of dyslexia are the rapid processing of language-based information and weak short-term and working memory. By adulthood, many people have equipped themselves with coping strategies that allow them to deal with situations in which they experience difficulties. Some persons might also rely on technology for many aspects of their daily life.²⁰⁴

Various reasonable adjustments can be made at all stages of the proceeding. Before the hearing, oral instruction can be followed by written indications and reminders. The instructions shall be given in plain language, through electronic means, and in case of written indications, the formatting style shall be clear (e.g., at least 12 font sizes, great spacing, coloured paper). During the hearing, persons with dyslexia might need regular breaks, clear explanations, single-asked questions, time to think about the information, and the possibility of asking questions and clarifications. In general, they should not be expected to give very precise details or to remember everything and possible misunderstandings should not be regarded as evasiveness and inconsistency.²⁰⁵

- **Eating Disorders**

Eating disorders are characterized by an abnormal attitude to food affecting eating habits and behaviours. Eating disorders are often linked to anxiety, depression, or obsessive-compulsive disorders. There are various kinds of eating disorders including anorexia nervosa, bulimia, binge eating disorder, and EDNOS (eating disorders not otherwise specified). During a trial, persons with an eating disorder might appear tired, uninterested or they might have difficulties in focusing.²⁰⁶

Reasonable adjustments might include frequent breaks, lunch at agreed times, and avoidance about comments of the person's physical appearance.²⁰⁷

- **Hallucinations**

Hallucinations consist of the experience of seeing, hearing, smelling, or feeling things that do not exist outside their mind. Hallucinations may occur in persons with schizophrenia, bipolar disorder, dementia, Alzheimer's, Parkinson's disease, or Charles Bonnet Syndrome, but also as a consequence of drug use, alcohol withdrawal, extreme tiredness, or recent bereavement. Hearing voices is a recognized symptom of

²⁰⁴ UK's Equal Treatment Bench Book, 409-410.

²⁰⁵ Ibid. 411-412.

²⁰⁶ Ibid. 413-414.

²⁰⁷ Ibid. 415.

schizophrenia, bipolar disorder, and dementia. Visual hallucinations are also common with schizophrenia and Parkinson's disease.²⁰⁸

If the person is experiencing hallucinations during the hearing, it is important to consider whether it is possible to continue. In case the hearing continues, possible reasonable adjustments consist in adopting a calm manner, allowing evidence to be given behind screens or at another time, focusing on one question at a time and repeating questions. Other solutions are the use of an intermediary and of evidence in written form.²⁰⁹

Reasonable adjustments include increased breaks and shorter days, availability of water, and easy access to toilets.²¹⁰

- **Intellectual disability**

Intellectual disability is characterized by significant limitations in intellectual functioning and adaptive behaviours. There are various types and degrees of intellectual disability. Persons with intellectual disability may have difficulties in communicating, interacting with other people, and living independently. People with intellectual disabilities need more time to understand spoken and written information, and they may have difficulties understanding instructions or abstract concepts. They may also have problems related to attention span and memory and become tired easily.²¹¹

- **Learning disabilities**

Learning disability is a life-long condition acquired before, during, or soon after birth, that affects intellectual development. It should not be confused with the "specific learning difficulties" such as dyslexia. Learning disability can be mild, moderate, or severe. People with a learning disability have difficulties to understand and remember new or complicated information, to learn new skills, and to generalize any learning to other situations. Some persons are unable to read or have difficulties in speaking, and some individuals might also have problems in accomplishing daily tasks.²¹²

There is a wide range of possible reasonable adjustments in the case of defendants with learning disabilities. During the hearing, there can be adjustments including a visit to the tribunal before the start of the trial, live links or screens, frequent breaks, the use

²⁰⁸ Ibid. 419.

²⁰⁹ Ibid. 419.

²¹⁰ Ibid. 246.

²¹¹ Ibid. 427.

²¹² Ibid. 429.

of an intermediary, plain language, communication aids, and further explanations about the context and the procedure. Even in evaluating the evidence, the person's learning disability should be taken into account. Another good practice is the use of Makaton and the presence of an interpreter who knows it. Makaton is a language programme that enables persons with communication difficulties to express themselves independently.²¹³

- **Mental health disability**

Mental health disability can include mood disorders (e.g., depression, postnatal depression, bipolar disorder), anxiety disorders (e.g., phobias, panic attacks, social and general anxiety, obsessive-compulsive disorders), and psychotic disorders (e.g., schizophrenia, some forms of bipolar disorder). Mental health disabilities may affect the way persons think, feel, and interact.²¹⁴

It is important to not stigmatize mental health problems and be aware that they might be only episodic. Possible adjustments can be various, and they depend on the specific problem and on what triggers the person. Examples of possible adjustments are allowing regular breaks, limiting the number of people in the courtroom, allowing a postponement for medical reasons, allowing video links, setting more specific rules for cross-examination, giving extra time to answer, and providing reassurance if necessary.²¹⁵

- **Multiple Sclerosis**

Multiple sclerosis is a disease affecting nerves in the brain and spinal cord. It causes problems with muscle movement, balance, and vision. There are different types of multiple sclerosis, and they can affect persons in very different ways. Some persons experience the relapsing-remitting type that consists of one short-lived episode and subsequent symptom-free periods. Other persons experience secondary progressive type of multiple sclerosis that can deteriorate rapidly.²¹⁶

The symptoms of multiple sclerosis vary widely and consulting the person is an effective way to understand the individual needs and the extra aid and assistance that should be organized. In general, reasonable adjustments for a defendant with multiple sclerosis are frequent breaks, shortened days, availability of water, and the use of a

²¹³ Ibid. 430-432.

²¹⁴ Australian Disability Access Book, Section 7.11.

²¹⁵ UK's Equal Treatment Bench Book, 434-435.

²¹⁶ Ibid. 439-440.

fan or air conditioning because extreme heat can cause a relapse. If the person has mobility impairment, the same reasonable adjustments described in the section on Mobility Impairment should apply.²¹⁷

- **Pathological and Demand Avoidance**

Pathological demand avoidance (PDA) consists of avoiding everyday demands and expectations to an extreme extent. People with PDA have usually a need for control that is often anxiety related. These persons may have difficulties with smaller implied demands within larger explicit demands, time and time-keeping demands, advance planning, expectations, and praise. Some people may also face problems with internal demands like personal expectations and desires or bodily demands. A distinctive characteristic of the person with PDA is the use of social strategies to avoid demands. The PDS Society says that there is a hierarchy of avoidance approaches. First, the person makes attempts to distract, make excuses, and delay; then the person feels physical incapacity with a reduction of meaningful conversations and withdrawal to fantasy; then there is a phase of taking control in which there is complete compliance but a later breakdown; finally, the person experience panic accompanied by agitation, aggression, shut down, running away, self-harm.²¹⁸

The problem of the legal process is that is full of direct and indirect demands, and it is characterized by strong uncertainty. Possible reasonable adjustments are trying to reduce uncertainty with an explanation of the various steps and requests, not giving many simultaneous tasks, and making the demands more indirect. Moreover, the judge can explain the reasons behind deadlines, or, where possible, give the individual some autonomy and flexibility. Regular breaks and patience when the person refuses to do something are also useful.²¹⁹

- **Persecutory Delusions**

Paranoia consists of unfounded beliefs that other people intend to harm the individual. Delusions are paranoid thoughts. Paranoia has a range of severity and the most severe forms consist of persecutory delusions. Persons with persecutory delusions have strong paranoid convictions and no facts or reason can change the person's thinking. This is a form of psychosis. Persons might experience persecutory delusions all the time or only occasionally when under stress. They can be related to some serious

²¹⁷ Ibid. 440.

²¹⁸ Ibid. 446-447.

²¹⁹ Ibid. 447-448.

mental illness problems like delusional disorder, schizophrenia, and bipolar disorder.²²⁰

It is important to avoid disregarding the person's evidence only because of the delusions. Indeed, there are very specific delusions -e.g., a delusion concerning only a specific individual- and the severity of delusions might vary. For this reason, the weight of the evidence coming from the person should be assessed case by case. There are also some indications to respond to a delusion during a trial. The judge and the other legal professionals shall listen to the person, not dispute the delusion, and not engage with the delusion or try to use logic to shift it. They shall simply focus on the elements that are verifiable and be careful with their body language and way of communicating.²²¹

B. Checklist for Criminal Justice Professionals working with defendants with intellectual and psychosocial disabilities in criminal proceedings

The defendant's right to a fair trial on an equal basis with others must be respected from the first contact with law enforcement officers and throughout all processes, through access to procedural accommodations. Just as certain groups, such as minors under 18, already benefit from both de jure and de facto procedural accommodations to ensure their equal participation in the criminal process, individuals with disabilities also require similar measures.

Assessing accommodation needs and barriers

Does the defendant/person have any disabilities? If so, what accessibility measures and accommodations are necessary? These support measures should be determined before the beginning of proceedings and should be gender and age-appropriate (See 4.2. Individual assessment).

Has the defendant/person with disabilities been contacted as early as possible to ascertain her/his accommodations and inform about the right to benefit proactively from procedural accommodations throughout the proceedings? (See 4.3. Right to information and communication in accessible formats).

²²⁰ Ibid. 448-449.

²²¹ Ibid. 449-450.

Support people

Has the person with disabilities been informed about the right to be assisted by a support/trusted person that they can freely choose? (See 4.2. Provision of procedural accommodations)

Has the support person been informed about the proceedings at stake against the defendant with disabilities and has been facilitated the direct contact between these two?

Language and communication assistance considerations

Is the language used to communicate with the defendant with disabilities simple and easy to understand?

Has an intermediary/facilitator (including a third-party) been made available at no cost to the defendant with disabilities to assist with communication throughout the proceedings? (See 4.2. Provision of procedural accommodations)

Has the defendant with disabilities been asked if she/can hear what is being asked or discussed, including in the courtroom?

Is the speech pace appropriate for the defendant to fully comprehend what is being communicated? Has the person been asked if she/he requires breaks or shorter sessions? (See 4.2. Provision of procedural accommodations)

Has the defendant with disabilities and the support person been asked about their communication methods and any adjustments before the beginning of proceedings?

Has the relevant assistive technology, communication support (including third-party interpreters) and communication tools been made available to support defendants with disabilities at all stages of the proceedings as necessary for their full participation? (See 4.3. Right to interpretation and translation)

Information access considerations

Has information (for example, documents and forms) been available in the relevant accessible formats? This can include Easy to Read, Braille, larger fonts and audio (See 4.3. Right to interpretation and translation)

Have documents been provided before hearings in a timely manner (and in the relevant accessible format) to allow sufficient time to read and absorb materials?

Physical access considerations

Is the venue accessible for people using wheelchair or other mobility aid?

Has been considered adaptation measures to minimise intimidation, especially in courtroom settings, such as removing formal attire like wigs or cloaks and offering comfort objects to the person with disabilities? (See 4.5. Right to be present at trial and the right to presumption of innocence)

Is the person using an Assistance/support Dog or other assistance/support animal²²²?
If so, when will the court break to allow water and toilet breaks? Is a bowl of water provided?

Legal assistance

Has been the defendant informed about her/his right to a lawyer and right to free legal aid?

Has the person been offered access to a lawyer or free legal aid from the first contact with the judicial authorities, and throughout the proceedings? (See 4.4 Assessment of the information on the Right to legal aid)

Has the lawyer been provided with procedural adaptations, such as interpreters, assistive technologies, intermediaries/facilitators, or others, to ensure effective communication between her/him and the defendant with disabilities throughout the proceedings?

²²² According to the [Disability Access Bench Book of the Judicial College of Victoria](#), Australia, assistance animal is an animal that is trained to perform tasks or functions that help a person with a disability to alleviate the effects of the disability. This includes animals trained to pick things up for people with mobility disabilities, animals trained to assist people who have seizures, or to provide comfort to vulnerable witnesses when waiting for court or when giving evidence from a remote witness facility. The practice is also used currently in the US and UK.

Participation in the trial

Have the person wishes and preferences been prioritised when considering the remote or in-person participation in the trial?

In case of remote hearings has it been ensured that defendants with disabilities have equal access to all required procedural accommodations as in in-person hearings (See 4.5. Right to be present at trial and the right to presumption of innocence)

C. Directory

Contact list of resource-organisations at the national level, with the description of the services they provide.

- Svaz tělesně postižených v České republice (Union of Physically Disabled in the Czech Republic): Provides support, advocacy, and rehabilitation services for individuals with physical disabilities. Offers social integration programs and legal assistance.
- Asociace pro ochranu práv pacientů ČR (Association for the Protection of Patients' Rights in the Czech Republic): Advocates for patient rights, provides legal and advisory services, supports patient complaints, and works to improve healthcare quality and policies.
- Sjednocená organizace nevidomých a slabozrakých České republiky (United Organization of the Blind and Partially Sighted of the Czech Republic): Supports visually impaired individuals through rehabilitation, education, employment assistance, and social inclusion initiatives. Provides accessible information and advocacy.
- Česká humanitární rada (Czech Humanitarian Council): Offers humanitarian aid, disaster relief, social services, and support for vulnerable groups including the elderly, disabled, and marginalized communities.
- Národní rada osob se zdravotním postižením ČR (National Council of Persons with Disabilities in the Czech Republic): Advocates for the rights and interests of people with disabilities. Engages in policy development, public awareness efforts, and offers various support services.
- Liga lidských práv (League of Human Rights): Although more broadly focused on human rights, it includes significant work on mental health issues, advocacy for mental health rights, public education, and support services for individuals with mental health conditions.

D. The schematic algorithm of needs assessment and provision of accommodations throughout the criminal proceedings

It is important to prepare for a hearing in advance to ensure an equitable inclusion of individuals with disabilities in legal proceedings. The algorithm below outlines essential points to consider and entails a methodical examination of factors such as the specific needs of defendants and barriers they may face. By adhering to these procedural steps, judicial officers and court personnel contribute significantly to dismantling barriers, fostering inclusivity, and upholding the fundamentals of justice for all, irrespective of their conditions.

Setting the Scene:

1. Identify accessibility requirements among parties involved in the legal process.
2. Determine specific requirements and necessary support, considering physical, communication, gender and other barriers.

Ensuring Accessibility Needs and Barriers:

1. Obtain permissions for the use of necessary equipment, including assistive technology devices.
2. If needed, prepare and provide documents in accessible formats (such as easy to read, Braille, larger fonts, and audio).
3. Ensure timely distribution of documents for sufficient review by the parties.

Practical Considerations:

1. Assess the availability of psychological support, advocates, and trusted individuals. If needed, arrange for interpreters, establish communication methods for indicating breaks or common answers.
2. Confirm access to legal advice.
3. Evaluate the suitability of the hearing time, consider additional time requirements for ensuring defendant's with disabilities understanding and breaks.

Other Considerations:

1. When possible, conduct a courtroom tour for individuals with disabilities prior to the first hearing.
2. Adapt the courtroom layout for wheelchair, scooter, or mobility aid users.
3. Assess the need for communication adjustments based on disabilities or literacy levels.
4. Assess the need for assistance/support animals, as well as of comfort objects when giving testimonies or in court.

E. Further readings

1. **Australian Disability bench book** offers useful information about the type of generic accommodations that might be required for persons with various types of disabilities that might be especially useful when accommodations are needed for persons with multiple disabilities.

<https://www.judicialcollege.vic.edu.au/eManuals/DABB/index.htm#59310.htm>

2. **ENABLE model bench book**

3. **ENABLE national briefing paper for the Czech Republic** evaluates the challenges faced by defendants with mental health conditions, psychosocial, and/or intellectual disabilities in the criminal justice system. It focuses on identifying barriers to accessing information, support, and procedural accommodations. Additionally, the paper examines existing laws, policies, and practices that help these defendants overcome these challenges, including promising practices in providing procedural accommodations. The findings from this report were used to develop this bench book.

https://validity.ngo/wp-content/uploads/2023/06/FORUM_National-Briefing-Paper_CZ_English.pdf

4. **International Principles and Guidelines on Access to Justice for Persons with Disabilities** is a tool designed to assist countries in creating and executing justice systems that ensure equal access for individuals with disabilities, aligning with global human rights norms. The guidelines were developed through consultations with experts in disability rights, disability organizations, governments, academics, and professionals.

<https://www.ohchr.org/en/special-procedures/sr-disability/international-principles-and-guidelines-access-justice-persons-disabilities>

5. **UK Equal Treatment Bench Book** aims to increase awareness and understanding of the different circumstances of people appearing in courts and tribunals. It helps enable effective communication and suggests steps which should increase participation by all parties.

<https://www.judiciary.uk/about-the-judiciary/diversity/equal-treatment-bench-book/>

6. **UN Disability Inclusive Language Guidelines** provide recommendations to ensure inclusive communication. These guidelines align with the United Nations Convention on the Rights of Persons with Disabilities and other authoritative

documents, offering practical advice for consistent and respectful language use. They emphasize the importance of combating ableism and celebrating diversity through language that respects the rights and dignity of all individuals: <https://www.ungeneva.org/sites/default/files/2021-01/Disability-Inclusive-Language-Guidelines.pdf>

7. International Commission of Jurists, [Model Disability Benchbook on the Rights of Persons with Disabilities in Criminal Proceedings](#), 2024
8. Validity Foundation, [Fair Trial Denied: Defendants with Disabilities Face Inaccessible Justice in the EU](#), 2024