

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

This briefing paper was developed by KERA Foundation (Bulgaria) within the project “Enabling inclusion and access to justice for defendants with intellectual and psychosocial disabilities” (ENABLE - 101056701 - JUST-2021-JACC).

The project seeks to promote access to justice and fairer criminal proceedings for defendants with intellectual and psychosocial disabilities in 8 EU countries:

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

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EXECUTIVE SUMMARY

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



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



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

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

Main findings regarding barriers, challenges and best practices

- The criminal justice system in Bulgaria takes a prejudiced and clinical approach to persons with disabilities. All proceedings revolve around forensic expertise on insanity defense/incompetency to stand trial, with no real procedural accommodations to account for the legal capacity and effective participation of the individuals.
- Insanity defense/incompetency to stand trial results in the termination of criminal proceedings and placement for compulsory treatment, as well as the exclusion of any further examination of mens rea ("guilty mind," intent). Psychiatrists then serve justice while the presumption of innocence is ignored.
- Compulsory treatment is the usual punishment for those found insane/incompetent, and it is the only alternative to incarceration. It could, however, be extended indefinitely and even exceed a traditional sentence.

EXECUTIVE SUMMARY

Main findings regarding barriers, challenges and best practices


- The criminal justice system does not recognise disability as a condition that necessitates additional support. It is a medical issue that is a problem with the psychiatric care system. Manifestations of disability are often confused with disobedience or faking to get away with the crime.
- Procedural accommodations are rarely used. It is primarily due to the reasons stated above, as well as a lack of knowledge and understanding of the CRPD's obligations and principles. But, beyond that, there is a long history in the country of stigmatisation and the belief that persons with disabilities are unworthy of and incapable of benefiting from due process.
- The majority of defendants interviewed shared the same experience of not being heard or not knowing what was going on at all. They were isolated from communication and information.
- Our research shows that in the majority of cases, lawyers are appointed only after the person has already given their first testimony to the police. Interviewees also expressed concern about public defenders' professional incompetence and lack of motivation.
- There is insufficient training on disability rights for criminal justice professionals, including lawyers.
- National disability regulation is progressing, but there has been no implementation of access to justice. Most criminal laws and practices continue to disregard disability regulations.
- Given the many criminal justice systems around the world that support the existence of insanity defense, incompetency to stand trial, and compulsory treatment, applicable EU Directives appear to address the problems surrounding Art. 12, 13, and 14 of the CRPD insufficiently.

EXECUTIVE SUMMARY

Main recommendations

- Abolish all capacity-based mechanisms, such as insanity defense, incompetency to stand trial, and compulsory treatment. Instead, provide all defendants with equal access to defenses such as lack of intent; develop a system of support services and accommodations to ensure effective participation; and develop community-based support and services to replace indefinite medical treatment.
- Crime prevention should consider the intersectionality of problems providing, among others, community-based services and support, alternatives to incarceration, and alternatives to traditional criminal justice systems such as restorative justice.
- Provide training to justice professionals, including police, on how to recognise disability and act in accordance with the CRPD.
- Improve the public defense system to ensure equal access to lawyers who provide high-quality services to all of their clients.
- Provide support for communication and information like communication facilitators [1] (intermediaries), easy-to-read documents, use of simplified language.
- Improve legislative connectors between disability and criminal laws on national level.
- Make necessary legislative amendments with regard to insanity defense/incompetency to stand trial and compulsory treatment to comply with Ruling by ECJ dated 19.09.2019, C-467/2018, in response of preliminary reference by the Lukovit District Court, Bulgaria (see Section 3.1.2.1 'General Disability and Criminal Legislation, Compulsory treatment' below).
- Stand for more explicit provisions in EU Directives affirming Art. 12, 13 and 14 of the CRPD and prohibiting all capacity-based approaches around EU criminal justice systems.

[1] In May 2023 a training will start for communication facilitators (intermediaries) in criminal justice proceedings. The training is organised by a NGO. Information for the training is available at: <https://nie.expert/next-training/>. However, it is to be noted that the role of intermediary is not yet officially recognised in Bulgaria.



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

UNITED NATIONS, 2008

01

INTRODUCTION

INTRODUCTION

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

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

“all necessary and appropriate modifications and adjustments in the context of access to justice, where needed in a particular case, to ensure the participation of persons with disabilities on an equal basis with others. Unlike reasonable accommodations [2], procedural accommodations are not limited by the concept of “disproportionate or undue burden”.

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

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

[2] “Necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms” (Article 2, United Nations, 2006)

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

The research guidelines are based on the international normative framework as set out in the relevant and intersecting articles of the **CRPD: article 12** (Equal recognition before the law) and **article 13** (Access to justice); **the International Principles on Access to Justice for Persons with Disabilities** (UN, 2020): **Principle 1** (All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability); **Principle 3** (Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations); **Principle 4** (Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others); **Principle 5** (Persons with disabilities are entitled to all substantive and procedural safeguards recognised in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process); **Principle 6** (Persons with disabilities have the right to free or affordable legal assistance); **Principle 10** (All those working in the justice system must be provided with awareness-raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice); **European Convention on Human Rights**: Article 5 (Right to liberty and security), Article 6 (Right to a fair trial), Article 13 (Right to an effective remedy) and Article 14 (Prohibition of discrimination); and EU acquis on procedural rights: **right to interpretation and translation in criminal proceedings [3]**; **right to information in criminal proceedings [4]**; **right of access to a lawyer in criminal proceedings [5]**; strengthening of certain aspects of the **presumption of innocence** and on the right to be present at the trial in criminal proceedings [6]; **legal aid** for suspects and accused persons

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

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

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

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

INTRODUCTION

in criminal proceedings [7]; **and procedural safeguards for vulnerable persons suspected or accused in criminal proceedings** [8].

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

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

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

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GOALS AND METHODOLOGY

GOALS AND METHODOLOGY

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

The specific goals of this project phase were:



Map the national legal and political framework

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



Examine the experience of different stakeholders

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



To collect recommendations

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

GOALS AND METHODOLOGY

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

Additionally, for the **field work**, **semi-structured interviews** (N= 23) were carried out with key stakeholders: Defendants with intellectual and /or psychosocial disabilities (N=9); Criminal justice professionals (N=8); Support services professionals (N=3); Non-Governmental Organisations (N=3), and Human Rights Institutions (N=0[9]). The interviews were conducted from November 2022 to March 2023. It was given priority to interviewees who have had experience/contact with the criminal justice system in the last three years. A non-probability purposeful sampling technique was used to identify and recruit the participants of this project. The identification of the interviewees was possible with the help of the national partners of the project. The data was analysed using content analysis. In the next section we summarise the main key finds of the desk research and interviews.

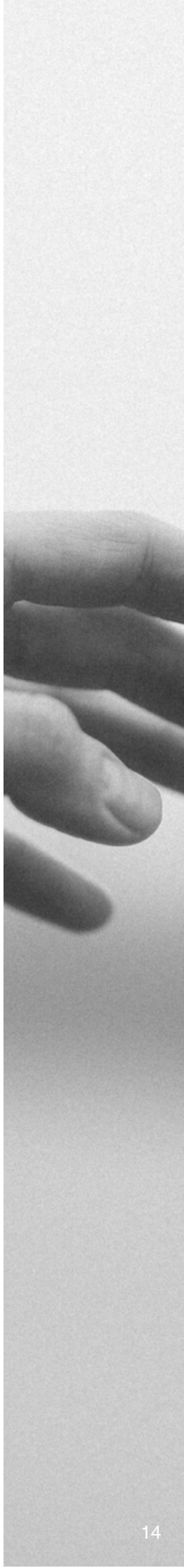
[9] Maria Krasteva (the author of this paper) had several conversations with officers from the Ombudsperson's office. In the end, they concluded themselves that the Ombudsperson has never monitored the rights of defendants with disabilities in particular, nor any such complaint was brought to their attention.

03

**DEFENDANTS WITH
DISABILITIES ACCESS
TO JUSTICE**

POLITICAL AND LEGAL FRAMEWORK

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



DEFENDANTS WITH DISABILITIES ACCESS TO JUSTICE



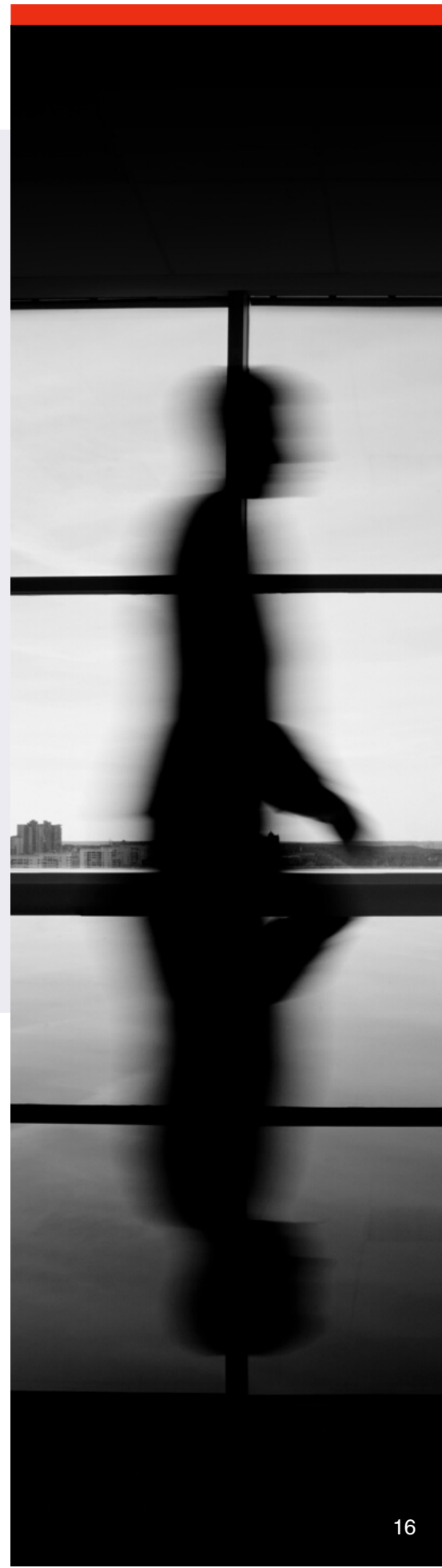
ACCESS TO JUSTICE

The primary goal of the desk research was to shed light on the legal and political framework governing defendants with disabilities' access to justice.

POLITICAL AND LEGAL FRAMEWORK

The findings of this analysis are presented in four sections:

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



01 Transposition of the international legal framework

A. Applicable UN regulation

Bulgaria ratified the **UN Convention on the Rights of Persons with Disabilities** (CRPD) on January 26, 2012, and it entered into force on April 21, 2012. [10] The Optional Protocol is still unratified. According to Article 5, paragraph 4 of the Constitution of the Republic of Bulgaria, all ratified and entered into force conventions become part of domestic legislation and take precedence over any conflicting domestic legislation provision. [11]

In its concluding observations on the country's most recent period report, the UN Committee noted with concern the lack of information in accessible formats and a shortage of trained sign language interpreters in all judicial and administrative proceedings. [12]

Another issue that should be considered even before seeking justice is the recognition of persons with disabilities' legal capacity. Article 12 of the CRPD promotes the right of persons with disabilities to have "equal legal capacity with others in all aspects of life."

[10] The CRPD is available in Bulgarian language at: <https://www.lex.bg/bg/laws/ldoc/2135791921>

[11] The Constitution of the Republic of Bulgaria is available in English language at: <https://www.parliament.bg/en/const>

[12] October 22, 2018, Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Bulgaria', art. 31-32: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsk80ZBJx%2BmVEa%2BXQpyKbrX6eiw%2FONDuhjOleQ0WS4ZCou%2F8e0LnMpan4%2FdVYURMuW4m5XiBzJlDxfa0hBsK%2FFlxXg2LE6l3Y%2FwmkUJ%2FZAlza>

POLITICAL AND LEGAL FRAMEWORK

01 Transposition of the international legal framework

The UN Committee on the Rights of Persons with Disabilities has repeatedly stated that States Parties to the Convention must review laws and abolish practices that allow for guardianship and 'take action to develop laws and policies to replace regimes of substitute decision-making with supported decision-making that respects the person's autonomy, will, and preferences'. [13] Nonetheless, in its concluding observations on the periodic report, the Committee criticised Bulgaria for maintaining legislation that still provides for guardianship for persons with disabilities, and it also recommends that the State establish procedures for supported decision-making as well as continuous training on Article 12 for stakeholders involved. [14]

The right to accessing justice was further developed in the 2020 International Principles and Guidelines on Access to Justice for Persons with Disabilities, as adopted by United Nations High Commissioner for Human Rights. [15] The Principles and Guidelines establish the recognition of legal capacity and support for exercising it as basic principles for ensuring access to justice for persons with disabilities. They also demand that the States provide safeguards for the assistance provided to exercise legal capacity in order to respect the rights, will, and preferences of individuals and to prevent abuse. [16]

B. EU legislation

The European Union Council adopted a Resolution on a Roadmap for Strengthening the Procedural Rights of Suspected or Accused Persons in Criminal Proceedings in 2009. [17] This Roadmap calls for the adoption of measures pertaining to the right to translation and interpretation (measure A), the right to information on rights and charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers, and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E). In accordance with this, the EU has adopted the following six directives on procedural rights for suspects and accused persons:

[13] General Comment No. 1 by the UN Committee on Rights of Persons with Disabilities, 2014, article 7 and 26: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>

[14] October 22, 2018, Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Bulgaria', art. 29-30: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsk80ZBJx%2BmVEa%2BXQpyKbrX6eiw%2FONDuhjOleQ0WS4ZCcu%2F8e0LnMpan4%2FdVYURMuW4m5XiBzJIDxfa0hBsK%2FFixXg2LE6I3Y%2FwmkUJ%2FZAIZA>

[15] 2020, International Principles and Guidelines on Access to Justice for Persons with Disabilities, available at:

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

[16] 2020, International Principles and Guidelines on Access to Justice for Persons with Disabilities, p. 6: https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf

[17] The Roadmap is available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009G1204\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009G1204(01))

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01 Transposition of the international legal framework

DIRECTIVE 2012/13/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2012 on the right to information in criminal proceedings. [18] According to the Directive, Member States must ensure that suspects or accused persons are informed of their procedural rights: the right of access to a lawyer; the right and conditions for receiving free legal advice, the right to be informed of the accusation; the right to interpretation and translation and the right to remain silent. [19]

DIRECTIVE 2010/64/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 on the right to interpretation and translation in criminal proceedings. [20] Member States shall ensure that suspects or accused persons who do not speak or understand the language of the criminal proceedings are provided with interpretation including assistance for persons with hearing or speech impediments, as well as with a written translation of all essential documents, to ensure that the persons are able to exercise their right of defence and to safeguard the fairness of the proceedings. [21]

DIRECTIVE 2013/48/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. [22] The Directive sets forth minimum standards concerning the rights of suspects and accused persons to have access to a lawyer, to have a third party informed of the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, without undue delay. [23]

[18] This Directive is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0013>

[19] In 2021 the European Commission started infringement proceedings against Bulgaria since the transposition measures notified by the country are considered to fall short of the requirements of this Directive. See European Commission, List of infringements: https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=false&active_only=1&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&DG=JUST&title=&submit=Search See also 2021, September infringements package: key decisions: https://ec.europa.eu/commission/presscorner/detail/EN/INF_21_4681

[20] This Directive is available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32010L0064>

[21] Although Bulgaria failed to transpose the Directive within the transposition period, as at the moment there is no pending infringement proceedings with regard to this Directive.

[22] This Directive is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1450449360102&uri=CELEX:32013L0048>

[23] Infringement proceedings are on-going against Bulgaria for not ensuring that all provisions of the Directive are implemented, in particular on notifying another adult. See European Commission, List of infringements: https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=false&active_only=1&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&DG=JUST&title=&submit=Search See also 2021, July infringements package: key decisions: https://ec.europa.eu/commission/presscorner/detail/EN/INF_21_3440

POLITICAL AND LEGAL FRAMEWORK

01 Transposition of the international legal framework

DIRECTIVE (EU) 2016/343 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.[24]

According to this Directive, Member States shall ensure that suspects and accused persons are presumed innocent until proved guilty according to the law. The burden of proof for establishing the guilt of suspects and accused persons must be on the prosecution. Suspects and accused persons have the right to remain silent in relation to the criminal offence and to not incriminate themselves. Trial which can result in a decision on the guilt or innocence of a suspect or accused person can be held in his or her absence, only if certain requirements are met.[25]

DIRECTIVE (EU) 2016/1919 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings [26]

This Directive obligates Member States to ensure that suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require. [27]

All Directives include general provisions for taking into account any vulnerability of individuals that affects their ability to participate in criminal proceedings, understand and follow, and for ensuring their rights are protected. Some explicitly mention disability, but only in the context of broader ideas about the integration of persons with disabilities and the fair administration of the justice system.

[24] This Directive can be found here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1503680060752&uri=CELEX:32016L0343>

[25] Infringement proceedings were going against Bulgaria in 2018-2022 for partial transposition of the directive. See European Commission, List of infringements: https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=false&active_only=1&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&DG=JUST&title=&submit=Search

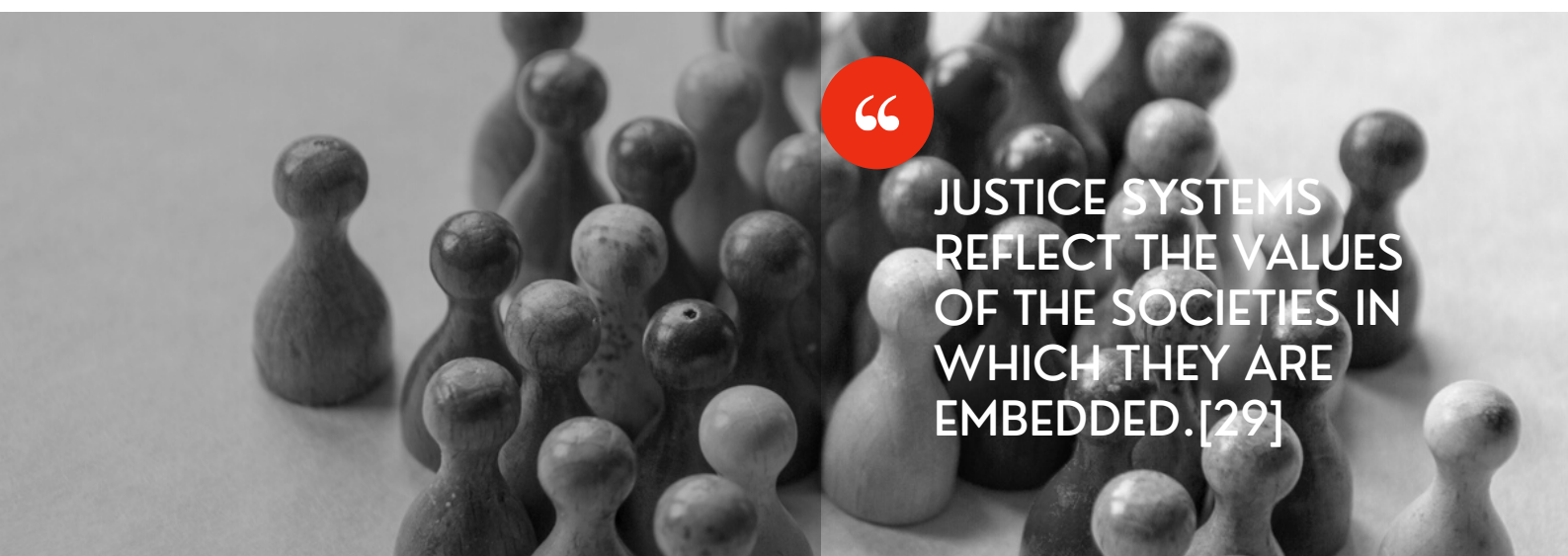
[26] This Directive can be found here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1503680234594&uri=CELEX:32016L1919>

[27] As at the moment no infringement proceedings are pending with regard to this Directive.

02 Overview of the national legal framework regarding access to justice

Persons with disabilities' rights have been strengthened in Bulgaria over the last decade, perhaps most notably with the adoption of the Persons with Disabilities Act in 2019. The new act establishes concrete and comprehensive regulation of the main rights of persons with disabilities in Bulgaria for the first time. By passing this Act, the State basically commits to ensuring that these rights are respected in all aspects of life. The new law also includes the only full and straightforward definition of "persons with disabilities" in Bulgarian law. [28] Other laws are expected to refer to this definition whenever persons with disabilities are concerned.

Another recent law, the Social Services Act, which went into effect in 2020, is expected to improve the availability and quality of services while focusing on the individual needs of each and every person for the first time. However, sufficient regulation has not yet been established to ensure that the criminal justice system follows these new regulations when dealing with persons with disabilities.



[28] 2020, International Principles and Guidelines on Access to Justice for Persons with Disabilities, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf

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

POLITICAL AND LEGAL FRAMEWORK

02 Overview of the national legal framework regarding access to justice

General Disability and Criminal Legislation

General legal framework

According to the Persons with Disabilities Act, the prosecution service and the court, as well as all other state institutions, must ensure that persons with disabilities have equal access to justice, including by making procedural and age-appropriate accommodations in all stages of the process. [30]

According to this law, persons with disabilities who have serious difficulties exercising their rights while participating in specific legal actions have the right to supported-decision making. The support for decision-making is provided through a range of interventions which generally aim to explain the meaning of the legal action and its consequences, to help persons understand what is happening and express their wishes, and to execute the legal action accordingly. [31] The interventions are defined by the law as professional social services, which include consultation, mentoring, decision-making, an anti-crisis plan, and protective measures. However, the Social Services Act makes no explicit mention of such services, and it is unclear how and who will provide the supported decision-making services. So far, they have only existed on paper. [32]

Similarly, the Persons with Disabilities Act mandates an accessible architectural environment, and there is also a bylaw outlining the specific requirements that public spaces and buildings must meet. [33] There is a minimum standard for architectural accessibility of courtrooms that requires accessibility of a certain number of seats in the room as well as accessible routes that are clearly marked. [34] However, accessibility requirements are being neglected in some courts and even more in police premises.

[30] Art. 67, para 1 of the PDA

[31] Art. 66, para 4 of the PDA

[32] There is a handbook about supported-decision making made by an NGO (“Supported decision making: theoretical and practical guidelines for interpreters on supported decision making”. More information is available at: <https://bcnl.org/analyses/podkrepeno-vzemane-na-reshenie-teoretichen-i-prakticheski-narachnik-za-talkovnitsi-pvr.html>). So far, only few judges put in practice the guidelines in cases for placement in residential care settings and placement under guardianship. However, supported-decision making is not yet officially recognised by the justice system.

[33] Ordinance No. 4/1.07.2009 for design, execution and maintenance of construction works in accordance with the requirements for accessible environment for the population, including persons with disabilities, available in Bulgarian language at: <https://lex.bg/laws/ldoc/2135639181>

[34] Art. 67 of Ordinance No. 4/1.07.2009 requires that at least two seats in courtrooms are wheelchair accessible and connected to an accessible route, and that at least one information desk in court buildings comply with accessibility requirements.

POLITICAL AND LEGAL FRAMEWORK

02 Overview of the national legal framework regarding access to justice

General Disability and Criminal Legislation

On the other hand, the main piece of legislation concerning criminal justice procedure (the Criminal Procedure Code, 'CPC') includes no specific rules for the support of defendants [35] with disabilities. According to the CPC, "everyone participating in criminal justice proceedings shall be equal before the law." [36] This provision prohibits restrictions based on a variety of protected grounds, but "disability" is not one of them. The link with the regulations governing disability rights, including the CRPD, can only be made based on the interpretation of some general provisions under the CPC, which means that such interpretation is entirely up to the discretion of the investigating and judicial authorities, with no guarantees for defendants with disabilities that this interpretation will be made in due course.

The only straightforward support provided by the CPC is in cases where a sign language interpreter is to be appointed for defendants with speech or hearing impairments. [37]

In addition to the foregoing, there are no provisions for recognising disability in the context of the right to defense. This is accomplished through psychiatric expertise, which serves entirely different purposes than identifying specific needs or barriers (for more information, see Section 'Insanity defense and competency to stand trial' below).

Criminal procedure in Bulgaria

The criminal justice process has two phases: pre-trial and trial phase. [38] The pre-trial phase includes a police investigation, and if enough evidence is gathered to prove a person's fault, that person is charged with a crime (accused of a crime). [39] The accused person becomes a defendant when the judge orders that a copy of the indictment and a summons to appear in court be served on them. [40] The trial phase is led by the court and includes gathering of evidence, pleadings and delivery of the sentence.

[35] Due to language and legislative differences between English language-based doctrines and the Bulgarian one, and for ease of reference, 'defendants' in this paper might be referring to both persons who are accused of crime in pre-trial phase and defendants who are later brought to court, unless a concrete distinction between the two is made by the author

[36] Art. 11 of CPC

[37] Art. 395, item "з" of CPC

[38] Art. 191 and Art. 247 of CPC

[39] Art. 219, para 1 of CPC

[40] Art. 247B of CPC

POLITICAL AND LEGAL FRAMEWORK

02 Overview of the national legal framework regarding access to justice

General Disability and Criminal Legislation

The concept of 'suspect' does not exist in the Bulgarian Criminal Procedure Code. With regard to offenders in pre-trial phase, there is only the role of the accused. Being the 'accused', persons have the right to defence [41], the right to know what crime they are accused of, to give explanations, to get introduced with the materials of the case, to make requests, comments and objections, to appeal acts which violate their rights, as well as to be accompanied by their lawyers during all actions of investigation. [42] The court, prosecutor and investigating bodies must explain to the accused their procedural rights and ensure that these rights can be exercised. [43] However, this creates a gap in which people suspected of committing a crime have no formal role in the criminal proceedings before they are charged. As a result, there is no legal guarantee that their right to defend themselves will be respected from the start of the investigation. Persons suspected of crime should be treated as witnesses in theory, but our research shows that in practice, they are given no formal role, and first interrogations and other important acts of primary investigation are frequently conducted without the persons having the opportunity to effectively participate and defend themselves. (For more information on this practice, see Section 3.2, 'Experiences about the access to justice of defendants with disabilities' below.)

Forensic expertise

Forensic expertise, which examines the mental state of the person at the time and after committing the crime, as well as during trial, plays an important role in the participation of defendants with disabilities in the justice process in Bulgaria. [44] Psychiatrists are the most used experts in this field, with psychologists frequently involved as well. [45] When investigating bodies have doubts about the defendants' 'sanity' or ability, given their physical and mental state, to perceive properly facts relevant to the case and give credible testimony, forensic psychiatric expertise is required. [46]

[41] Art. 15, para 1 of CPC

[42] Art. 55, para 1 of CPC

[43] Art. 15, para 3 of CPC

[44] Art. 19, 21, 26 of Ordinance No. 2/26.10.2011 for the requirements on forensic medical, psychiatric and psychological expertise including reimbursement of expenses to medical establishments, available in Bulgarian language at: <https://lex.bg/laws/ldoc/2135760470>

[45] Ruling No. 2070 of 21.05.2020 undercriminal case No. 136 / 2020 r. of Blagoevgrad District Court, not publicly available

[46] Art. 144, para 2, item 3 and item 4 of CPC

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02 Overview of the national legal framework regarding access to justice

General Disability and Criminal Legislation

Insanity defense and incompetency to stand trial

Persons who act in a state of “insanity” are not criminally liable if “they were unable to understand the nature or meaning of what they were doing or were unable to control their actions due to intellectual deficiency or continued or short-term disorder of the mind” (insanity defense). [47]

If it is proven that the offender was “insane” at the time of the offense, the criminal proceedings are terminated. It is possible that the offender was “sane” when committing the crime but went “insane” during the criminal proceedings (incompetency to stand trial). If this “incompetence” is declared to be a “continued disorder of the mind”, the person is presumed to be incapable of punishment, and the criminal proceedings are terminated. [48] If the person is declared to have a "short-term mental disorder that excludes sanity," the criminal proceedings are halted until the defendant recovers. [49]

Compulsory treatment

In the case of insanity defense or incompetency to stand trial, the court may order compulsory treatment, the length and type of which depend on the defendant's particular mental state as well as the nature and degree of danger of the committed act. [50]

When there is a change in the patient's condition or the treatment requires it, the court can terminate or amend the compulsory treatment. [51] In any case, the court makes a decision on whether the compulsory treatment should be terminated, prolonged, or replaced six months after admission to the psychiatric hospital. [52] The court makes its decision during a court hearing after hearing from the respective psychiatric hospital and an expert opinion from a forensic psychiatrist. [53]

[47] Art. 33, para 1 of the Criminal Code (CC)

[48] Art. 24, para 1, item 5 and Art. 289, para 1 of CPC

[49] Art. 25, para 1, item 1 of CPC

[50] Art. 89 and Art. 90, para 1 and 2 of CC

[51] Art. 91, para 1 of CC

[52] Art. 91, para 2 and Art. 432, para 1 of CC

[53] Art. 432, para 3 of CPC

POLITICAL AND LEGAL FRAMEWORK

02 Overview of the national legal framework regarding access to justice

General Disability and Criminal Legislation

The motion for compulsory treatment can be made by a prosecutor [54] before the district court. [55] Participation of a prosecutor and a lawyer of the person, against whom a compulsory treatment is requested, is mandatory. [56] The person may not attend the hearing if his or her health condition does not allow it. [57] In any case the court considers the opinion of the forensic psychiatrist. [58] The court's decision is subject to appeal. [59]

The issue of termination of criminal justice proceedings and proceeding with compulsory treatment were subject to preliminary reference by the Lukovit District Court in Bulgaria to the Court of Justice of the European Union (CJEU, ECJ). [60] In its ruling [61] the ECJ confirms the shortcomings of such practice [62] and criticises the existence of judicial proceedings which allows for persons in cases of insanity defense to be placed in psychiatric hospitals due to therapeutical and security reasons, without the court verifying that certain procedural rights of these persons were respected. [63] Further, the ECJ clarifies that the presumption of innocence must be interpreted to require that the prosecutor proves within the court proceedings that the person, whose hospitalisation is requested, is the actual perpetrator. [64]

[54] Art. 427, para 1 of CC

[55] Art. 428 of CPC

[56] Art. 430, para 2 of CPC

[57] Art. 430, para 3 of CPC

[58] Art. 430, para 3 of CPC

[59] Art. 431, para 1 and para 2 of CPC

[60] The preliminary reference is available in Bulgarian language at:

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

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

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

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

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

[62] The Court's Ruling confirms the deficiency of this procedure and its incompliance with Directive

2012/13/EU on the right to information in criminal proceedings and Directive 2013/48/EU on the right of

access to a lawyer in criminal proceedings.

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

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

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General Disability and Criminal Legislation

Although this ruling has been published in Bulgarian language and has been subject to discussion in the context of necessary legislative amendments [65], no such amendments are in place as at the moment. [66]

[65] See Annual Report by the Supreme Court, p. 51, available in Bulgarian language at: <https://www.vks.bg/analizi-i-dokladi/vks-godishen-doklad-2020.pdf>

[66] May 2023

POLITICAL AND LEGAL FRAMEWORK

02 Overview of the national legal framework regarding access to justice

National strategies

National Disability Strategy

The recently adopted National Strategy for Persons with Disabilities 2021-2030 aims at establishing inclusive environment for persons with disabilities in Bulgaria so that they can fully exercise their rights and live independently. [67]

The Strategy, like the one before it, does not prioritise access to justice for persons with disabilities. Access to justice is not even mentioned among the identified needs and planned actions for achieving the Strategy's objectives.

National Crime Prevention Strategy

The Bulgarian Crime Prevention Strategy for 2021-2030 [68] mentions 'mentally ill' persons as being part of a disadvantaged group at higher risk to commit a crime. [69] In this regard, the Strategy sets forth several interventions:

- Helping families with 'mentally ill' people
- Implementation of systematic control over persons 'suffering from mental illnesses' who are not accommodated in the relevant medical institutions
- Organisation and implementation of programs for social integration of this category of persons [70]

It is not clear however which is the competent authority to take responsibility for implementing the strategy goals.

[67] The National Strategy for the Persons with Disability 2021-2030, available in Bulgarian language at: <https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=1342>

[68] The Bulgarian Crime Prevention Strategy for 2021-2030, available in Bulgarian language at:

https://www.mvr.bg/docs/default-source/strategicheskidokumenti/%D1%81%D1%82%D1%80%D0%B0%D1%82%D0%B5%D0%B3%D0%B8%D1%8F-%D0%B7%D0%B0-%D0%BF%D1%80%D0%B5%D0%B2%D0%B5%D0%BD%D1%86%D0%B8%D1%8F-%D0%BD%D0%B0-%D0%BF%D1%80%D0%B5%D1%81%D1%82%D1%8A%D0%BF%D0%BD%D0%BE%D1%81%D1%82%D1%82%D0%B0-2021---2030-%D0%B3.pdf?sfvrsn=27e3e10a_2

[69] The Crime Prevention Strategy for 2021-2030, strategic objective No. 3: Working with persons at risk of committing a crime or being victims of crime.

[70] The Crime Prevention Strategy for 2021-2030, p. 24 – 25.

POLITICAL AND LEGAL FRAMEWORK

02 Overview of the national legal framework regarding access to justice

Procedural accommodations

Principle 3 of the International Principles on Access to Justice for Persons with Disabilities establishes that persons with disabilities, including children with disabilities, **have the right to appropriate procedural accommodations**, which should a) facilitate effective communication to ensure understanding of their rights, case materials and participation in proceedings (e.g., guarantee of interpretation in sign language, the use of augmentative and alternative modes of communication, transport and communication, the use of intermediaries); b) provide full access to the physical environment (including access to judicial building, adjustments to the physical layout of the room); c) adjustment to procedural rules (e.g., may include use of audio-video records, video-links, adjustments on questioning); e) appropriate to gender and whether person is deprived of liberty.

As already mentioned, these are necessary modifications in the context of access to justice to ensure the participation of persons with disabilities on an equal basis with others. Next, we will describe briefly the situation regarding the provision of **procedural accommodations** in Bulgaria:

Information and communication

As a general rule, the court, the prosecutor and the investigating bodies are to explain to the defendants their procedural rights and ensure that these rights can be exercised. [71] If arrested (in detention), police officers are to immediately explain all due rights to the arrested person. [72] This is documented with a declaration given to the person to fill out and sign. [73] In court, judges are obliged to ask defendants whether they understand what they are accused of. [74]

The CPC contains no provisions that provide for the clarification of rights or the indictment in a way that is appropriate for overcoming the barriers faced by defendants with disabilities. The CPC does not include a role for a communication facilitator (intermediary) to assist the person during interrogations or other forms of communication, unless the

[71] Art. 15, para 3 of CPC

[72] Art. 72, para 5 of the Ministry of Internal Affairs Act in connection with Art. Art. 63, para 3 of the Regulation on the implementation of the Ministry of Internal Affairs Act

[73] Art. 63, para 3 of the Regulation on the implementation of the Ministry of Internal Affairs Act

[74] Art. 276, para 3 of CPC

POLITICAL AND LEGAL FRAMEWORK

02 Overview of the national legal framework regarding access to justice

Procedural accommodations

person has a speech or hearing impairment, in which case a sign language interpreter is appointed. [75]

There is no technical assisting equipment, such as assistive listening devices, computer-assisted transcription, voice-based telecommunication products, and so on, nor is there simple information and communication, such as easy-to-read documents.

Right to a lawyer

If the person *'suffers from any physical or mental disability that prevents them from defending themselves'* [76] and has not authorised a lawyer of their choice, the investigating body (or the court) is obligated to appoint a lawyer for that person. [77] Defendants have the right to contact their lawyers, meet privately, and receive legal advice and assistance, including prior to and during interrogation or any other procedural action involving the defendant. [78] Lawyers are obligated to defend their clients as best as they can and to explain their clients' rights and obligations in detail. [79]

There is no rule that governs lawyers' responsibilities when their client has a disability. There are no special knowledge or experience requirements for lawyers who work with persons with disabilities.

Supported decision making services

The CPC does not include any guidance on supported decision-making. As previously stated, such rules exist in the Persons with Disabilities Act, which does not explicitly link to CPC.

[75] Art. 142, para 2 of CPC, Art. 106a of the Ministry of Internal Affairs Act

[76] These circumstances are subject to forensic expertise.

[77] Art. 94, para 1, item 2 of CPC

[78] Art. 55, para 2 of CPC

[79] Art. 40, para 2 and Art. 3 of the Bar Act

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02 Overview of the national legal framework regarding access to justice

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Individual assessments on the specific needs

The CPC does not provide for an individual assessment of a defendant's specific needs or barriers in order to support their participation in criminal justice proceedings. Individual assessments are governed by the Persons with Disabilities Act, but they do not generally relate to the right to access to justice. In any case, prosecutors, courts, and police are not among the authorities who can request such an evaluation. [80] This is theoretically possible if the general rules for interpreting laws are followed, but this approach is uncommon, and defendants have no guarantees that any such interpretation will ever be applied.

Right to be present at trial (Accessibility and adjustments to the physical space)

If persons have a disability which does not allow them to appear before the investigating body, they may be questioned elsewhere. [81] If necessary, court hearings may be held outside the court (for example, when the defendant is in a hospital [82]) [83]. Prosecutors and courts have a general obligation to ensure transparency and accessibility of their actions. [84]

As previously stated, a minimum standard for architectural accessibility of courtrooms and all public buildings in general exists. These requirements, however, are frequently overlooked.

Third person accompanying like family member, friend or anyone chosen by the person

Criminal justice legislation in Bulgaria does not expressly allow persons with disabilities to be accompanied by someone they trust, such as family or friends, if they so choose. In general, court hearings are open to the public and may be attended by defendants' relatives, but they have no right to participate, including the right to speak for the judge or the defendant. [85]

[80] Art. 21, para 2 of PDA

[81] Art. 120, para 2 of CPC

[82] See Ruling No. 42 dated 23.05.2018 under criminal case (в. ч. н. д.) No. 109/2018 of the Burgas Appellate Court, not publicly available.

[83] Art. 262 of CPC

[84] Art. 5, para 2 of the Judicial System Act

[85] Art. 20 of CPC

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02 Overview of the national legal framework regarding access to justice

Procedural accommodations

Video recording and video conference

Video recordings of testimony, hearings, and other proceedings, as well as video conferencing, are generally permitted. None of these, however, are specifically designed as a procedural accommodation for defendants with disabilities. These are sometimes necessary to address a person's particular vulnerability and specific needs, but only for victims of crimes and witnesses. [86]

Procedural adjustments

There are no regulations or policies in place to ensure the fair treatment and full participation of defendants with disabilities. There is the possibility of pre-trial testimony recording, but it is not intended as a type of procedural accommodation and is not used in this manner in practice.

Requests for and offers of accommodations

There are no guidelines for requesting and offering procedural accommodations. The only procedural accommodations provided have already been mentioned.

[86] Art. 139, para 10 and para 11 of CPC, and Art. 140, para 5 of CPC

POLITICAL AND LEGAL FRAMEWORK

02 Overview of the national legal framework regarding access to justice

Rights Monitoring

New administrative structures were established under the Persons with Disabilities Act to ensure compliance with all applicable laws and policies regarding persons with disabilities in Bulgaria. The Persons with Disabilities Agency, the Monitoring Council, and the Persons with Disabilities National Council are among them. The Persons with Disabilities Agency is central to the development, drafting, and implementation of state policies and programs for persons with disabilities. The Monitoring Council, comprised of 9 members from the Office of the Ombudsperson, the Equality Body, organisations of persons with disabilities, and academia, was specifically assigned to monitor compliance with the CRPD under Article 33(2) of the CRPD. [87]

Finally, the Persons with Disabilities National Council was established to assist and consult with other authorities in the process of developing and implementing laws and policies affecting persons with disabilities. This council is made up of several groups, including, among others, national organisations of/for persons with disabilities, employee organisations, and employer organisations. [88]

Under Article 33(1) of the CRPD, the focal point within government for matters relating to CRPD implementation is the Integration of Persons with Disabilities Unit at the Policy for Persons with Disabilities, Equal Opportunities and Social Benefits Department at the Ministry of Labour and Social Policy, with the Minister of Labour and Social Policy serving as the coordination mechanism.

However, none of these bodies' work to date has addressed the issues of persons with disabilities accused of crime or access to justice for persons with disabilities in general.

[87] 2020 FRA table of bodies set up for the implementation and monitoring of CRPD at: https://fra.europa.eu/sites/default/files/fra_uploads/table-bodies-article-33-crpd-2020_en.docx which can be downloaded from: <https://fra.europa.eu/bg/content/mrezha-na-es-za-prilagane-na-konvenciyata-na-oon-za-pravata-na-horata-s-uvrezhdaniya>

[88] Art. 7-19 of PDA

03 Training and awareness for criminal justice professionals

The Persons with Disabilities Act requires judicial and police personnel to receive regular training on access to justice for persons with disabilities. [89]

The National Institute of Justice, the Bulgaria's institution responsible for magistrate vocational training, has held only two seminars in recent years (one in 2019, one in 2020, and none in 2021-2022) on access to justice for persons with disabilities. [90] The Police Academy has one disability related subject in their curriculum training [91] but from the information provided [92] it is not clear whether this course provides any knowledge on access to justice and procedural accommodations, nor that any such training has ever happened.

There is no special training for lawyers regarding defendants with disabilities or access to justice for persons with disabilities in general. [93]

[89] Art. 67 of PDA

[90] Respond by the National Institute of Justice to a formal request under the Access to Public Information Act, 2022

[91] The course "Police Psychology" includes training on "Strategies for working with citizens with mental problems" and "Discrimination and prejudice. Hate Crimes"

[92] Respond by the Police Academy to a formal request under the Access to Public Information Act, 2022

[93] Respond by the Center for Training of Lawyers to a formal request under the Access to Public Information Act, 2022

04 Statistics and data on access to justice

Statistics and data collection on access to justice

For the purposes of this research, specific requests for information on: (i) the number of defendants in criminal proceedings who are persons with disabilities; (ii) the types of disabilities of defendants; and (iii) the number of forensic expertise on sanity/competency to stand trial, have been submitted to competent Bulgarian authorities.

None of the requested information was provided with the explanation that the Prosecutor's Office does not collect personal data like race, ethnicity and health status. [94]

With regard to legal aid provided to defendants with disabilities, according to the response received, competent authorities keep no such data or statistics. [95]

[94] Respond by the Prosecutor's Office to a formal request under the Access to Public Information Act, 2022

[95] Respond by the National Legal Aid Bureau to a formal request under the Access to Public Information Act, 2022

POLITICAL AND LEGAL FRAMEWORK

05 Main findings

Despite the fact that Bulgaria has ratified the CRPD for over a decade, the Convention's implementation appears to be slow. One example is recent disability legislation, as well as its implementation in practice, which lags far behind any true understanding of the Convention's principles and values.

The new Persons with Disabilities Act is unquestionably a step forward in ensuring persons with disabilities' access to justice and legal capacity. Yet, the act has been in effect for four years, but there has been no sign of any actual implementation of these specific provisions. Not to mention the internal contradiction between the new provisions for supported decision-making and access to justice and the guardianship system, which remains in full force in the country.

Having said that, it is unsurprising that there is very little recognition of the specific rights of defendants with disabilities and what the justice system is required to meet those rights. Procedural accommodations are limited to a few provisions relating to information and communication, with the only clear obligation being the appointment of a sign language interpreter in relevant cases, as well as a lawyer whenever a person is thought to be struggling with physical or mental challenges. Even from a statistical standpoint, it is clear that defendants with disabilities are of little interest to the justice system.

When defendants with disabilities are involved, forensic expertise is clearly essential to the justice process. However, the expertise is initially designated to assess the persons' inabilities and incapacity, and this approach eventually dominates all pre-trial and trial proceedings.

POLITICAL AND LEGAL FRAMEWORK

05 Main findings

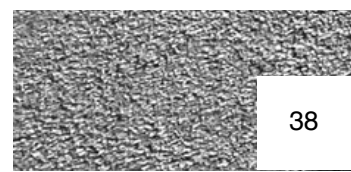
Among other things, certain regulations have a negative impact on the rights of defendants with disabilities. One is the absence of the role of "a suspect", which allows defendants to be involved in investigation actions without being in any legal capacity and thus not formally provided with due safeguards of their rights. Another significant gap is the regulation regarding competency to stand trial: once the defendant is deemed insane/incompetent to stand trial, the case is closed, and the individual is sent to compulsory treatment. In this manner, the analyses and judgment on the offender's fault are left to forensic psychiatrists rather than judges, while further investigation into the offender's connections to the crime is prematurely terminated.

The consequences of the described phenomenon are evident in the experiences of defendants with disabilities, justice and support service professionals, and others, as detailed below.

DEFENDANTS WITH DISABILITIES
ACCESS TO JUSTICE



EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES



A black and white photograph showing the long, dark shadows of several people walking on a light-colored, textured pavement. The shadows are cast from the left side, indicating a low sun position. The overall mood is somber and contemplative.

DEFENDANTS WITH DISABILITIES ACCESS TO JUSTICE

- 01** Defendants' with disabilities experiences
- 02** Criminal justice professionals' experiences
- 03** NGOs, human rights institutions, and support service professionals' experiences
- 04** Brief analysis of patterns
- 05** Intersectionality
- 06** Best practices
- 07** Main Recommendations

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

In order to examine, in Bulgaria, the experience of different stakeholders about access to justice of defendants with intellectual and/ or psychosocial disabilities - identifying barriers, challenges and areas of improvement they envision in it - 23 semi-structures interviews were conducted (for detailed information see Annex 1) with

- persons with intellectual and/or psychosocial disabilities (N=9, including 2 women),
- lawyers (N=2),
- judges (N=1),
- prosecutors (N=1),
- police (N=4),
- support service professionals (N=3),
- National Human Rights Institution (N=0^[96]), and
- NGO (N=3)

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

[96] Several conversations were done by the author of this report with different officers from the Ombudsperson's office. In the end, they concluded that the Ombudsperson has never monitored the rights of defendants with disabilities in particular, nor any such complaint was brought to their attention.



EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences



“They arrested me in the building (his home). They didn't tell me why they were taking me – “[name of the investigating police officer] wants you there for one hour and we will bring you back”. They took me to the police station where they kept me in the corridor for 4-5 hours. Meanwhile, my mother called me on the phone and told me that they (the police) were searching our apartment. Then they took me upstairs to the room to explain to me my rights, to ask whether I wanted a lawyer and to tell me that they were detaining me for 24 hours. They did not tell me I was an accused or that I was guilty. They just arrested me. This is a standard procedure. I signed a protocol with my rights. What rights were these...the right to a doctor and the right to a lawyer. They didn't tell me why they arrested me – “We have no evidence against you but if you confess, we will let you go so you won't have to stay 24 hours (in detention).”

They did not provide me with a lawyer during the interrogation and did not inform me of my right to remain silent. Three criminal police officers put me in a room and said “Now tell us what you know about the case”. The director entered the room and started: “You're lying to us, you don't have any illnesses, you have committed the crime, we know it was you.” I didn't ask (in the protocol with the rights) for a lawyer at the time because I didn't think they were going to interrogate me.

Before you go inside (in detention) they take off your shoe laces, your watch, any objects. The same as when you are admitted to the psychiatric hospital to prevent committing suicide. Military service also has this. It is an arrest but with no conditions. If you were seriously ill, you could die. In the entry protocol (for going into arrest) I've reported all my illnesses. The director said to me: “You're lying, you don't have any illnesses.”

I was examined by a paramedic (while detained) but he only checked my blood pressure and body temperature and asked for the number of my ID card. He only wanted to do his

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences



report. He didn't do anything. I was afraid of dying, that my life was in danger, so I confessed to the crime. He didn't do anything. I was afraid of dying, that my life was in danger, so I confessed to the crime.

I confessed to committing the crime because I realised that they would not let me go and they would keep me for 24 hours (in detention). Furthermore, they did not provide you with food, water, or anything else. They release you once you confess. They used the computer to create the document (the confession statement). I signed without even reading it. We were on Facebook the next day, along with another woman who had stolen a phone.

After two months, they summoned me to the police station for a forensic examination by a psychologist and a psychiatrist. Because I had previously reported illnesses. I was unable to attend because I was ill. This expertise was a matter of life and death to [name of investigating police officer]. They sent two policemen to my door, saying, "Come on, get up, and we'll take you." Their behavior was not very civilised. If you do not go, they will force you or fine you. They weren't polite, but what could you expect from cops? I locked myself in my room as 5-6 police officers, including [name of investigating police officer], arrived. They didn't believe I had any problems. One of them grabbed my leg and dragged me to the ground. They handcuffed me and dragged me out. I was on the verge of losing consciousness. They dragged me into the police car, and the three officers began insulting me. They saw me as a sick person who was aggressive. They dragged me down the hall (at the police station) and dumped me on the floor. "Let's talk," said the psychiatrist above. What was there to talk about? I was handcuffed, cold, and naked. I told them I wouldn't talk without a lawyer and that I wasn't guilty, so they arrested me. At the time, I was an accused with a public defender.

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences



One year after this case, there was a court trial and I spent 10 days in [name of a psychiatric hospital] to have my forensic expertise done. I didn't stay there. It took the psychologist two hours to interview me. This methodology (for forensic expertise on competency to stand trial) has been used in [name of a psychiatric hospital] for 30 years. The expertise – is this a triangle - it's a triangle. Is this a square - it's a square. [name of a psychiatrist] said to the judge “Why to hospitalize him? He lives in his home like in prison. I've visited him myself. If we hospitalize him, this will affect his emotions”. The psychiatrist said it would take three days to complete the expertise but the prosecutor insisted on one-month hospitalization [to execute the forensic expertise on competency to stand trial].

I told at the court hearing about the insulting words (by the police officers to him) but you need Strasbourg (the ECtHR at Strasbourg) for that and I can't prove it. My hands were in my pockets but this angered the judge. My mother was there at that time and tried to speak out but the judge said “If you say something once more, I'll put you out of the courtroom”.

It's a gap in the law that they don't believe you when you say something orally. They require a formal note from a doctor.” [97]

“Nobody helps you in such situations, even your relatives run away” [98]

All of the stories shared by defendants with disabilities seem to point to a single right in relation to the justice system: the right to a lawyer. The general attitude toward defendants with disabilities is that they are a "problem" for the psychiatric care system. The justice system considers their job done as long as they are provided with a lawyer and psychiatric intervention.

[97] Excerpts from a story of an interviewed defendant with psychosocial disability, male. Although in first-person, most text is paraphrased but not a direct quotation.

[98] From an interview with a defendant with psychosocial disability, male

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

Legal aid and provision of procedural accommodations

» Right to information and communication (intermediary if applicable)

The overall feeling in the stories is one of complete isolation from the world, where no one, not even the justice system, cares what happens to defendants with disabilities. Every story paints a picture of a severe lack of information and communication. Throughout the police investigation, some interviewees recall being told they had the right to a lawyer and a phone call, as well as being given some paper to sign, while others did not understand anything at all. After being interrogated and providing fingerprints, one was informed of his right to a lawyer and a phone call. The common experience for all was not knowing what was going to happen or what to expect.

Although most of the interviewees were found to be competent to stand trial, they were not allowed to speak much and were left with the impression that no one was listening to them or believing their words. All interviewees shared similar stories about the police and prosecutors' patronising and humiliating attitude and communication style.

According to their accounts, the court was a more respectful place, but it was also distant and did not make an effort to ensure effective communication and inclusion. The majority of interviewees expressed the same fear of speaking up in court. Some did not understand much, and most found it difficult to follow.

"The police officers read it aloud and tell her what to write down" [99]

"They did not explain why I was there. I told them that I had a contact with aliens and he (the police officer) showed me some ugly animals on his phone... They did not tell me my rights they only teased me." [100]

"I did not know how to say what I was thinking because I did not know how they would react and whether it could get worse." [101]

[99] From an interview with a defendant with intellectual and psychosocial disability, female

[100] From an interview with a defendant with intellectual and psychosocial disability, male

[101] From an interview with a defendant with psychosocial disability, male

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

"Who am I to tell the judge that it isn't like that?" "When I say this is not true, they tell me to be silent." "How come he (the prosecutor) can speak lies about me and I cannot tell my opinion?" "You plead for an agreement in order to know for what and for how long you are going to jail. In case of an agreement, you do not participate, they only ask if you consent." [102]

"(A prosecutor to the defendant): [name in diminutiv], behave yourself! Get familiar with the case and speak only when the judge asks you." [103]

"No questions, they told me to sit down." [104]

» Person of trust or other support

Over half of those interviewed, particularly those with more complex mental health conditions, did not have a stable family environment. Throughout the proceedings, they had no one to lean on. Some had one person visit them in detention or come to court hearings, usually a family member or friend.

None of the interviewees received participation assistance, such as a communication facilitator, social worker, or psychologist. Other than those from the justice system, the only professionals mentioned were psychiatrists, doctors, and psychologists who were in the picture either for a routine check-up or to provide forensic expertise on the defendant's sanity/competency to stand trial.

One of the interviewees had previously attended a day-care social service in his town. However, no one from the service was informed of what happened to their client, and they were not permitted to visit or support him throughout the proceedings.

"There wasn't a single supporting person in court, only one orderly from the psychiatric hospital but he did not know a thing." [105]

"I put my hands in my pockets but he (the judge) got pissed off... My mother was inside at the time and tried to speak out but the judge said to her "If you speak once more, I'll put you out of the courtroom." [106]

[102] From an interview with a defendant with psychosocial disability, male

[103] From an interview with a defendant with psychosocial disability, female

[104] From an interview with a defendant with intellectual and psychosocial disability, male

[105] From an interview with a defendant with intellectual and psychosocial disability, male

[106] From an interview with a defendant with psychosocial disability, male

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

» Legal aid and right to access to a lawyer

Every interviewee stated that they were provided with a lawyer. What is puzzling is that they were all 'interviewed' by the police, and sometimes even arrested or hospitalised in a psychiatry, before a lawyer was called in.

Only three of the nine interviewees stated that they had a private lawyer. The rest were assigned a public defender, the general consensus being that they were inept, did not explain anything, and had little personal contact with their clients.

"A lawyer came to me one week before the trial. He didn't ask me anything, he said - "All is clear and settled"... nothing else" "I wanted my rights, to be secured." [107]

"The public defender was the same at the three trials in year '85, '91, 2011. The lawyer was 80 years old at the last one. The defendant saw him only in court. "He (the lawyer) just wanted to adjust to the situation. I told him he'd better keep quiet and I speak but the judge said that's not how it worked. Only when you are given the word." [108]

"He doesn't know the names of the lawyer and the investigating police officer. He doesn't have the lawyer's phone number. He has been hospitalised (in the psychiatric ward in the prison) for 4 months now and does not know anything about the case or how long he will be in prison for. The lawyer has not explained anything. He is thinking of asking to see the evidence himself because he doesn't understand anything." [109]

» Requests for and offers of accommodations

The interviewees reported no such requests/offers. In any case, nothing in their stories could be considered procedural accommodation. Quite the contrary. The tendency is toward exclusion rather than inclusion.

"I wasn't told that I could use support." [110]

[107] From an interview with a defendant with intellectual and psychosocial disability, male

[108] From an interview with a defendant with psychosocial disability, male

[109] From an interview with a defendant with psychosocial disability, male

[110] From an interview with a defendant with intellectual and psychosocial disability, male

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

» Adopting procedures

There have been no reports. The interviews show that police had little training and almost no knowledge of the rights of persons with disabilities. The majority of interviewees told stories about police abuse and mistreatment. Procedures were not modified at all, and defendants with disabilities were sometimes suspected of lying about their disability.

Justice appears to be administered formally while defendants with disabilities are double-stigmatised. First, because they are offenders in a punishment-centered system, and second, because their disability is commonly understood to equal general incapacity.

In addition, interviewees describe detention facilities as their worst experience overall.

"Within 24 hours, they took him to three district police stations giving testimonies for the same crime." [111]

"He felt tense and depressed (at the court hearing). His ears were buzzing. He told the lawyer about the way he felt but "he came to collect the money". His father was at the courtroom but he was not allowed to speak to him. He had shackles around his ankles but they were very tight and his leg got swollen. He told this to the escorting police officers but they said "when the hearing ends we will loosen them"." [112]

"He was detained for 3 months. He didn't feel well there. He was hearing the voices of his relatives and did not remember everything. He felt embarrassed to admit that he was hearing voices. Doctors visited him for a check-up, yet of his general health condition only. They didn't give him any medication nor did he have any treatment. They only prescribed him sleeping pills which were too weak. He needed psychological support." [113]

[111] From an interview with a defendant with psychosocial disability, male

[112] From an interview with a defendant with intellectual and psychosocial disability, male

[113] From an interview with a defendant with psychosocial disability, male

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

» Right to be present at trial (accessibility)

There was no mention of accommodation in this regard. The interviewees who were placed in psychiatric hospitals during their trials complained that they were not even informed of the status of their trials.

"Nobody in the psychiatric hospital informed me about the trial. They didn't tell me that there was a court trial going on. I was only informed about the summons, that I had a trial." [114]

"Half of the people in prison (the psychiatric ward in the prison) are tied up and don't know what's going on. It's like nothing is happening until the indictment is delivered." [115]

» Forensic expertise, compulsory treatment

If there is any methodology observed in working with disability in criminal justice, it would undoubtedly be one of the forensic expertise on insanity/incompetency to stand trial, which is requested almost every time an offender with disability is sent to trial. Almost all interviewees reported being the subject of such examination, which they described as superficial and formalistic.

Those who underwent compulsory treatment shared stories of complete isolation that lasted for years, as well as poor conditions and an inhumane attitude. The compulsory treatment was described as being limited to psychiatric medications and little in the way of leisure activities, with no indication of programs for rehabilitation and integration. There appears to be no alternative to the compulsory treatment, nor are there any support services for when the person recovers.

"This methodology (for forensic expertise on competency to stand trial) has been used in [name of a psychiatric hospital] for 30 years. The expertise – is this a triangle - it's a triangle. Is this a square - it's a square." [116]

"They asked me if I knew money. "I know it, I'm not like that." [117]

[114] From an interview with a defendant with intellectual and psychosocial disability, male

[115] From an interview with a defendant with psychosocial disability, male

[116] From an interview with a defendant with psychosocial disability, male

[117] From an interview with a defendant with intellectual and psychosocial disability, male

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

“They did the forensic expertise in 15-20 minutes. He did not understand what it was about.” [118]

“I prefer prison to psychiatric hospital where I will be slobbering.” [119]

“I wanted to speak to a lawyer from Geneva over the phone but I wasn't allowed. The nurses hated me and did not help me.” “I didn't talk to anyone. I stayed at the room (in the psychiatric hospital) as a prisoner and nothing else. Alone.” “I need someone to help me.” “He has no personal clothes or items in the psychiatric hospital. They gave him some old, torn pieces of clothing. It is cold there.” [120]

“They worn me out with injections and concluded I was a psychopath. They did not tell me why (what is the reason for the injections). The doctor only asked “Are you hearing voices?”, “I am not hearing any voices, I am a normal person” I responded. “If you are not hearing voices, your place is in prison. But let's wait and see, you might start hearing them”. “When out of prison, the police was waiting for him at the gate, handcuffed him and took him to the psychiatric hospital, made him sign voluntarily that he needed a treatment in order to adapt. There he was put in a solitary confinement for two weeks which then became 2-3 years. They didn't explain why he was in a solitary confinement. “That's how it is done” they said.” [121]

“Some people spend 20 years in a (psychiatric) hospital. There has to be more support/services to get out.” [122]

[118] From an interview with a defendant with psychosocial disability, male

[119] From an interview with a defendant with psychosocial disability, female

[120] From an interview with a defendant with intellectual and psychosocial disability, male

[121] From an interview with a defendant with psychosocial disability, male

[122] From an interview with a defendant with psychosocial disability, male

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

02 Criminal justice professionals' experiences

“It is a formal process, challenging for everyone” [123]

» Identification of disability

There is no methodology for identifying disability, according to the interviewees from this group. When there is no medical documentation, justice professionals must rely on their personal sensitivity. If they believe there is something "wrong" with the way the person communicates or behaves, and they have gathered sufficient evidence for the crime, they will file a request for forensic expertise. A psychiatrist and a psychologist conduct the expertise, which is designed to determine the person's sanity/competency to stand trial. Some interviewees believe the expertise is diagnose-centered and prejudiced. The conclusions of the expertise are frequently accepted by justice professionals and then dominate the entire justice process.

“Also the risk of over-significance of the forensic expertise, for which I do not think we have sufficient legal framework (standardisation and requirements) and all this sometimes allows for arbitrary expert conclusions which untrained magistrates cannot effectively control. This way a diagnosis can become something more stigmatising than a court sentence.

Disability can be called by psychiatrists “defensive behavior” when confusing it with uncooperativeness.

The diagnosis itself together with the forensic expertise can totally eliminate the person as a participant.

If any attention is paid at all, it is only to answer the question whether the person acted in sanity or not but not to look from the perspective of what the person needs in order to effectively participate in the process.” [124]

[123] From an interview with a lawyer

[124] From an interview with a judge

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

02 Criminal justice professionals' experiences

» Procedural accommodations

All participants in this group agreed that, aside from sign language interpreters, no procedural accommodations are regulated or provided in practice. Without any facilitation, information and communication are delivered in a formal manner. Information on defendants' rights is provided in the form of a small-lettered paper declaration that is handed over to the person to sign or, at most, a police officer reads it aloud to the person and instructs on what to fill out.

According to some interviewees, the practice is to inform the person of their rights only after sufficient evidence is gathered to prove that there is a crime and that this specific person is allegedly the perpetrator of that crime. Only then is the perpetrator given a formal role in the proceedings, that of "an accused." Previously, this person was a nobody in the legal system and thus had no rights. According to one of the interviewees, there used to be a "suspect" under the law, but it was intentionally removed because "suspects" were thought to manipulate the process by knowing from the start that they were the one suspected of the crime.

"The police talk with the person in his capacity of a citizen. Only as a citizen. But these interviews, that the police do with the person, have no procedural value. They serve as some kind of orientation for the investigating police officer and the prosecutor.

...

Very often we work without their cooperation, without any communication with them. They come to us to bear their responsibility, not to get integrated or to communicate in some way with them, not even to explain so they understand what it is about." [125]
"Persons usually get informed about their rights when they become 'accused'. Exactly upon serving the indictment, when perpetrators might have already incriminated themselves. A very serious problem. Very often the authorities explain the rights with "you know them already"." [126]

[125] From an interview with police investigating officers

[126] From an interview with a lawyer

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

02 Criminal justice professionals' experiences

“The role of a suspect does not exist, it did in the past, but it was making the process more difficult, that’s why it was removed. Suspects manipulated the process. Therefore, at present perpetrators only gain rights after evidence is gathered and they have been summoned as ‘accused’. By the time of indictment, the investigating police officers do only “interviews” and “check-ups” which do not count as valid evidence and are not considered as part of the criminal proceedings.” [127]

“About police interviews - I am not sure whether their rights are being explained. I think that they maybe even deceive people that there is no problem, that this will not last long, that there will be no consequences and they do not need a lawyer. But the situation changes afterwards. It is easier to work this way.” [128]

» **Forensic expertise, compulsory treatment**

This group's interviewees all agreed that forensic expertise on insanity/incompetency to stand trial plays a critical role in criminal proceedings. Some interviewees felt that communicating with the offender before the expertise was completed and it was clear whether the person was criminally liable or not, was a waste of time. Defendants with psychosocial disabilities, according to interviewees, are generally assumed to be incompetent to stand trial. As a result, such individuals are frequently suspected of lying or exaggerating their disability in order to avoid criminal liability.

At the same time, compulsory treatment is the only option for those unable to stand trial, and interviewees described it as the worst form of incarceration compared to prison. It was explained that persons with disabilities were afraid of and reliant on the medical staff at these locations. Compulsory treatment is also described as a dead end for defendants with disabilities, as many of them stay for years due to poverty and a lack of community support or a reintegration plan.

“...the psychiatric expertise is a big problem because usually we do not get to know much about the persons. They contain some formal words and there are forensic psychiatrists whose expertise... if you read them, you would say that all people are the same.” [129]

[127] From an interview with a prosecutor

[128] From an interview with a lawyer

[129] From an interview with a lawyer

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

02 Criminal justice professionals' experiences

“The system prejudices disability as a form of avoiding of responsibility and corruption.” [130]

“His case is obvious – he commits a crime, he goes to a psychiatric hospital, forcibly put there for a certain period of time. After being discharged, he does something else and it all repeats. What I am saying is that there is no institution which to try to provide these people with support.” [131]

» **Attitudes and training / awareness**

All interviewees shared stories of discriminatory and prejudiced attitude towards defendants with disabilities. Along with that, there is lack of proper training to justice professionals.

“Very often they would take advantage of their weakness (the disability) in order to speed-up the process and make the person confess to the crime...if, of course, criminally liable.” [132]

“There are no trainings, only random ones by NGOs, with no sustainability.” [133]

“The lack of knowledge on how to approach eventually puts society and police, and persons with psychosocial disabilities at risk. In my opinion, training, preparation, and teamwork are essential, especially when dealing front-line with crisis. There coordination fails between medical services and police.” “Knowledge to all professionals through training and information to society, then legislative change. Should a legislative change without knowledge goes first, this change might be harmful.” [134]

[130] From an interview with a judge

[131] From an interview with investigating police officers

[132] From an interview with a lawyer

[133] From an interview with a lawyer

[134] From an interview with a judge

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

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

» Identification of disability

The interviewees in this group all agreed that there is no methodology or training for justice professionals on how to identify a mental disability. Often, disability goes unnoticed, or there is prejudice that the disability is being faked by the person to avoid criminal liability, or that these are people "who fantasise about things." Sometimes a person's behaviour is misinterpreted as disobedience or a refusal to cooperate.

"...his provocative behaviour in crisis might be misunderstood and he might be approached in an aggressive way and to respond with aggression himself... and the police officer, in self-defence, pulled out a gun and shot him in the stomach." [135]
"The investigating police officers and the prosecutor tend to assume in the beginning that the person fakes (disability) to avoid criminal liability." "In general, neither police officers nor prosecutors are trained to recognise first symptoms of disability. There is not any such regulation anyway...what to do." [136]

» Procedural accommodations

There was no evidence of procedural accommodations provided to defendants with disabilities. Neither a request nor an offer. According to this group of interviewees, information is scarcely available or is provided in inaccessible formats or manners. Communication with defendants with disabilities is even avoided, and when it does occur, no special tools or support professionals are used to ease the process. There is no support system in place to ensure that defendants with disabilities can participate effectively, nor are adjustments made to the proceedings or the environment. Good practices are mentioned as being rare and random, carried out by non-governmental organisations, and with little chance of sustainability.

"It doesn't come to the person's mind that he has the right to say (to the judge) – I cannot hear. Later, it turns out that his hearing is lowered...nobody asked him (the judge thinks he twists and turns)." [137]

[135] From an interview with a psychologist from a human rights NGO

[136] From an interview with a researcher from a human rights NGO

[137] From an interview with a psychologist

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

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

"The person is left without a relationship of trust. Doctors don't give him information, his public defender tells him that everything is clear..." [138]

"The Judicial System Act requires judges to be much more operative in proceedings than the inclusion of a person with psychosocial or intellectual challenge assumes." "He will be given a detention order after being hours in the police station and he will be given the declaration with his rights in written form and be told, if he cannot manage filling it out, where precisely to put NO." "The detention order does not explain the reason for detention, it only contains an article from the Criminal Procedure Code, which is not clear even to persons without disabilities." "The entire criminal justice process is not adapted to the needs of persons with disabilities." "A large part of our findings over the years have not been about their complaints because many of these people were completely unaware of what was going on during the process and had no idea what their procedural rights were." [139]

» **Forensic expertise, compulsory treatment**

This group of interviewees also believes that the medical model dominates the justice system as an attitude toward disability. The forensic expertise on insanity/incompetency to stand trial is central to the justice process. Again, the expertise is described as formal and focused on the persons' inabilities rather than their abilities and specific needs in order for the person to be included. There are no clear guidelines for carrying out the expertise. Forensic experts (psychiatrists and psychologists) are scarce, underpaid, and poorly trained. There are no other options for treatment and rehabilitation besides compulsory treatment, which has been described as excessively long, among other things.

One of the interviewees mentioned a negative phenomenon regarding expertise for insanity/incompetency to stand trial: after the expertise is completed and the person is sent for compulsory treatment, the court closes the case and the person's guilt with regard to the crime is never investigated.

[138] From an interview with a psychologist

[139] From an interview with a researcher from a human rights NGO

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

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

"So, it might turn out that psychiatric hospitals admit people who indeed has no connection with the crime than they are victimised or used." "The medical model remains in the administration of justice, i.e. the diagnose is dominating. Absolutely and automatically, when there is a diagnose, it brings along a set of 'inabilities' with regard to the person without this being individually examined. Often, in these psychiatric expertise we see one and the same content about the same people without reflecting any specifics in the functioning of these people..." [140]

"The state is missing when it comes to persons with psychosocial disabilities...they are either placed in institutions or in psychiatric hospitals to die." [141]

"Alternative systems and services are lacking and even if the judge is progressive, he/she knows that there is nowhere else to send the person, apart from, for example, compulsory treatment." [142]

"3-5 years of compulsory treatment under Art. 92 of the Criminal Procedure Code (addictions)... what for...they need detox and then to find them a job." [143]

» Attitudes and training/awareness

All interviewees in this group agreed that there was inadequate training and awareness among all justice professionals about the rights of persons with disabilities, especially when they were defendants. There is also the stigma associated with disability, which, among other things, taints the presumption of innocence. Furthermore, the court is viewed as a punitive institution rather than a protector of human rights.

"The court makes no effort to communicate with a person with intellectual issues. It is often assumed that the person is the perpetrator based on the disability and there are hardly any court proceedings. From our experience, persons with intellectual disabilities go to prison much more often than persons with psychosocial disabilities." [144]

"The Bulgarian court is not perceived as a body which guarantees rights than a punishing institution." [145]

[140] From an interview with a social worker from a human rights NGO

[141] From an interview with a psychologist

[142] From an interview with a researcher from a human rights NGO

[143] From an interview with a psychiatrist

[144] From an interview with a social worker from a human rights NGO

[145] From an interview with a social worker from a human rights NGO

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

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

“Being different means different treatment.” “It is either sane or insane. Well, that’s not true. There is so much in between and there must be willingness to explore it. There are judges who have the sense for it and they do it, but are very few.” [146]

“An extremely high level of ignorance about the Convention (CRPD), including courts. There is hardly any judge familiar with CRPD, let alone recognising it as part of the Bulgarian law. The ECHR is known better but few refers to it. Universities and law faculties do not teach human rights. Said that, rights of persons with disabilities are widely unknown. Legal aid is maybe one of the most problematic areas. In most cases, lawyers see their client (for a first time) at the courtroom. I have heard lawyers making statements in absolute contradiction with the interest of the person.” “We found out that lawyers are not prepared at all to communicate with such detainees, let alone being able to protect their rights and interests.” [147]

[146] From an interview with a psychologist

[147] From an interview with a social worker from a human rights NGO

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

04 Brief analysis of patterns

All three groups of interviewees had similar experiences. Patterns can be identified in terms of capacity, with the majority of defendants reported to be the subject of medical expertise on insanity/incompetency to stand trial. If they are determined to be insane/incompetent, they are sentenced to indefinite confinement without further examination of their intent and other attitudes toward the alleged crime.

During the pre-trial phase, the police frequently conduct initial interrogations without providing the individuals with a procedural role or a lawyer.

Defendants with disabilities are typically kept in information and communication isolation because it is assumed that they are unable to perceive reality "normally".

Disability is frequently misunderstood until confirmed by a psychiatrist. It is sometimes taken for a lack of cooperation or a false pretense in order to get away with a crime. Most justice professionals, including lawyers, are unaware of the CRPD. Training on disability rights is haphazard and inadequate.

Apart from the one straightforward provision about sign language interpreters, the long history of prejudice and medical approach to disability appear to leave no room for procedural accommodations.

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

05 Intersectionality

Our conclusions will be incomplete unless we address the problems' intersectionality. Poverty, prejudice, poor education, and a lack of supportive community-based services are the pillars of interdependent disadvantage systems in which defendants with disabilities are frequently the victims.

According to the male and female defendants interviewed, men with psychosocial issues are frequently assumed to be aggressive and dangerous. This is why police officers choose to use force against male defendants with disabilities, particularly during initial contact, such as arrests. Despite having a higher level of adaptability and knowledge of the justice system than male defendants, female defendants are heavily patronised by all justice professionals.

“Crimes are often due to social reasons. After treatment (in a psychiatric hospital), there is no support outside. Only protected group homes.” [148]

“There are two options for drug addicts in Bulgaria – the prison or the grave.” [149]

“She asked for a house arrest (instead of prison), but she does not have a home address because she lives in a shelter for homeless people.” [150]

“Persons with very low intellectual capacity usually had little or no contact with the education system or were dropped out of school from the very beginning and this is also connected to the family environment because all their relatives have no education and did not attend school. Most of their doings against other people are out of instinct for self-preservation and survival on physical level.” [151]

[148] From an interview with a psychiatrist

[149] From an interview with a defendant with psychosocial disability

[150] From an interview with a defendant with psychosocial disability

[151] From an interview with a lawyer

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

Best practices

Only one good practice in the field was mentioned by the interviewees: an NGO assessment of the social functioning of persons with disabilities. The assessment was designed to be used in all court cases involving persons with disabilities. Its goal is to provide analyses to the court on the person's social functioning and special needs, primarily for effective participation in the trial, but also to protect the person's rights and interests in general. However, the practice is relatively new and has only covered a small number of cases thus far. [152]

Main recommendations

Defendants with disabilities interviewed made few recommendations, mostly centered on improving detention conditions (arrest establishments) and police attitudes.

The group of justice and support service professionals discussed the need for vulnerability identification training and made recommendations for a multidisciplinary approach to working with defendants with disabilities. Communication was identified as a more pressing issue, and a recommendation was made for a communication facilitator or other supporting person who has a trusting relationship with the defendant and is familiar with how he or she communicates.

There was also a general recommendation for a community-based support system as a tool for crime prevention.

[152] There is a video explaining the aim of the assessment and how it can be used, available at: <https://www.youtube.com/watch?v=jtQUPc9uUj8>. So far, this instrument is used mostly in civil law cases.

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CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS AND RECOMMENDATIONS

01 Conclusions

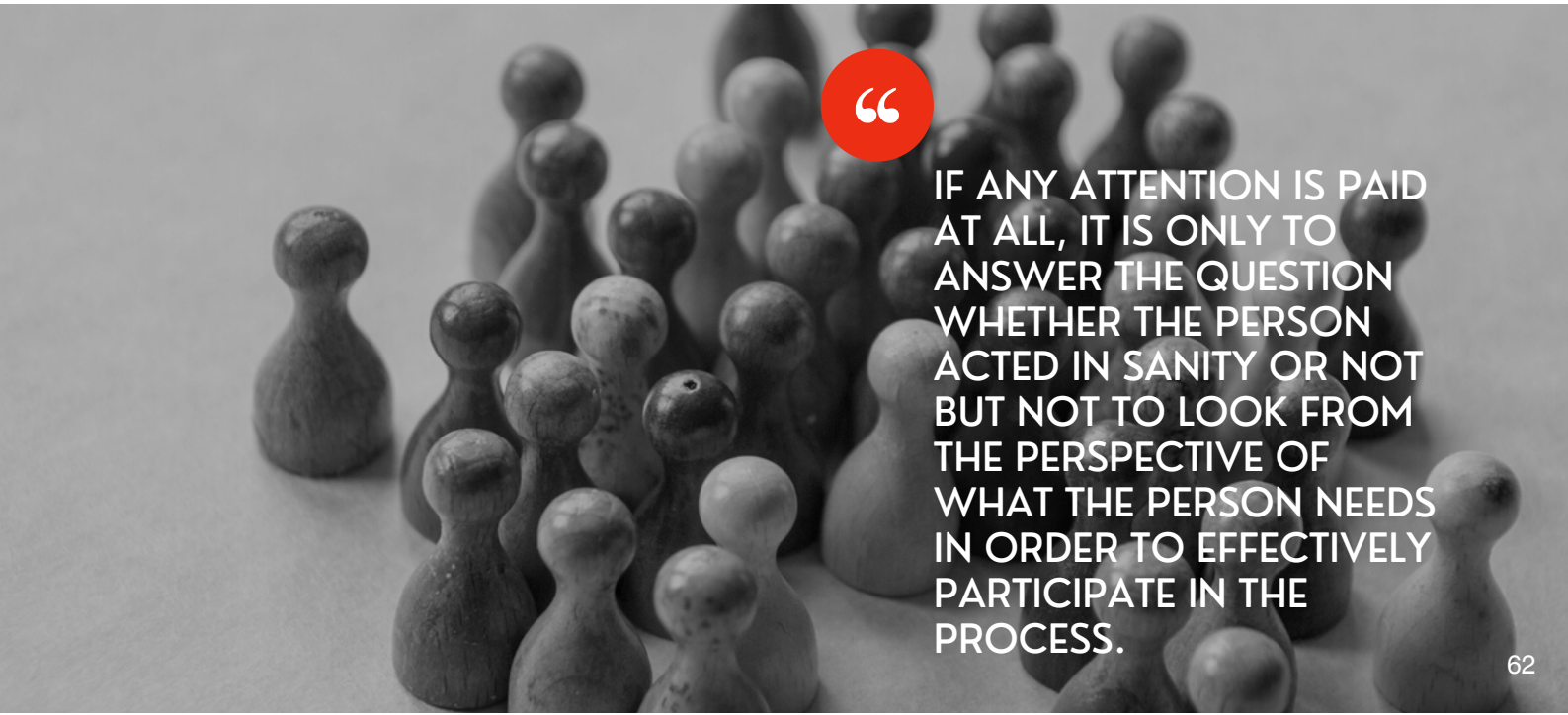
The aim of this national briefing paper was to provide an overview of the main national barriers- and best practices to overcome the main gaps regarding access to justice and provision of procedural accommodations to defendants with intellectual and/or psychosocial disabilities in Bulgaria. The study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

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

Bulgaria has had guardianship for many years. Although recent legislation allows for supported decision-making, no implementation has occurred thus far, and there is no political will or understanding that supported decision-making will replace guardianship. In addition, forensic expertise on insanity defense/incompetency to stand trial is widely used in cases involving defendants with mental disabilities, where the capacities of the persons are primarily assessed by psychiatrists.



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IF ANY ATTENTION IS PAID AT ALL, IT IS ONLY TO ANSWER THE QUESTION WHETHER THE PERSON ACTED IN SANITY OR NOT BUT NOT TO LOOK FROM THE PERSPECTIVE OF WHAT THE PERSON NEEDS IN ORDER TO EFFECTIVELY PARTICIPATE IN THE PROCESS.

CONCLUSIONS AND RECOMMENDATIONS

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Even if they are found to be sane/competent to stand trial, defendants with disabilities are frequently treated as if they do not know what is best for them and do not perceive reality correctly. This approach results in their right to legal capacity being denied and them being excluded from the proceedings.

Procedural accommodations, on the other hand, are provided in very few cases, adding another barrier to exercising the right to legal capacity.

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

Procedural accommodations are not yet recognised as a state obligation nor a right of the defendant with disabilities. Apart from the requirement for sign language interpreters, it is possible to conclude that no actual procedural accommodations are in place.

In recent years, one good practice by an NGO has been tried out. It is concerned with assessing the social functioning and specific needs of persons with disabilities during court proceedings. This tool, however, has not yet been used for defendants with disabilities.

Aside from that, the country has only a few progressive judges and lawyers who are sensitive to the needs of defendants with disabilities and work hard to ensure equal treatment and participation.

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

CONCLUSIONS AND RECOMMENDATIONS

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As previously stated, aside from sign language interpreters who may be appointed during the course of the proceedings, there are no adjustments or support available to aid in information comprehension. On the contrary, our research shows that information and communication are delivered in an inaccessible manner, even to people who do not have disabilities.

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

In Bulgaria, justice for defendants with disabilities is primarily organised around the concepts of insanity defense/incompetency to stand trial and compulsory treatment. This, combined with the country's long history of stigmatising persons with disabilities, undermines the presumption of their innocence. The most upsetting practice is that the case is closed once the defendant is declared insane/incompetent. Then, defendants with disabilities do not have access to the same defenses as other defendants, such as self-defense, duress, and the absence of mens rea (intent). Nonetheless, these defendants are placed in psychiatric hospitals for compulsory treatment for an indefinite period of time, which may sometimes exceed the length of imprisonment envisaged for the same crime.

According to our findings, disability can also lead to abuse and unnecessary coercion, and is frequently misinterpreted as disobedience or intentional faking.

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

CONCLUSIONS AND RECOMMENDATIONS

01 Conclusions

Officially, defendants with disabilities are always assigned a public defender unless they hire their own private attorney. However, a serious issue is the lack of proper training for public defenders and all lawyers in general. Defendants with disabilities are frequently left in the dark about what is going on in the proceedings, with the impression that they were not properly defended and that they were alone in the process.

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

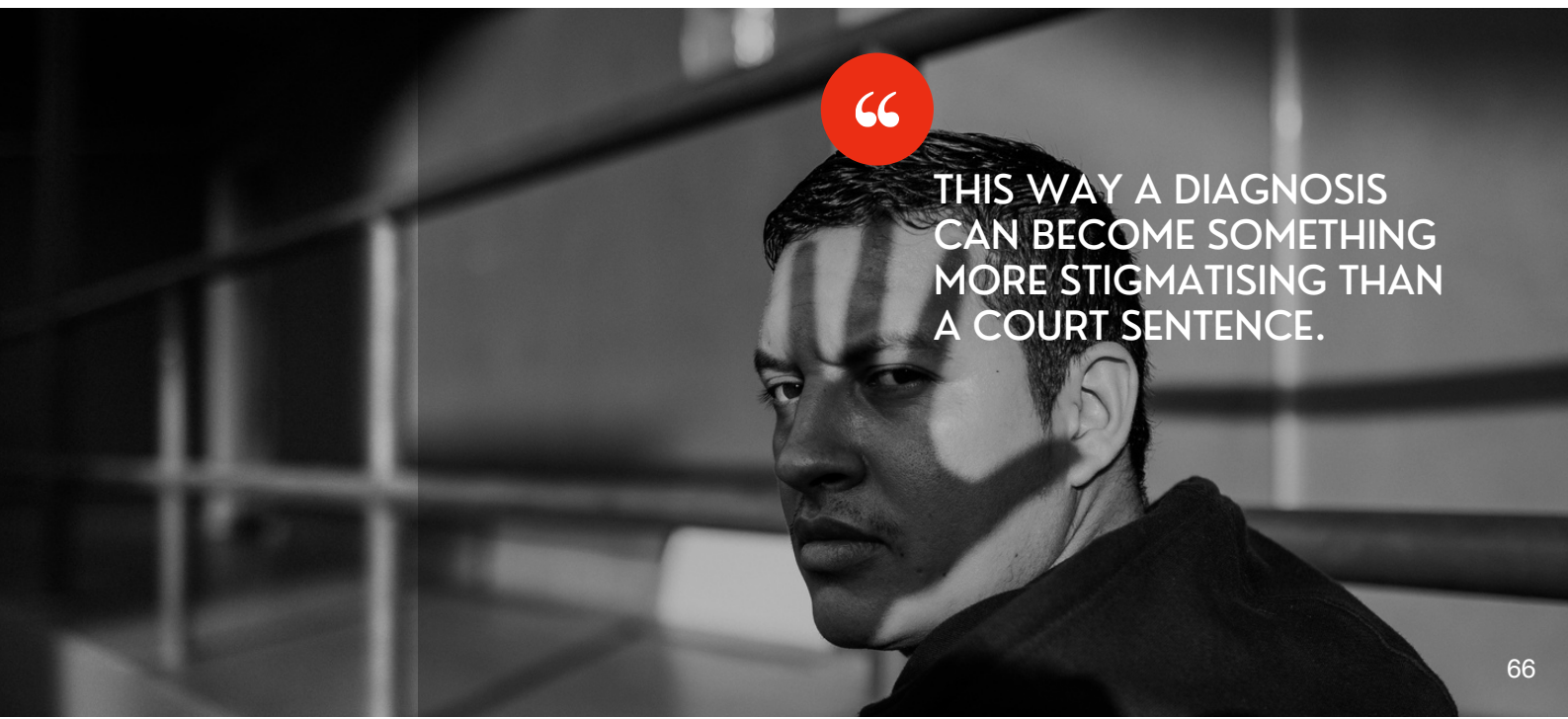
According to the research, training for justice professionals on the rights of persons with disabilities in general is sporadic, if at all. The attitudes of the justice system reveal little knowledge of the rights guaranteed by the CRPD, while being dominated by prejudice and a medical approach.

CONCLUSIONS AND RECOMMENDATIONS

02 Recommendations

Bulgaria has a long history of prejudice and stigmatisation of persons with disabilities, as well as legislation that reflects that history. On a purely legislative level, we would advocate for the coherence of disability and criminal legislation with the CRPD principles. The International Principles and Guidelines on Access to Justice for Persons with Disabilities provide a useful set of tools and guidance on how to design inclusive and equitable justice systems. The country's new disability laws are a step toward equality, but their implementation thus far suggests a lack of knowledge and understanding of core principles such as legal capacity.

The criminal justice system in Bulgaria, like in many other countries, requires that a defendant have a certain level of "mental capacity" before being put on trial, which is defined by most doctrines as competency or capacity to stand trial. The decision about a defendant's ability to participate is mostly based on the opinions of forensic psychiatric experts who have been specifically asked to assess this ability. Courts may disregard expertise on occasion, but clinical opinion usually prevails. In this way, a medical diagnosis can be used to justify excluding a person from equal participation in the justice system.



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THIS WAY A DIAGNOSIS
CAN BECOME SOMETHING
MORE STIGMATISING THAN
A COURT SENTENCE.

CONCLUSIONS AND RECOMMENDATIONS

02 Recommendations

Findings of insanity defense and incompetence to stand trial result in the loss of procedural safeguards, including a complete lack of standing to participate in legal proceedings, and result in long periods of psychiatric hospital detention (compulsory treatment). As a result, disability is "converted into the core cause of detention." Because of the periodic extensions of the compulsory treatment, "defendants may be in the criminal justice system much longer than if they were traditionally sentenced."

This also raises serious concerns about the presumption of innocence: a person may be detained for years for compulsory treatment without the court examining the person's actual attitude and intent toward the crime. In Bulgarian criminal justice, defendants with disabilities must have equal access to all defenses, including lack of intent (*mens rea*), self-defense, duress, and so on. "This means that defendants with disabilities should be judged based on their actual state of mind at the time of committing the acts, taking into account how the formation of intent or construction of knowledge with respect of the crimes charged may have been affected by the person's subjective perception or experience of distress. Irrespective of whether it conforms to what others might imagine as reasonable or expected. Consideration of the subjective dimension of the mental element of a crime is required to ensure persons with disabilities have the opportunity to benefit from the doctrine of *mens rea* on an equal basis with others. Moreover, defendants should be able to present evidence related to the existence of oppression, unbalanced power relations, or violence and how these impact on the defendant's perceptions. In other words, in considering *mens rea* subjectively it is necessary to take into account contextual aspects, so as to ensure that disability is considered in a social context." [153]

Insanity defense and incompetency to stand trial can and should be abolished. Compulsory treatment cannot accomplish the goal of crime prevention. Bulgaria must abolish any capacity-based processes in the criminal justice system.

[153] All quotes and citations in this section with regard to insanity defence and competency to stand trial are from 'Implementing the CRPD in criminal justice systems – briefing paper', R. Fleischner, Access to Justice Knowledge Hub, July 2022, not publicly available

CONCLUSIONS AND RECOMMENDATIONS

02 Recommendations

In place of the insanity/incompetency to stand trial law, the state should establish mechanisms to support and accommodate persons with disabilities in the criminal justice system. This could include the use of communication facilitators (intermediaries), advocates, and other support individuals and processes. Restorative justice may be a fair way to divert defendants with disabilities away from the criminal justice system. Improving the public defense system is another important step that will aid in the process of eliminating capacity-based interventions. Public defenders and all lawyers “must understand the impact of criminal justice system on persons with disabilities, communicate effectively, and recognise and be faithful to the tenants of legal capacity.”

Reform may eventually save money by "eliminating the existing very costly systems", such as stationary forensic expertise and compulsory treatment, and replacing them with less expensive community-based support and services.

Because legal capacity of persons with disabilities is the mother of most principles, including access to justice, we criticise EU directives on access to justice for failing to address more firmly issues such as insanity defense, incompetency to stand trial, and compulsory treatment, which are all part of many criminal justice systems in the EU.

Any criminal justice reform must consider crime prevention. Our research reveals stories of defendants with disabilities who struggled with poverty, had little or no education, and had no community support other than psychiatric care. Thus, preventing crime and recidivism would necessitate an intersectional approach in the first place, as well as the establishment of an effective system of community-based services.

Last but not least, policymakers are advised to put persons with disabilities who have lived through the criminal justice system at the center of all reform efforts.

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ANNEXES

ANNEXES

Annex 1 - Profile of the interviewees

ID	Interviewee*	Sex	Age	Duration of the interview	Years when had contact with the justice system	Type of interview (remote, on-site, other)	Other relevant information
BG/DPS/M/01	Person with psychosocial and intellectual disability	Male	66	40 minutes	Since 2022	On-site	In psychiatric hospital for 15 months.
BG/DPS/M/02	Person with psychosocial disability	Male	53	39 minutes	Since he was 15 years old	On-site	Was in prison for 20 years, with lived experience of compulsory treatment
BG/DPS/M/03	Person with psychosocial disability	Male	45	64 minutes	Since 2021	On-site	Long experience with the psychiatric system
BG/DPS/M/04	Person with psychosocial disability (drug addiction)	Male	27	40 minutes	Since 2019	On-site	In compulsory treatment for drug addicts since 2021. No recording was allowed
BG/DPS/M/05	Person with psychosocial disability	Male	51	40 minutes	7 years	On-site	In prison for 7 years now. No recording was allowed.
BG/DPS/M/06	Person with psychosocial disability	Male	32	40 minutes	By 8th grade of school he had many detentions, due to alcohol and drugs, by the age of 24 he had three convictions	On-site	In the psychiatric ward of the prison for psychiatric treatment. No recording was allowed.
BG/DPS/M/07	Person with psychosocial and mild intellectual disability	Male	39	40 minutes	Since 202	On-site	In the psychiatric ward of the prison for 4 months now, due to suicidal attempts while in custody. No recording was allowed.

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BG/DI&DPS /F/01	Person with psychosocial and intellectual disability	Female	37	40 minutes	Since childhood	On-site	The interview took place in prison, in the presence of the prison social worker. No recording was allowed.
BG/DI&DPS /F/02	Person with psychosocial and intellectual disability	Female	35	40 minutes	1 year	On-site	In prison now, outside lives in shelter for homeless people. The interview took place in prison, in the presence of the prison social worker. No recording was allowed.
BG/L/M/01	Lawyer	Male	47	40 minutes	20 years experience as a lawyer	On-line	Experience with defendants with drug addictions prevalingly
BG/L/M/02	Lawyer	Male	38	70 minutes	Public defender	On-line	Works in a small court district with one of the biggest psychiatric hospitals in the country.
BG/P/F/01; BG/P/F/02; BG/P/F/03; BG/P/M/04	Police	Female Female Female Male	40 - 42	40 minutes	Four investigating police officers	On-site	Work in a small town. All four were interviewed together. No recording was allowed.
BG/J/F/01	Judge	Female	30-45	60 minutes	Judge in a small court district	On-line	Extensive experience with cases of persons with disabilities.

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BG/J/M/02	Prosecutor	Male	57	40 minutes	33 years as investigating police officer first and now prosecutor	On-site	The interviewee did not consent to recording.
BG/S/F/01	Psychologist	Female	64	52 minutes	Psychologist since 1981, court expert for more than 20 years	On-site	Experience in pre-trial phase and forensic expertise
BG/S/F/02	Psychologist	Female	66	20 minutes	15 years as a psychologist and a director of a social services complex for persons with mental problems	On-site	She was present at the interview of one of the defendants as his support person. She also gave an interview herself.
BG/S/M/01	Psychiatrist	Male	55	90 minutes	20 years in forensic psychiatry	On-site	Director of a psychiatric ward. No recording was allowed.
BG/HR/F/1	Human rights NGO/social worker	Female	48	35 minutes	25 years in the disability rights field	On-site	Director of a NGO with extensive experience in creating and lobbying for practices in mental disability rights field, which is also a social service provider
BG/HR/F/2	Human rights NGO/researcher	Female	47	67 minutes	24 years in the disability rights field	On-line	Researcher and disability rights advocate with extensive experience

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ID	Interviewee*	Sex	Age	Duration of the interview	Years when had contact with the justice system	Type of interview (remote, on-site, other)	Other relevant information
BG/HR/F/3	Human rights NGO/ psychologist	Female	42	47 minutes	14 years in mental health care	On-site	Director of a social services complex, managed by a NGO.

* First the interviewees were asked to read the informed consent form, and only after it was read and signed did the interview and its recording begin.