

**LITHUANIAN NATIONAL**

**DISABILITY BENCH BOOK**

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# 01

**ABOUT THE  
BENCH BOOK**

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## 1.1. Background

Irrespective of whether they are victims, witnesses or alleged perpetrators of crime, persons with mental health conditions and various disabilities have significant difficulties in accessing justice and engaging with criminal justice professionals: police officers, lawyers, prosecutor authorities and judges. At the same time, while reported to be four to ten times more likely to be abused (including sexually) than their peers without disabilities<sup>1</sup>, individuals with psychosocial and intellectual disabilities - especially those placed in residential settings<sup>2</sup> - face significant exclusion from justice processes and violations of their fair trial rights<sup>3</sup>. Outdated laws do not recognise the legal capacity and standing of individuals with psychosocial and intellectual disabilities and omit to detect the disability and provide the needed support to access information and communicate. Further, outdated laws do not offer procedural accommodations, they lack access to effective legal advice and perpetuate attitudinal barriers of the criminal justice actors (CJA). Their lack of specialisation, trainings are among the systemic challenges faced by persons with intellectual and psychosocial disabilities that are participating in criminal proceedings in the EU.<sup>4</sup>

At the same time, the UN Convention on the Rights of Persons with Disabilities<sup>5</sup> (CRPD), which was ratified by the European Union<sup>6</sup> and all its Member States without reservations<sup>7</sup>, places significant obligations on states to identify and eliminate obstacles or barriers and take proactive, systemic measures to ensure that all persons with disabilities can equally exercise their right to access to justice. Nevertheless, although the relevant EU Directives<sup>8</sup> and Member-states' legal frameworks recognise the need to support the access to justice of people with hearing, sensory or physical disabilities, the legislation remains silent to the specific needs and barriers of persons with intellectual and psychosocial disabilities<sup>9</sup>. This is despite that – very often - the same type of measures are provided throughout the criminal proceedings to other groups in vulnerable situation that may requires similar assistance , such as minors or

<sup>1</sup> Disability Justice, 'Justice Denied: Abuse and Exploitation' <https://disabilityjustice.org/justice-denied/abuse-and-exploitation>

<sup>2</sup> Amelink Q, Roozen S, Leistikow I, Weenink JW. Sexual abuse of people with intellectual disabilities in residential settings: a 3-year analysis of incidents reported to the Dutch Health and Youth Care Inspectorate. *BMJ Open*. 2021 Dec 6;11(12):e053317. doi: 10.1136/bmjopen-2021-053317. PMID: 34873008; PMCID: PMC8650479.

<sup>3</sup> Smith, T. (2023). *Autism and Criminal Justice. The Experience of Suspects, Defendants and Offenders in England and Wales*. Routledge.

<sup>4</sup> Validity Foundation, [Fair Trial Denied: Defendants with Disabilities Face Inaccessible Justice in the EU](#), 2024.

<sup>5</sup> UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, A/RES/61/106, 24 January 2007, <https://www.refworld.org/legal/resolution/unga/2007/en/49751>

<sup>6</sup> The European Union ratified the CRPD on 23 December 2010.

<sup>7</sup> With some exceptions mentioned here:

[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en)

<sup>8</sup> Directive on the right to interpretation and translation in criminal proceedings (2010/64/EU); Directive on right to information in criminal proceedings (2012/13/EU); Directive on the right of access to a lawyer in criminal proceedings (2013/48/EU); Directive on strengthening of certain aspects of the presumption of innocence and on the right to be present at the trial in criminal proceedings (2016/343/EU); Directive on legal aid for suspects and accused persons in criminal proceedings (2016/1919/EU); Directive on procedural safeguards for children suspected or accused in criminal proceedings (2016/800/EU)

<sup>9</sup> e.g. the Directive 2010/64/EU on the right to interpretation and translation guarantees the right to a foreign language interpreter and assistance for people with hearing or speech disabilities in criminal proceedings. Cognitive barriers—difficulties understanding procedures and providing accommodations — are left out. Similarly, the Directive 2012/13/EU on the right to information in criminal proceedings ensures defendants with hearing or speech disabilities have access to information about their rights, accusations, and case materials. The directive as well does not require this information to be accessible for defendants with cognitive barriers.

women-victims of domestic or sexual violence.<sup>10</sup> For those few states that *have* put in place support mechanisms, the measures extend only to persons with intellectual and psychosocial disabilities that participate in proceedings as victims, leaving outside other participants.<sup>11</sup> There are also countries that have gone ahead to regulate some of these vitally important support mechanisms, allowing also CJA to use the services of a professional facilitator who assess the participants' needs and carry out the accommodation tasks<sup>12</sup> or use procedural documents written in accessible language<sup>13</sup>.

Despite these setbacks, we see that many CJA from all assessed countries continue to provide support measures to participants in criminal proceedings with intellectual and psychosocial disabilities, including defendants. Despite the lack of legislation and necessary national regulations, CJA sometimes use accessible language, speak at a slower pace, and take breaks between phrases to allow information to be processed, they also collaborate with specialized NGOs to assess accommodation needs and allow family members to support the participants with intellectual and psychosocial disabilities throughout the criminal justice process.

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

## 1.2. Who is this Bench Book for?

The key audiences for this Disability Bench Book are judges, prosecutors, lawyers, law enforcement officers and other professionals (broadly referred to as CJA) working on criminal cases involving persons with mental health conditions, intellectual and/or psychosocial disabilities. While the focus of this Bench Book is on defendants in criminal justice settings, the principles, standards, and recommendations made herein may be applicable to other participants in criminal proceedings who experience these types of disabilities, such as victims and witnesses, as well as in broader contexts, including in civil proceedings.

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<sup>10</sup> e.g. the Directive 2010/64/EU on the right to interpretation and translation guarantees the right to a foreign language interpreter and assistance for people with hearing or speech disabilities in criminal proceedings. Cognitive barriers—difficulties understanding procedures and providing accommodations — are left out. Similarly, the Directive 2012/13/EU on the right to information in criminal proceedings ensures defendants with hearing or speech disabilities have access to information about their rights, accusations, and case materials. The directive as well does not require this information to be accessible for defendants with cognitive barriers.

<sup>11</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>

<sup>12</sup> Plena Inclusión, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Spain' (2023) <https://www.plenainclusion.org/publicaciones/buscador/briefing-paper-on-barriers-faced-by-defendants-with-intellectual-and-or-psychosocial-disabilities-in-the-criminal-justice-system-in-spain> p.29.

<sup>13</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf> p.9.

### 1.3. How to use this Bench Book?

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

The practical tools proposed in the Bench Book aim to clarify how criminal justice professionals should deal with each of those systemic barriers that are most likely to arise at the pre-judicial and judicial stages of criminal proceedings to enable defendants with mental health conditions, intellectual and/or psychosocial disabilities (as well as other types of disabilities) to participate in criminal proceedings equally with others.

### 1.4. Bench Book Overview

This Bench Book is structured as follows:

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

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

**Chapter 4** – Implementing procedural rights for defendants with disabilities requires criminal justice actors to adopt practical tools and measures. This chapter covers identifying disabilities and support needs, providing procedural accommodations, ensuring accessible information, and other supportive actions to help defendants with intellectual and/or psychosocial disabilities overcome barriers in the justice system.

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

- ✓ explain the most common barriers and adjustments required by people with intellectual disabilities (Annex 1)
- ✓ offer a step-by-step guide for criminal justice professionals to assess needs and provide accommodations during the criminal process (Annex 2)
- ✓ share contacts of the relevant resource organizations in your country to support you in the implementation of the right to access to justice for people with disabilities (Annex 3)
- ✓ explain the content of the core international standards in the field (Annex 4)
- ✓ provide you with useful sources of information for further reading (Annex 5).

## 1.5. Methodology

The content of this bench book was developed by the non-governmental organisation (NGO) Mental Health Perspectives (Psichikos sveikatos perspektyvos – [www.perspektyvos.org](http://www.perspektyvos.org)), based on the findings of a national research study<sup>14</sup> on the barriers of defendants with mental health conditions, intellectual and/or psychosocial disabilities in accessing criminal justice system<sup>15</sup>, carried out within the ENABLE project<sup>16</sup>. The presented information, including the practical recommendations, was gathered through extensive consultations with representatives of disability organizations, groups of judges, prosecutors, lawyers, and other relevant stakeholders who attended multidisciplinary meetings organized by NGO Mental Health Perspectives between October 2022 and March 2024.

## 1.6. Main definitions and terminology

**Accessibility** refers to the design of products, devices, services or environments so as to be usable by everyone and includes information and communications. For persons with disabilities, for example, physical accessibility involves the creation of a barrier-free environment where they can move freely (think of systemic solutions for stairs and heavy doors for persons using a wheelchair) or can independently access information freely (think of availability of documents in Braille or Easy Read format)<sup>17</sup>

**Intermediaries, facilitators** – they are “(...) persons who work, as required, with justice system personnel and persons with disabilities to ensure effective communication during legal proceedings.” Such intermediaries may “support persons with disabilities to understand and make informed choices, making sure that things are explained and talked about in ways that they can understand, and that appropriate accommodations and support are provided.”<sup>18</sup>

**Legal capacity** – legal capacity includes the capacity to be both a holder of rights and an actor under the law<sup>19</sup>. Legal capacity to be a holder of rights entitles a person to full protection of his or her rights by the legal system. Legal capacity to act under the law recognizes that person as an agent with the power to engage in transactions and create, modify or end legal relationships. Please see more detailed information on this in Annex 4.

<sup>14</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf> p.9.

<sup>15</sup> ENABLE Project, National Briefing Papers: <https://validity.ngo/projects-2/enabling-inclusion-and-access-to-justice-for-defendants-with-intellectual-and-psychosocial-disabilities/national-briefing-papers/>

<sup>16</sup> Full name of the project: Enabling inclusion and access to justice for defendants with intellectual and psychosocial disabilities (101056701 – ENABLE – JUST-2021-JACC). More information can be accessed here: <https://validity.ngo/projects-2/enabling-inclusion-and-access-to-justice-for-defendants-with-intellectual-and-psychosocial-disabilities/>

<sup>17</sup> UN Disability Inclusive Language Guidelines: <https://www.ungeneva.org/sites/default/files/2021-01/Disability-Inclusive-Language-Guidelines.pdf>

<sup>18</sup> International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020), Glossary of Terms.

<sup>19</sup> CRPD Committee GC No 1, para 12, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>

**Person with disabilities** – “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”<sup>20</sup>. Persons with psychosocial and intellectual disability refers to diverse communities, particularly those who face human rights violations on the basis of their actual or perceived mental disabilities. This evolving concept includes, among others, people who self-identify as or are perceived or treated as persons with neurological or learning impairments, persons who hear voices, etc.

**Procedural accommodations** – refer to all necessary and appropriate “modifications and adjustments in the context of access to justice, where needed in a particular case, to ensure the participation of persons with disabilities on an equal basis with others.”<sup>21</sup> Most of the measures described in this Bench Book amount to “procedural accommodations.”

**Reasonable accommodations** represent the necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”

**Supported decision-making vs Substituted decision-making** - Supported decision-making is a model entailing that persons with disabilities are provided with a range of support options, including the support of people they trust (e.g. family, friends, peers, advocates, lawyers, interpreters, facilitators/intermediaries), so that they enhance their ability to make decisions for themselves. Conversely, substituted decision-making is a model which deprives persons with disabilities of the right to make decisions for themselves, and delegates to others the right to make decisions on behalf of persons with disabilities (most often someone is appointed to be “guardian” by law) .The latter model is prevalent in legal systems across the world, even if it violates the autonomy and legal capacity of persons with disabilities, and infringes the CRPD.

**The Medical model vs the Human rights model of disability** - the Medical model of disability places the focus on the person’s condition, which is understood to directly cause their disability; on the other hand, the Human rights model places the focus on the individual and their inherent dignity, acknowledging that it is the barriers created by society prevent individuals with disabilities from enjoying human rights on an equal basis. CRPD embraces the Human rights model, defining disability as an evolving concept that “results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”<sup>22</sup>.

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<sup>20</sup> UN Convention on the Rights of Persons with Disabilities, Article 1

<sup>21</sup> Office of the High Commissioner for Human Rights, 'Access to Justice'

[https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR\\_Disability/GoodPractices/Access-to-Justice-EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf), p 9.

<sup>22</sup> The CPRD preamble, p. e)

# 02

**RIGHTS OF PERSONS  
WITH DISABILITIES:  
INTERNATIONAL AND EU  
LEGAL FRAMEWORK**

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The UN Convention on the Rights of Persons with Disabilities (CRPD/the Convention) is regarded as a key instrument in the international legal framework governing the rights of people with disabilities.<sup>23</sup> The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.<sup>24</sup>

Lithuania ratified the CRPD in 2010 and committed to implement its provisions without any reservations. It is important to note that the CRPD includes its General Comments, which are authoritative interpretations of the Convention issued by the Committee on the Rights of Persons with Disabilities (the Committee)<sup>25</sup>. Among the most relevant General Comments (GC) to the topic of this Bench Book are GC on Article 12 (Equal recognition before the law)<sup>26</sup>, Article 9 (Accessibility)<sup>27</sup>, Article 19 (Right to live independently and be included in the community)<sup>28</sup>, Article 5 (Equality and non-discrimination)<sup>29</sup>. The Committee and Special Rapporteur on the Rights of Persons with Disabilities also issued important guidelines for implementing the CRPD, including the Guidelines on Article 14 on the right to liberty and security of persons with disabilities<sup>30</sup>, as well as the International Principles and Guidelines on Access to Justice for Persons with Disabilities (the International Principles).<sup>31</sup>

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

- **prohibit all discrimination** on the basis of disability and **guarantee** to persons with disabilities **equal and effective legal protection** against discrimination on all grounds<sup>32</sup>
- **ensure that the right to stand trial** must be recognised to all persons with disabilities, at all levels of the criminal justice system, without discrimination,

<sup>23</sup> The CRPD Convention and the Optional Protocol entered into force on 3 May 2008. It is the first comprehensive human rights treaty to be open for signatures by regional integration organizations. The CRPD was adopted on 13 December 2006 and was opened for signature on 30 March 2007. There were 82 signatories to the Convention, which was the highest number of signatories in history to a UN Convention on its opening day. United Nations Department of Economic and Social Affairs. "Convention On The Rights Of Persons With Disabilities (CRPD)." Accessible <https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd>

<sup>24</sup> UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, Art. 1, available [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_61\\_106.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_61_106.pdf)

<sup>25</sup> The Committee on the Rights of Persons with Disabilities, established by the Convention (Article 34), monitors the implementation of the Convention by states parties. The Committee overseeing the implementation of the CRPD issues General Comments and concluding observations on states' that are party to the Convention regarding their progress on implementation.

<sup>26</sup> Office of the High Commissioner for Human Rights, 'General Comment No. 1: Article 12 - Equal Recognition' <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-1-article-12-equal-recognition-1>

<sup>27</sup> Office of the High Commissioner for Human Rights, 'General Comment No. 2: Article 9 - Accessibility' <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-2-article-9-accessibility-0>

<sup>28</sup> Office of the High Commissioner for Human Rights, 'General Comment No. 5: Article 19 - Right to Live' <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no5-article-19-right-live>

<sup>29</sup> Office of the High Commissioner for Human Rights, 'General Comment No. 6: Equality and Non-Discrimination' <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-non-discrimination>

<sup>30</sup> The Guidelines on the right to liberty and security of persons with disabilities are contained in the Annex to A/72/55, the Committee's Bi-Annual Report 2016

<sup>31</sup> UN, Special Rapporteur on the Rights of Persons with Disability, International Principle and Guidelines on Access to Justice for Persons with Disabilities (2020).

<sup>32</sup> According to Article 2 of the CRPD discrimination on the basis of disability represents "(...) any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment )or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation; (...)"

and that constructs such as “cognitive incapacity” and “mental incapacity”<sup>33</sup>, as determined, for instance, by functional or mental status assessments (that are common in most legal systems) are not used to restrict the right to legal capacity.”<sup>34</sup>

- provide the support necessary to enable persons with disabilities to make decisions that have legal effect.<sup>35</sup> Such **support measures “must respect the rights, will and preferences of these persons** and should never amount to substitute decision-making.”<sup>36</sup>
- promptly **identify and recognise the barriers** and the appropriate **support measures to enable an effective participation in proceedings** of a person suspected or accused in criminal proceedings via initial assessment, carried out by police officers, law enforcement or judicial authorities, as well as other competent authorities, including independent experts <sup>37</sup>
- take measures to **provide gender and age-appropriate individualized procedural accommodations**, according to the will and preference’ of the person concerned.”<sup>38</sup>. Such accommodations encompass all the necessary and appropriate modifications and adjustments needed to make decisions for themselves in a particular case<sup>39</sup>, which include (1) access to intermediaries/facilitators (2) provision of procedural adjustments, and (3) modifications, adjustments to the environment and communication support, to ensure access to justice for persons with disabilities.<sup>40</sup> Accommodations should be organized before the start of proceedings, and all participants should be informed of their availability throughout the course of legal proceedings.<sup>41</sup> In addition, they should be available in digital form as well. This is particular important within the context of remote hearings and use of video-links.
- **have access to legal notices and information in a timely and accessible manner** on an equal basis with others, and that information about justice systems and procedures, including notices that require a response or an action to be taken, are available in an accessible format (including sign language, and audio guides, telephone line advice and referral services, etc) that are also compatible with diverse forms of AAC, including low and high tech.<sup>42</sup>

<sup>33</sup> The CRPD Committee has clarified that the CRPD strongly rejects the application of concepts and standards such as “unfitness to stand trial” and “insanity defences” as discriminatory and in violation of the Convention. The Committee has therefore called for the removal of all such standards from criminal justice systems in States Parties to the CRPD. Declarations of unfitness to stand trial or non-responsibility or incapacity in criminal justice systems are not only discriminatory, but lead to detention of persons based on their disabilities contrary to Article 14 of the CRPD.

<sup>34</sup> Ibid, International Principles, in paragraph 1.2.c,

<sup>35</sup> CRPD, GC No 1, para. 16.

<sup>36</sup> CRPD, GC No 1, para. 17.

<sup>37</sup> Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, Recital 6

<sup>38</sup> UN OHCHR, ‘Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (December 2017), A/HRC/37/25, para 26.

<sup>39</sup> World Health Organization, “Supported decision-making and advance planning: WHO QualityRights Specialized training,” 1 January 2019, accessible <https://www.jstor.org/stable/resrep27901.14?seq=4>

<sup>40</sup> UN International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 3.2.d

<sup>41</sup> Ibid, Principle 3, Guideline 31, p.15

<sup>42</sup> Article 21 of the CRPD, UN International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 4

- ensure that persons are **informed of their rights orally or in writing, in accessible language**, considering any particular needs and barriers of the suspect/ accused persons with intellectual and psychosocial disabilities and that information about their procedural rights, in an accessible format, can be received on request<sup>43</sup>
- ensure that suspects or accused persons who do not speak or understand the language of the criminal proceedings are **provided with effective, accurate and impartial interpretation** both receptively (i.e. understanding what persons with disabilities are saying) and expressively (i.e. having the skill necessary to convey information back to those persons)<sup>44</sup>
- **provide free or affordable legal assistance**, that is competent and timely. Also, in order to participate equally in any legal proceedings and discharge their professional duties, **lawyers of persons with disabilities should be provided with procedural accommodations**, such as interpreters, assistive technology and intermediaries/facilitators, or the resources necessary to support effective communication with clients, witnesses and other persons with disabilities.
- ensure that suspects and accused persons have the right to be present at their trial<sup>45</sup> and that their right to presumption of innocence is fully guaranteed<sup>46</sup>

The greater part of these rights, including the right to information, right to interpretation and translation, right of access to a lawyer and legal aid are also protected within the European Union by relevant EU legislation, such as Directives and Recommendations of the European Commission.<sup>47</sup>

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<sup>43</sup> Commission Recommendation 2013/C-378/02 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, Section 3 – Rights of vulnerable persons, Right to information.

<sup>44</sup> Directive 2010/64/EU of the European Parliament and of the Council – Articles 1, 2, 4 and 5; CRPD, UN International Principles and Guidelines on Access to Justice for Persons with Disabilities

<sup>45</sup> Article 14.3 International Covenant on Civil and Political Rights; Article 8.2 Directive 2016/343/EU

<sup>46</sup> Directive 2016/343/EU on strengthening of certain aspects of the presumption of innocence and on the right to be present at the trial, Article 3

<sup>47</sup> Recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (2013), Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions (2022)

# 03

**PERSONS WITH  
INTELLECTUAL AND  
PSYCHOSOCIAL  
DISABILITIES AND THE  
JUSTICE SYSTEM**

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At the end of 2023, about 224.9 thousand people with disabilities lived in Lithuania. Compared to 223.3 thousand people in 2022, this number has increased slightly.<sup>48</sup> Nevertheless, there is no legal definition of nor any requirement for procedural accommodations within the criminal justice system in Lithuania, and the concept of ‘vulnerability’ itself is not defined in legislation.<sup>49</sup> Lithuania has not yet transposed the EU directive regarding the protection of vulnerable persons in criminal proceedings. Therefore, such persons are not systematically identified and do not receive the required attention, assistance, and support.<sup>50</sup> These measures are equally relevant for victims and witnesses with disabilities, ensuring they receive the necessary support.

Furthermore, there is limited data on defendants with disabilities. Whilst the Lithuanian government aims to improve accessibility for people with disabilities through a national plan, the progress is slow. Only 30% of physical infrastructure, including courts, is accessible, and informational accessibility is even lower at 5%.<sup>51</sup> Most prisons are accessible, but municipal services for people with disabilities mainly focus on transportation and sign language interpretation, lacking support for legal aid. The Department for the Affairs of Persons with Disabilities monitors CRPD implementation, providing data in their reports.<sup>52</sup>

### **Recognition of legal capacity**

In Lithuania, civil law restricts individuals' rights through legal incapacity and limited capacity, with guardianship often established for those unable to understand or control their actions due to mental health conditions.<sup>53</sup> Concerns arise when social care facilities act as guardians, violating the CRPD's Article 12, which upholds the right to legal capacity. This denial often excludes defendants with intellectual and psychosocial disabilities from fair trials, leading courts to impose compulsory medical

### **Disclosure or/and identification of disability**

Lithuania lacks mechanisms to identify individuals needing accommodations early in criminal proceedings, often discovering disabilities only after sentencing. Instead of

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<sup>48</sup> Ministry of Social Security and Labour of the Republic of Lithuania, 'Statistika' <https://socmin.lrv.lt/lt/veiklos-sritys/socialine-integracija/negalios-reforma-ir-asmenu-su-negalia-itrauktis/statistika-2>

<sup>49</sup> Forum of Lithuanian Disability Organizations. Alternative report on the implementation of the United Nations Convention on the Rights of Persons with Disabilities in Lithuania.

<sup>50</sup> Ibid, p.7

<sup>51</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>

<sup>52</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>

<sup>53</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>

assessing support needs, evaluations focus on "incompetency," leading to forced institutionalization in psychiatric facilities or prisons, sometimes indefinitely.<sup>54,55</sup>

The 2020 study by the Lithuanian Social Research Centre on the EU Directive 2016/343 implementation found that defendants with mental or intellectual disabilities are recommended a defence lawyer and allowed a relative's presence during interrogations, with psychiatrists advising on trial attendance. If defendants cannot attend due to mental conditions, their lawyer must attend, and medical expertise is sought for liability issues, initiating a different process.

### **Deprivation of liberty based on disability**

Despite Article 14 of the CRPD prohibiting freedom restriction based on disability, Lithuania allows legalised restriction or deprivation of liberty for individuals with mental health conditions or disabilities in various circumstances, including criminal cases and involuntary hospitalisations.

### **Compulsory medical measures**

The criminal justice system applies compulsory medical measures to individuals deemed legally incapacitated or with diminished responsibility, raising issues of prolonged deprivation of liberty. A fair trial includes the right to be presumed innocent until proven guilty, the right to legal representation, and the right to challenge evidence and present a defence, all of which may be compromised when individuals are subject to compulsory medical measures.<sup>56</sup>

### **The right to information**

The right to information is hindered by the lack of accessible materials and comprehension difficulties, especially concerning legal documents like the "Letter of Rights." Although sign language interpretation services are available, they may not always be utilized effectively, highlighting gaps in practice. This compromises the right to interpretation and communication support, recognized in Article 9 of the CRPD, which obligates states to provide accessible communication support to ensure effective communication for individuals with disabilities.

### **Right to access to a lawyer and legal aid**

In Lithuania, the Code of Criminal Procedure mandates legal representation in ten specific situations, regardless of financial status, ensuring legal aid for suspects or

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<sup>54</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>

<sup>55</sup> Implementing the Convention on the Rights of persons with disabilities in criminal justice systems, A briefing paper, July 2022

<sup>56</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>

accused individuals, including those with disabilities, even if they waive this right. However, concerns arise from interviews regarding the quality and allocation of state-guaranteed legal aid. Issues include insufficient time for communication with appointed lawyers and inconsistencies in assistance due to different lawyers attending review meetings for compulsory medical measures.<sup>57</sup>

### Right to equal participation in proceedings

A 2023 study<sup>58</sup> by NGO Mental Health Perspectives (Psichikos sveikatos perspektyvos) on access to justice for defendants with mental health conditions and disabilities in Lithuania found significant challenges due to a lack of formal procedural accommodations, inconsistent application by judges and prosecutors, and inadequate communication skills among criminal justice professionals.<sup>59</sup>

Discretionary decisions by judges and prosecutors impact the effectiveness of safeguards for defendants with disabilities. While legal aid is available, concerns arise regarding the quality and allocation of services provided. Despite efforts to train justice system personnel, gaps persist in understanding and addressing disability-related issues, highlighting the need for ongoing awareness-raising and training programs.<sup>60</sup>

### Intersectional discrimination

Persons with disabilities in Lithuania also face other forms of discrimination and exclusion, which can impede their access to justice. Discrimination on the basis of disability may be compounded by simultaneous discrimination on the basis of other identities or bases such as gender, ethnicity, religion, poverty, sexual orientation or citizenship status.<sup>61</sup>

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<sup>57</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>

<sup>58</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>

<sup>59</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>

<sup>60</sup> ENABLE Project, National Briefing Papers: <https://validity.ngo/projects-2/enabling-inclusion-and-access-to-justice-for-defendants-with-intellectual-and-psychosocial-disabilities/national-briefing-papers/>

<sup>61</sup> UN OHCHR, 'Report - Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities' (December 2017), A/HRC/37/25, para 16. As clarified by the CRPD in its General Comment No 6: "[d]iscrimination can be based on a single characteristic, such as disability or gender, or on multiple and/or intersecting characteristics. 'Intersectional discrimination' occurs when a person with a disability or associated to disability suffers discrimination of any form on the basis of disability, combined with, colour, sex, language, religion, ethnic, gender or other status. Intersectional discrimination can appear as direct or indirect discrimination, denial of reasonable accommodation or harassment." CRPD GC No 6, para 19.

# 04

**IMPLEMENTING  
PROCEDURAL RIGHTS  
FOR DEFENDANTS  
DISABILITIES**

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This chapter will explore the practical implementation of procedural rights for persons with disabilities, incorporating relevant national legislation, international human rights law, and regional standards.

#### 4.1. Right to equal participation in the criminal process

There is a normative conflict between international standards, such as Principle 7 of the International Principles and Guidelines and the CRPD, and national practices in Lithuania. The CRPD obligates states to prohibit using "cognitive incapacity" or "mental incapacity" to restrict legal capacity. However, in Lithuania, legal provisions sometimes limit access to justice and participation in criminal proceedings for individuals with mental health conditions, intellectual, or psychosocial disabilities.<sup>62</sup> This affects their right to stand trial and provide testimony, risking indefinite placement under medical or security measures without due trial.

Semi-structured interviews with criminal justice professionals in Lithuania revealed a lack of in-person contact and participation of defendants with disabilities in the criminal process. To address this, promising practices should focus on ensuring full participation and in-person contact for defendants with disabilities, improving their access to justice and safeguarding their rights.<sup>63</sup> By adopting these recommendations, Lithuania can align its national practices with international standards.

#### Recommendations for justice professionals

1. Ensure familiarity with and, when possible, draw attention to any legislation that contravenes the CRPD.
2. Avoid using deficit language when referring to witnesses, victims, or defendants with disabilities, opting instead for the terms outlined in Section 1.6 of this Bench Book.
3. Recognize and assume the full legal capacity and right of defendants with disabilities to participate in all stages of the proceedings and in all courts. This includes:
  - a. Provide persons with disabilities the **support and accommodations** necessary to exercise their legal capacity. For more example, please see section 4.4. below.
  - b. Ensure that defendants who have been previously declared to be without legal capacity to participate in court proceedings have **the right to appeal** or otherwise seek restoration of their legal capacity and have

<sup>62</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>

<sup>63</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>

access to procedural accommodations and supports, as well as legal assistance to participate in court proceedings.

- c. If a defendant with a disability lacks the necessary intent (*mens rea*) within the usual meaning of the term, the defendant should be treated the same way as any other defendant who lacks intent.<sup>64</sup>

### Positive practise

Sweden abolished the insanity defence in 1965. Swedish law recognizes *mens rea* (meaning intent or “guilty mind”) as an element of a crime but provides that a defendant’s mental status may not be considered in determination of guilt. Rather, a person’s mental disability may be considered in sentencing.<sup>65</sup>

In its comments to Belgium, the CRPD recommended changes to laws to guarantee that persons with disabilities “who have committed a crime ... be tried under the ordinary criminal procedure, on an equal basis with others and with the same guarantees, although with specific adjustments to ensure their equal participation in the criminal justice system.”<sup>66</sup> In 2009, the High Commissioner for Human Rights wrote that recognition of the legal capacity of persons with disabilities requires replacing criminal defences based on “mental or intellectual disability” with “disability-neutral” doctrines.<sup>67</sup>

In Portugal, the law guarantees that all persons have legal capacity through the scheme of an “accompanied adult,”<sup>68</sup> which permits that if a person cannot exercise their rights, it is possible to request the necessary accompanying measures from the Court. The measures can be requested by the Public Prosecutor’s Office, by the persons themselves and by the spouse or other relative with the consent of the person.<sup>69</sup>

In Spain, Law 8/2021<sup>70</sup> recognised legal capacity for all people with disability, guardianship was eliminated, and judicial measures of support for people with disabilities are adopted as last resort. In this way the Spanish legislation moved

<sup>64</sup> Implementing the Convention on the Rights of persons with disabilities in criminal justice systems, A briefing paper, July 2022, p. 19

<sup>65</sup> Piers Gooding & Tova Bennett, The Abolition of the Insanity Defence in Sweden and the United Nation’s Convention on the Rights of persons with Disabilities: Human Rights Brinkmanship or Evidence it Won’t Work? 21 New Criminal L. Rev. 141 (2018) available at <https://online.ucpress.edu/nclr/article/21/1/141/68831/The-Abolition-of-the-Insanity-Defense-in-Sweden>, in: Implementing the Convention on the Rights of persons with disabilities in criminal justice systems, A briefing paper, July 2022

<sup>66</sup> CRPD/C/BEL/CO/1 paragraph 28 available at

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fBEL%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fBEL%2fCO%2f1&Lang=en). See also CRPD/C/TKM/CO/1, paragraph 30(b); CRPD/C/DEU/CO/1, 32(a) and (b)

<sup>67</sup> UN Human Rights Council, annual report of the UN High Commissioner for Human Rights and reports of the High Commissioner and the UN Secretary General, UN doc. A/hrc/10/48 at 15 (26 January 2009)

<https://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.48.pdf>

<sup>68</sup> Law n. ° 49/2018. Available at <https://dre.pt/dre/detalhe/lei/49-2018-116043536>, In: FENACERCI, p.38

<sup>69</sup> FENACERCI, p. 15.

<sup>70</sup> Law 8/2021, Ley de 2 de junio, por la que se reforma la legislación civil y procesal para el apoyo a las personas con discapacidad en el ejercicio de su capacidad jurídica, «BOE» No. 132, 3 June 2021.

from a system of substitution of decision-making to a system of support in decision-making.

## 4.2. Right to procedural accommodations

Procedural accommodations, as outlined in Principle 3 of the International Principles and Guidelines, are vital for ensuring access to justice for individuals with disabilities, encompassing various fundamental rights such as legal capacity and participation.<sup>71</sup>

States must provide gender and age-appropriate individualized procedural accommodations, including intermediaries, procedural adjustments, and modifications to the environment and communication support, to meet the diverse needs of persons with disabilities and prevent discriminatory practices.

Apart from translation, interpretation, and the compulsory presence of legal representation, the criminal justice system in Lithuania lacks formal provisions concerning procedural accommodations. In practice, decisions regarding procedural measures are left to the discretion of judges, prosecutors, and other criminal justice professionals. While the Code of Ethics for Judges of the Republic of Lithuania and associated documents do not explicitly address disability issues, the most recent Court Practice Bulletin (No. 55, January-June 2021) by the Supreme Court of Lithuania contains information on the treatment of individuals with disabilities:<sup>72</sup>

- The focus should be on promoting integration, reducing stigmatization, and ensuring the rights of individuals with intellectual and/or psychosocial disabilities, with an emphasis on appointing guardians to protect their rights and interests.
- Legal presumption favors capacity unless proven otherwise, resolving doubts in favor of the individual.
- Least restrictive measures should always be applied, with restrictions being proportional to the goal of protecting the individual's interests.
- Insufficient evidence warrants dismissal of requests for restricted status, as mental illness doesn't automatically imply lack of legal capacity.
- Capacity limitations are last resort measures, reserved for exceptional cases.

Based on insights gathered from semi-structured interviews with criminal justice professionals and defendants with mental health conditions, intellectual, and/or psychosocial disabilities, the current situation poses challenges that include difficulties in comprehending the proceedings and understanding their implications for individual rights. Despite the lack of legal regulations and official guidelines, some criminal justice

<sup>71</sup> UN (2020) International principles and guidelines on access to justice for persons with disabilities:

<https://www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/GoodPracticesEffectiveAccessJusticePersonsDisabilities.aspx>

<sup>72</sup> Supreme Court of Lithuania, 'Practice Bulletin No. 55, January-June 2021' (Supreme Court of Lithuania, 2022) [https://www.lai.lt/data/public/uploads/2022/02/teismu\\_praktika\\_nr\\_55.pdf](https://www.lai.lt/data/public/uploads/2022/02/teismu_praktika_nr_55.pdf)

professionals in Lithuania are already implementing procedural accommodations. However, uncertainty persists regarding the impact of such accommodations on legal proceedings, with concerns that they may be perceived as evidence of a mistrial.<sup>73</sup>

### Recommendations for justice professionals

1. Conduct assessments on defendants with disabilities before and during court proceedings with the aim of **determining the procedural accommodations and support required** to ensure their full and effective participation in the proceedings. Such assessments should take into consideration the will and preferences of the individual with a disability.
  - a. Ensure that court buildings and facilities are accessible for person with a disability. If not, consider moving the hearing to a venue closer to the defendant or one with better accessibility.
  - b. Provide alternative transportation options for those unable to access public transport.
  - c. Make sure every instruction or court decision is easy to understand. Confirm understanding by asking them to repeat instructions back to you. Let parties involved know it is not a test and it is okay to ask for extra support. Instead of asking "Do you understand?", offer to explain further.
  - d. Minimize waiting times for court listings and appearances to reduce anxiety and stress. Involve defendants with disabilities by asking them how much time they need for each step and explain how each step is important for their case.
  - e. Create a supportive environment that encourages individuals to disclose their disabilities and accessibility requirements without fear of discrimination or stigma. For example, judicial officers may begin all hearings with a statement indicating their attentiveness to individual needs and encouraging disclosure: *"If anyone present has specific requirements, including those related to disabilities, please inform my clerk/associate or myself, so we can facilitate your full participation in today's proceedings."*
  - f. After the meeting, confirm important dates and actions to make sure they have been written down correctly. If appropriate, send a written summary of the directions as soon as possible after the meeting to defendant with disability so they have time to prepare and seek advice if needed.

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<sup>73</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>



ensuring transparency.<sup>74</sup> Directive (EU) 2016/800 mandates individual assessments for children with disabilities in criminal proceedings, ensuring tailored support. However, challenges include privacy issues and obtaining accurate information due to stigma and procedural complexities.

According to a Validity toolchest<sup>75</sup> focused on victims with disabilities, an individual assessment should:

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

In interviews with defendants with disabilities, the acknowledgment of disability and evaluation of specific needs were frequently cited as problematic or nearly absent.<sup>76</sup>

### Practical guidance and recommendations

1. Develop and implement a **practical mechanism for early identification of disability and individual needs** (individual assessment) to ensure equal participation in the criminal procedure.

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<sup>74</sup> Recital 6, Commission Recommendation 2013/C-378/02 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings.

<sup>75</sup> Validity Voices for justice, Toolchest for professionals, p.24-25

<sup>76</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>

- a. Identification should occur early in the criminal justice process at the very beginning of the proceedings, and prior to any actions undertaken as part of the criminal justice proceedings, for instance prior to police interview.

### Positive practise

In some, countries, such as UK and Spain, this assessment can be done by facilitators. In Spain, facilitators can be provided freely by NGOs like Plena Inclusion.<sup>77</sup> When prison's officers suspect that the person has an intellectual disability, they contact Plena Inclusion that conducts an assessment and provides assistance in obtaining the official recognition.<sup>78</sup>

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

### Checklist when discussing someone's potential needs in court:

- Instead of making assumptions, rely on evidence.
- Directly address the person (even in a presence of interpreters or caregivers) unless an alternative approach becomes necessary.
- Emphasize the individual's needs by asking about specific assistance required rather than focusing on the nature or extent of their disability.
- Recognize that conditions vary, requiring a nuanced understanding beyond general knowledge.
- Approach questioning with sensitivity, acknowledging that individuals may be hesitant to disclose their disabilities.
- Minimize unnecessary disclosure of medical histories whenever feasible.

2. Identify and disseminate best practices for disability identification and **provide training emphasizing the human rights model of disability** and necessary adjustments for equal participation.

### Positive practise

<sup>77</sup> Spain National Paper, Section 3.1.2.2 p. 20.

<sup>78</sup> Ibid. Section 3.2.1.1 p. 30.

In Spain, the Ministry of Justice's Center for Legal Studies offers a six-month online training course on "Disability Attention in the Administration of Justice". The course is open to all the professionals trained at the Center for Legal Studies, and it has an unlimited number of spots.<sup>79</sup>

In Romania, the CLR (Center for Legal Rights), in partnership with the Public Prosecutor's Office of the High Court of Cassation and Justice and with the support of the Ministry of Justice organizes multidisciplinary training courses for legal and psychosocial specialists including magistrates, lawyers, psychologists, social workers, and psychiatrists (AdaptJust courses).<sup>80</sup>

In Portugal, regular training activities are organized at the local level by a working group comprised of police officers, local disability organizations, representatives from the municipality and the local health system. The working group constitutes an interesting network for different professionals for the exchange of information and the development of appropriate and flexible solutions to local problems.<sup>81</sup>

3. **Involve defendants in the development** of individual assessments, ensuring they receive the finalized assessment and have the right to comment with necessary support.
4. Ensure judges and other justice professionals **verify completion of individual assessments** early in the process. Police, law enforcement, and other relevant parties involved in identifying disability should receive adequate training and provide necessary assistance and accommodations from the start of proceedings.
5. Implement **information sharing rules** between the criminal justice professionals and safeguards for individual assessments conducted by other professionals.
6. Even if no disability has been disclosed, watch for behavior that can indicate a person needs procedural accommodation. For example, someone's behavior may seem disrespectful, challenging, inconsistent, or dishonest, but these perceptions could be inaccurate if the individual is dealing with a mental health condition. Substance abuse, such as alcohol or drug use, could exacerbate these behaviors.

The Prison Reform Trust **indicators that may suggest a person is experiencing mental health difficulty**: avoiding eye contact, exhibiting low energy, restlessness, emotional distress, negative self-talk, grandiosity, incongruous laughter, difficulty in

<sup>79</sup> National Briefing Paper on Spain, section 3.1.3 p. 24.

<sup>80</sup> National Briefing Paper on Romania, section 3.1.3 p. 18-19.

<sup>81</sup> National Briefing Paper on Portugal, section 3.2.2.2 p. 34.

responding to questions, rapid speech, disordered speech, apparent distraction, forgetfulness, and inappropriate appearance.<sup>82</sup>

#### 4.4. Provision of procedural accommodations

Continuing from the previous section, once assessments have identified barriers, it's crucial to ensure the defendant's right to a fair trial is upheld consistently. Similar to how minors benefit from procedural accommodations, individuals with disabilities also require such measures to ensure their equal participation in the criminal process.

##### Practical guidance and recommendations

1. Ensure accommodations for persons with disabilities:
  - a. Identify accommodation needs at the beginning of proceedings.
  - b. Consult persons with disabilities about their accommodation needs. A disclosure from an individual that they have a disability is enough to place an obligation on the authorities to make a full determination, taking into account the individual's views.
  - c. Make support services available within the criminal justice system.
  - d. Prepare accommodations before hearings/trials.
2. Inform participants about rights and accommodations:
  - a. Make defendants aware of their right to accommodations and that it can be requested at any time.
  - b. All justice professionals should initiate accommodation provision.
3. Establish a procedure for recognizing, requesting, assessing, and providing support for persons with disabilities. For example, develop a position description for intermediaries/facilitators, which could include the following: who can be an intermediary, what conditions need to be fulfilled, code of ethics, the need to remain a neutral part in the process, sanctions. Similarly, develop a position description for support/assistance animals<sup>83</sup>.
4. Develop and implement clear procedures:
  - a. Approve a guide for procedural accommodations.

<sup>82</sup> Judiciary of England and Wales, 'Equal Treatment Bench Book - April 2023 revision' <https://www.judiciary.uk/wp-content/uploads/2023/06/Equal-Treatment-Bench-Book-April-2023-revision.pdf>

<sup>83</sup> According to the Disability Access Bench Book of the Judicial College of Victoria, Australia, assistance animal is an animal that is trained to perform tasks or functions that help a person with a disability to alleviate the effects of the disability. This includes animals trained to pick things up for people with mobility disabilities, animals trained to assist people who have seizures, or to provide comfort to vulnerable witnesses when waiting for court or when giving evidence from a remote witness facility. The practice is also used currently in the US and UK.

- b. Cooperate to establish efficient frameworks.
  - c. Provide lawyers with necessary accommodations.
  - d. Ensure accommodations are gender- and age-appropriate.
5. Provide intermediaries/facilitators for defendants with disabilities for communication assistance:
  - a. Ensure sufficient trained intermediaries are available during police interviews, court hearings and consultations with lawyers.
  - b. Provide systematic training for intermediaries.
  - c. Cover intermediary costs.
  - d. In the absence of sufficient and qualified court-appointed intermediaries/facilitators, work collaboratively with third-party stakeholders who provide such support to persons with disabilities.
6. Inform persons with disabilities of their right to a support person:
  - a. Establish a procedure for identifying a support person. Allow individuals to choose their support person. Do not assume that the support person will necessarily be a family member or that a person with disability will necessarily want to make use of a support person.
  - b. Ensure the support person's presence throughout proceedings.
  - c. Maintain the role distinction between facilitators and support persons. The facilitator and the support person have different roles and where needed, they should both be guaranteed at all stages of the proceeding.
  - d. Allow face-to-face contact with the support person.
7. Ensure venue accessibility:
  - a. Limit exposure to others when necessary.
  - b. Adapt seating and positioning as needed
  - c. Create a non-intimidating environment by removing formal attire.
8. Adapt language to individual needs. Specifically, the following has to be considered: Speed and tone of delivery, level of vocabulary, level of grammar, complexity of questions, ability to narrate independently, questions related to time, orientation and distance, level of literacy. Ensure the pace of the proceedings is well adjusted – ensure for instance rather short sessions, frequent breaks.

#### **4.5. Right to information and communication in accessible formats**

As outlined in the previous sections, ensuring equal access to justice for all individuals, regardless of their abilities, is a fundamental principle enshrined in international legal frameworks and guidelines. For all rights to work in practice it is crucial to communicate information in accessible formats.

### 4.5.1. Right to information in accessible formats

Article 21 of the CRPD guarantees individuals with disabilities the right to freely express themselves and access information equally. This includes the right to receive information through various channels and formats at no extra cost, such as sign language, Braille, and easy-to-read materials.

Moreover, Article 9(2)(f) of the CRPD and Principle 4 of the International Principles and Guidelines on Access to Justice for Persons with Disabilities emphasize the importance of providing appropriate assistance and support for accessing information.<sup>84</sup> Legal cases, like *Medina Vela v. Mexico No. 32/2015*,<sup>85</sup> have highlighted violations of these rights when information is not made accessible during criminal proceedings.

The EU Directive 2012/13/EU further mandates member states to inform suspects or accused persons of their rights in simple and accessible language, considering the needs of vulnerable individuals. The Court of Justice of the EU (CJEU) has clarified in *Salduz v. Turkey (2008)* that suspects must be informed of their rights as soon as they are subjected to suspicions justifying restrictions on their liberty, and this information should be accessible to them. Additionally, the EU Recommendation on procedural safeguards emphasizes the importance of providing procedural rights information in an accessible format to persons with disabilities, aligning with the principles of the CRPD.

To address the lack of accessible measures and specialist communication skills among criminal justice professionals in Lithuania, it's essential to implement specific adjustments outlined in Principle 3 of the Criminal Procedure Code. This includes providing easy-to-read formats for legal notices and ensuring interpreters are equipped to communicate effectively with individuals with disabilities. Additionally, improving the quality of legal aid provided by public sector lawyers is crucial, as highlighted by participants in semi-structured interviews.<sup>86</sup>

## Practical guidance and recommendations

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<sup>84</sup> International Principles

<sup>85</sup> Views adopted by the Committee under article 5 of the Optional Protocol concerning communication in *Medina Vela v. Mexico*, no 32/2015, 15 October 2019, para 10.5

<sup>86</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>

1. Provide comprehensive information and support to individuals with disabilities from their initial interaction with law enforcement authorities throughout all stages of legal proceedings.
2. Ensure clear communication for persons with disabilities of available support resources and accommodations emphasizing accessibility and ease of access, and about their rights at every stage of the legal process.
  - a. This includes informing them of their right not to incriminate themselves.
  - b. Providing clarity on the legal procedures they will undergo.
  - c. Explaining the rules of detention facilities.
  - d. Informing them of available organizational support from the outset of their interaction with the justice system.
3. Consider appointing an intermediary / facilitator to assist in communication and ensure the effective transmission of relevant information to the defendant.
4. When asking questions:
  - d. Signpost when moving to new topics ('We will now discuss...').
  - e. Break down questions into separate elements.
  - f. Avoid idiomatic language, hypothetical or abstract questions, suggest the answer in question.
5. Ascertain if individuals with disabilities fully understand their rights and the legal procedures involved.
6. Present information in simplified, understandable formats such as leaflets, ensuring it aligns with the defendant's specific communication needs.
7. Avoid using legal jargon and legalistic use of language. For example: say decide (instead of 'determine'), pause / break / postpone (instead of 'adjourn/adjournment'), amongst other things (instead of 'inter alia').

### Positive practise

According to the Australian Disability Access Bench Book, an easy way to avoid this language barrier is to avoid using legal terminology and to use instead concrete and plain language. For instance, the judges and legal representatives should use the verb "to follow" instead of the verb "to comply". Judges and legal practitioners should also explain particular terms and check during the hearing whether the defendant understands the meaning of specific words.<sup>87</sup>

<sup>87</sup> Australian Disability Access Bench Book, available <https://www.judicialcollege.vic.edu.au/eManuals/DABB/index.htm#59523.htm>

### 4.5.2. Right to interpretation and translation

Persons with disabilities have the right to access interpretation and translation services to facilitate their full participation in the justice process, especially those with visual or hearing impairments. Article 9(2)(h) of the CRPD mandates states to promote accessible information technologies at minimal cost, including sign language interpretation and accessible legal information. Directive 2010/64/EU requires states to provide interpretation for suspects who don't understand the language of criminal proceedings, covering those with hearing or speech impediments.

In Lithuania access to specific accommodations and interpretation services varies, interpreters are defined in Article 43 of the Criminal Procedure Code and are invited to proceedings by legal authorities. They can participate remotely in proceedings unless their direct presence is essential.

Improving the accessibility of the "Letter of Rights" in Lithuania could significantly enhance the justice process. Currently, its complexity and lack of clarity present obstacles, particularly for individuals lacking legal expertise. Simplifying the language and structure of this document would make it more understandable, benefiting especially those with intellectual or psychosocial disabilities who struggle with comprehension. With clearer information, legal authorities would have an easier time interpreting and explaining rights to suspects and defendants, ultimately fostering a fairer and more inclusive criminal justice system.<sup>88</sup>

#### Recommendations for justice professionals

1. Provide support for communication and access to information through communication **facilitators /intermediaries**
2. Ensure that all **facilitators/ intermediaries** are able to interpret effectively, accurately and impartially, both receptively (i.e. understanding what persons with disabilities are saying) and expressively (i.e. having the skill necessary to convey information back to those persons), while using any necessary specialized vocabulary (e.g. legal or medical) and respecting professional and ethical standards. Note: A facilitator is not the same as a support person.
3. Ensure that **written information** is available in a range of accessible formats: justice professionals must ensure the elaboration of and provision of access to easy-to-read procedural documents.<sup>89</sup>

<sup>88</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>

<sup>89</sup> Accessible formats include: Sign language; Video and audio guides; Telephone line advice and referral services; Accessible websites; Induction loop, radio or infrared systems; Closed captioning; Braille; Easy Read and plain language; Facilitated communication; and amplification devices and document magnifiers.

4. **Ensure adequate training** on communication tools and methods for all justice professionals.
5. At all stages of the proceedings ensure that all court processes provide the technical and other support necessary for defendants with disabilities to **use any form of communication as necessary for their full participation.**<sup>90</sup> These include
  - a. Assistive listening systems and devices;
  - b. Open, closed and real-time captioning, and closed caption decoders and devices;
  - c. Voice, text and video-based telecommunications products;
  - d. Videotext displays;
  - e. Computer-assisted real-time transcription;
  - f. Screen reader software, magnification software and optical readers;
  - g. Video description and secondary auditory programming devices that pick up audio feeds for television programs.
6. **Provide communication support**, including through third-parties, for example:
  - a. Note-takers;
  - b. Qualified sign language and oral interpreters;
  - c. Relay services;
  - d. and Tactile interpreters, where and when necessary.
7. **Provide justice professionals with communication tools** to use in communication with persons with disabilities. For instance:
  - a. The [AAC pictograms browser](#)<sup>91</sup> and an [example of use](#).<sup>92</sup>
  - b. An example of a [“communication board”](#)<sup>93</sup>

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<sup>90</sup> These include- Assistive listening systems and devices; Open, closed and real-time captioning, and closed caption decoders and devices; Voice, text and video-based telecommunications products; Videotext displays; Computer-assisted real-time transcription; Screen reader software, magnification software and optical readers; Video description and secondary auditory programming devices that pick up audio feeds for television programmes.

<sup>91</sup> Aragonese Center of Augmentative and Alternative Communication (ARASAAC) website available at AAC Symbols and shared resources - ARASAAC; the Augmentative and Alternative Systems of Communication (AAC) are ways of expression different from spoken language, that aim at increasing and/or compensating for the difficulties of communication and language of many people with disabilities. For instance, they can be used to better communicate with persons presenting cerebral palsy (CP), intellectual disability, autism spectrum disorders (ASD), neurological diseases such as amyotrophic lateral sclerosis (ALS), multiple sclerosis (MS) or Parkinson's disease, muscular dystrophies, traumatic brain injuries, aphasias.

<sup>92</sup> OHCHR, Making sure people with disabilities get justice - EasyRead version of: International Principles and Guidelines on access to justice for persons with disabilities, available at ISL133 20 ER UN Access to Justice (ohchr.org).

<sup>93</sup> Access Ability Australia (AAA), Communication Board. Workshops and Meetings, available at <https://accessabilityaustralia.com/staging/wp-content/uploads/2023/10/City-of-Mandurah-Workshops-and-Meetings-Communication-Board-V1.pdf>; Communication boards use symbols to share ideas, wants, needs, and thoughts, assisting individuals with communication challenges. They are typically used with persons with intellectual disabilities, autism spectrum, learning disabilities, traumatic brain injuries, dementia, or deafness.

- c. [Easy to read guidelines](#)<sup>94</sup>
- d. How to write [a social story](#)<sup>95</sup> and an [example of use](#).<sup>96</sup>

## 4.6. Right to access to a lawyer and legal aid

### Assessment of the information on the Right of access to a lawyer

Lawyers are essential for assisting defendants with disabilities during legal proceedings as they ensure access to justice, as outlined in Principle 6 of the International Principles and Guidelines on Access to Justice for Persons with Disabilities and EU law, including Article 47 of the EU Charter and Directive 2013/48/EU.

Despite legal guarantees, challenges persist, such as gaps in legal knowledge and disparities between private and government-appointed lawyers in Lithuania. These issues hinder fair legal representation for individuals with disabilities. Therefore, improving legal aid standards and ensuring equal access to competent legal assistance are crucial steps toward addressing these challenges.<sup>97</sup>

### Recommendations for justice professionals

1. Guarantee the right to legal assistance from the onset of proceedings, extending from pre-trial stages to trial:
  - a. Provide defendants with disabilities legal aid upon initial contact with law enforcement, irrespective of the alleged offense, under terms no less favourable than those for individuals without disabilities.
  - b. Inform defendants of their entitlement to legal representation.
  - c. Maintain an updated roster of legal representatives specializing in disability rights and procedural accommodations.
  - d. Facilitate procedural accommodations, such as interpreters and assistive technology, to enable effective communication of lawyers with defendants with disabilities.
  - e. Ensure effective access to a lawyer for detained individuals, including those under compulsory medical measures or detention.

<sup>94</sup> Mencap, Am I making myself clear? Mencap's guidelines for accessible writing (2002) available at [https://funding4sport.co.uk/downloads/guidelines\\_for\\_accessible\\_writing.pdf](https://funding4sport.co.uk/downloads/guidelines_for_accessible_writing.pdf); For instance, they can be employed to communicate with people with intellectual disabilities, learning disabilities, or autism spectrum.

<sup>95</sup> Autism Services, Education, Resources and Training (ASERT) website, available at <https://paaautism.org/resource/create-a-social-story/>; Social stories help people to react to social situations that may be challenging like appearing in court, being detained or being arrested. They are typically used to communicate with people with autism spectrum.

<sup>96</sup> Access Ability Australia (AAA), The Capital. Social Story, available at <https://accessabilityaustralia.com/staging/wp-content/uploads/2023/06/A-visit-to-The-Capital-Social-Story-V1.pdf>

<sup>97</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>

- f. Ensure proactive engagement and regular contact between lawyers and clients, overseen by national Bar Associations to uphold quality standards.
- g. Provide lawyers with basic training on the rights of persons with disabilities.

### **Assessment of the information on the Right to legal aid**

Legal aid is a cornerstone principle in international law, ensuring fair trials and effective remedies. The Committee on the Rights of Persons with Disabilities recommends accessible and affordable legal assistance tailored to individual needs. The International Covenant on Civil and Political Rights (ICCPR) safeguards the right to choose legal representation and be informed about available legal aid. Additionally, the Guidelines on Access to Justice for Persons with Disabilities emphasize the necessity of free or affordable legal assistance, particularly for victims of violence, with a focus on women and girls with disabilities.

Improvements are needed to address practical challenges surrounding access to legal aid. Administrative burdens and financial constraints frequently hinder individuals with disabilities from accessing legal assistance. Inconsistencies among EU Member States regarding eligibility criteria and financial thresholds add to the complexity. These disparities can lead to unaffordable legal fees, difficulty in securing legal counsel, and disruptions in ongoing proceedings. Rectifying these issues is essential to uphold defendants' rights to fair trials and effective legal support.

### **Recommendations for justice professionals**

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

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

#### **4.7. Right to be present at trial and the right to presumption of innocence**

In international human rights law, the presumption of innocence is a fundamental principle, ensuring fair treatment until proven guilty. As outlined in previous chapters, CRPD emphasizes equal access to justice for persons with disabilities, including the right to substantive and procedural safeguards. However, practices labelling individuals with disabilities as unfit for trial and subjecting them to indefinite detention in mental health facilities violate these rights and must be discontinued.

EU law, as outlined in Directive 2016/343/EU, reinforces the presumption of innocence and safeguards for suspects and accused persons. While the directive does not specifically address defendants with disabilities, a broad interpretation consistent with the CRPD and international jurisprudence is necessary.

In Spain, there have been instances where behaviours exhibited by individuals with disabilities were misconstrued as suspicious or uncooperative by justice professionals. This misconception, particularly prevalent in cases involving intellectual disabilities and substance abuse, can undermine the presumption of innocence.

In Bulgaria, cases involving defendants with disabilities are often closed upon declaring them "insane" or "incompetent," leading to compulsory treatment in psychiatric hospitals without proper judicial review. This indefinite detention without due process violates their rights and perpetuates systemic discrimination.

In 2020, the Lithuanian Social Research Centre conducted a study on the implementation of EU Directive 2016/343, which aims to enhance certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings. The findings of the research report indicated that psychiatrists have the authority to advise against the defendant's attendance at the trial altogether. In instances where the defendant faces psychological challenges, medical expertise is sought to assess liability, initiating a separate procedure.<sup>98</sup>

#### **Recommendations for justice professionals**

1. Respect the right of defendants with disabilities to be present at trial and defend themselves in person:

<sup>98</sup> Psichikos Sveikatos Perspektyvos, 'Briefing Paper on Barriers Faced by Defendants with Intellectual and/or Psychosocial Disabilities in the Criminal Justice System in Lithuania' (2023) <https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>, p. 22

- a. Apply exceptions to the right to be present at trial equally for persons with disabilities.
  - b. Adapt courtroom settings to minimize intimidation, such as removing formal attire like wigs or cloaks and ensuring a less formal atmosphere.
2. Assess the suitability of remote hearings for individuals with disabilities, prioritizing their will and preferences.
- a. Provide adequate training, IT tools, and internet access for justice professionals and individuals with disabilities participating in remote hearings.
  - b. Ensure access to procedural accommodations in remote hearings, including the involvement of intermediaries and communication support through note-takers, sign language interpreters, and relay services.
  - c. Clarify the roles of participants in remote hearings, ensuring understanding for defendants with disabilities.
  - d. Adjust the pace of proceedings by scheduling shorter sessions and frequent breaks to accommodate the needs of defendants with disabilities. For example, defendants with disabilities might need to take medication at a specific time. Some medications can cause side-effects as they wear off. Inform the individual that they can request a break whenever needed.

### Positive practise

In the Czech Republic, the possibility of remote hearings is available. According to the Criminal Procedure Code videoconferencing equipment<sup>99</sup> may be used in the performance of criminal proceedings, if it is necessary for the protection of the rights of persons, in particular with regard to their age or state of health, or if security or other compelling reasons so require. This presumably could also apply to persons with disabilities.

The Equality and Human Rights Commission has highlighted challenges with remote hearings in the criminal justice system, which also extend to all types of remote hearings.<sup>100</sup> It's important to consider that:

- Identifying confusion, disengagement, or inattention is more difficult when individuals appear as small figures on screen.
- Poor audio and visual quality can pose significant challenges, especially for those struggling to follow or participate.

<sup>99</sup> The law precisely says “the technical equipment for the transmission of images and sound,” Section § 52a of the Criminal Procedure Code, in: The Czech Republic, national study, Enable, April 2023, p. 21

<sup>100</sup> Judiciary of England and Wales, 'Equal Treatment Bench Book - April 2023 revision' <https://www.judiciary.uk/wp-content/uploads/2023/06/Equal-Treatment-Bench-Book-April-2023-revision.pdf>

- Being unable to see the entire courtroom and everyone in it can be confusing or distressing for individuals.
- Participants may feel more isolated and find it harder to communicate with legal advisors in remote hearings compared to appearing in person.
- Identifying intellectual and/or psychosocial disabilities is more challenging in video hearings if it hasn't been previously brought to attention.

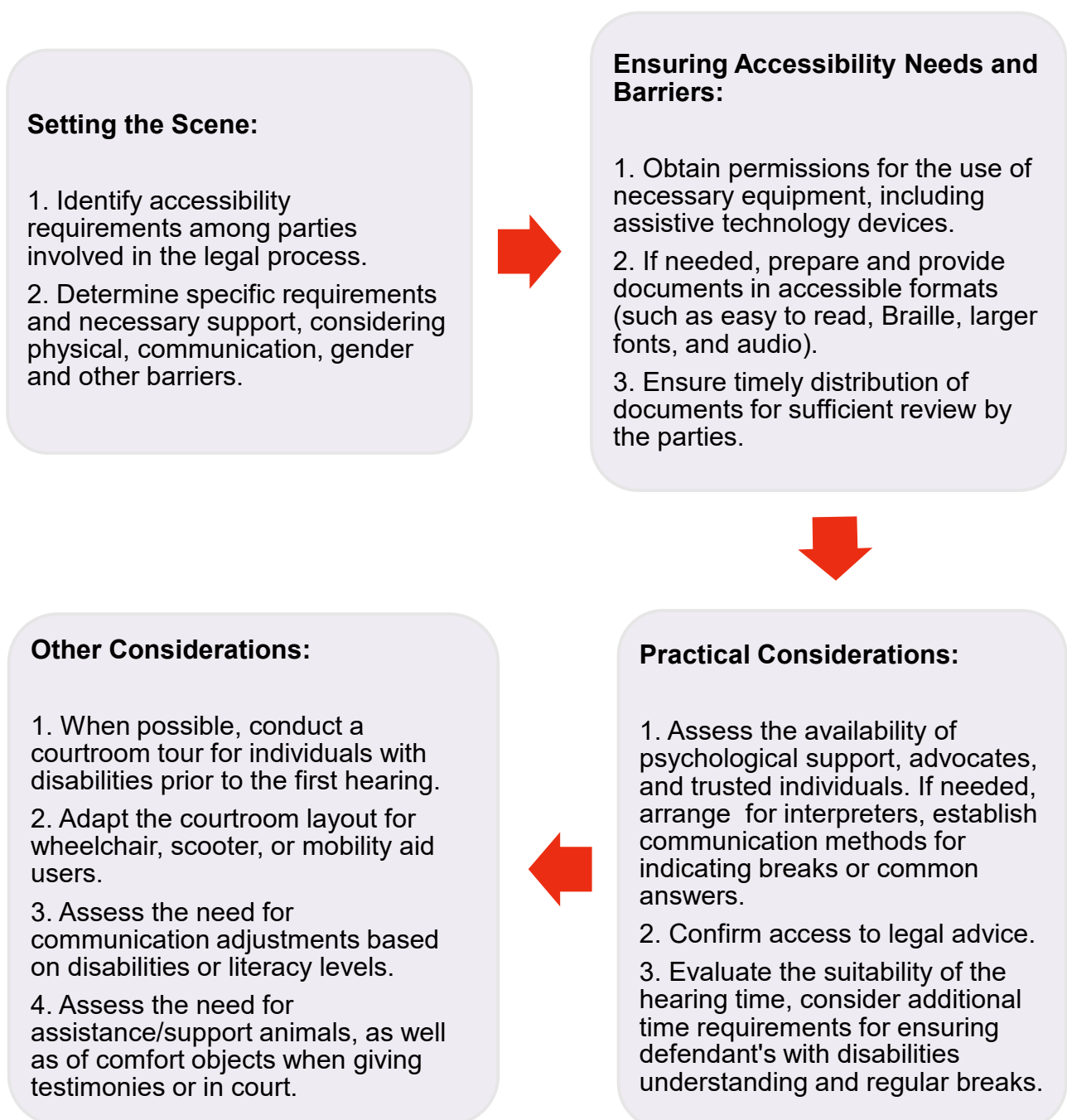
3. Consider that remote hearings will not be suitable in every instance. When managing a remote hearing:

- a. Determine if the individual will have support or be alone during the hearing.
- b. Address any potential disruptions beforehand. For example, breaks, connection loss, or interruptions.
- c. Introduce everyone at the start and proceed slowly.
- c. Customize the display screen to optimize visibility, considering who should be shown and in what size.
- d. Pin certain faces to the screen for consistency.
- e. Check regularly if the individual is following.
- f. Establish a signal for the individual to indicate when they don't understand or want to speak.



## 5.1. The schematic algorithm of needs assessment and provision of accommodations throughout the criminal proceedings (a step-by-step guide)

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



## 5.2. Understanding disability: Examples of impairments and possible adjustments

The CRPD itself describes disability as an “evolving concept” and indicates that among other persons with disabilities include “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”<sup>101</sup>

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

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

### ▪ **Acquired Brain Injury**

The term Acquired Brain Injury (ABI) refers to any damage to the brain that occurs after birth. ABI may be caused by various circumstances (e.g., accident, stroke, tumours, or health conditions such as Parkinson’s disease). Acquired Brain Injury may lead to changes in physical and sensory abilities, or to changes in the ability to think and learn (e.g., memory loss, lack of concentration, difficulty with abstract thinking). It may also cause changes in behaviour and personality (e.g., lack of motivation, mood swings, feeling flat or depressed, impulsive or uninhibited behaviour). Finally, ABI may create communication difficulties (e.g., slow or slurred speech, difficulty following conversations) and medical difficulties (e.g., epilepsy, seizures).<sup>102</sup>

Some adjustments should be made to assist persons with ABI who have difficulties in communication. Examples of these adjustments are the use of technologies, the use of clear and concise language, the repetition of some indications and concepts, and the allowance of extra time (uninterrupted) to answer questions.<sup>103</sup> During the hearing, other useful adjustments are regular breaks, late start times, shortened days, and a quiet environment.<sup>104</sup>

### ▪ **Attention Deficiency Hyperactivity Disorder (ADHD)**

Attention Deficiency Hyperactivity Disorder (ADHD) is a health condition characterized by inattentiveness, impulsiveness, and hyperactivity that show up from the age of

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<sup>101</sup> CRPD, Preamble, (e).

<sup>102</sup> Australian Disability Access Book, Section 7.2.

<sup>103</sup> Ibid. Section 7.2.

<sup>104</sup> UK’s Equal Bench Book, 388.

seven years and it might continue in adulthood. This health condition might affect a trial because the person might struggle to focus and listen to the judge.<sup>105</sup>

For this reason, accommodations can consist of giving management instructions or orders one at a time, not asking for over-complex particulars or schedules, and writing down what actions need to be taken. Moreover, breaks, summing up the current stage of the process, or using short sentences can be useful. Finally, these persons should be allowed to provide written answers to written questions and to have the hearing in a room with minimal outside noises and reduced distractions.<sup>106</sup>

- **Autism spectrum condition**

Autism spectrum condition (ASC) is a lifelong neurological and developmental condition, and it affects relationships and interactions of the person with the environment and other people. ASC is a spectrum condition so people can experience it in very different ways. For instance, not all autistic persons have some degree of a learning disability. People with ASC may experience delayed or impaired language comprehension and expression. They may also have difficulties using and understanding the social context of language and impaired social skills. For example, they may interpret words and sentences very literally, avoid eye contact, or have difficulties understanding their own or other people's emotions. Some persons with ASC may also have repetitive, ritualistic, or 'unusual' behaviours, and they may be extra sensitive to sounds, touch, light, or other sensory perceptions.<sup>107</sup>

In these cases, adjustments include the use of clear, concise and plain language, a calm voice tone, extra time (uninterrupted) to answer questions and avoidance of sarcasm or metaphors, and too many gestures or distractions. The questions should be precise and direct, and the judge should start each question by first addressing the person's name to avoid misunderstandings. Also, allowing extra time for processing each question and providing an answer. The judge should also be careful to not consider the avoiding of eye contact or other behaviours as a lack of respect.<sup>108</sup> Other possible adjustments are clear explanations about the procedural stages, circulation of written indications, schedules, and chronologies of deadlines, allowance of regular breaks, and patience. The courtroom should be quiet and with low lights, and the person should be allowed to choose where to sit.<sup>109</sup>

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

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

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<sup>105</sup> Ibid. 392.

<sup>106</sup> Ibid.392.

<sup>107</sup> Australian Disability Access Book, Section 7.3.

<sup>108</sup> Ibid. Section 7.3.

<sup>109</sup> UK's Equal Access Bench Book, 398.

everything in black, white, and grey. Visual Impairment/Low Vision is a partial loss of vision that cannot be corrected through glasses.<sup>110</sup>

Accommodations include ensuring documents are in accessible formats (e.g., Braille), requiring general support and guidance from the support staff when this is needed, making necessary physical adjustments in the courtroom, allowing support persons to be present, and guaranteeing access to assistance dogs. The persons should also be allowed to familiarise themselves with the physical environment, and they should not be asked to recall information or events based on their vision. Finally, good practices for judges and legal professionals are announcing themselves before speaking and asking the defendants about their specific needs.<sup>111</sup>

#### ▪ **Deafness and hearing loss**

Deafness is the complete or almost incomplete inability to hear. Deaf people communicate in various ways. Some persons within the deaf community do not consider deafness as a disability but regard themselves as a cultural and linguistic minority group.<sup>112</sup>

Possible adjustments are providing interpreters of the sign language, allowing the presence of a support person, facing the deaf persons, keeping eye contact, and giving the needed time to answer.<sup>113</sup> Other possible good practices involve choosing a quiet room with good lighting, allowing the use of an induction loop, or writing information and indications. When the judge and the other professionals in the court speak, they should not shout or exaggerate with hand gestures or facial expressions, but they should speak in a steady rhythm, make a little pause after every sentence to allow the translation, look at the deaf person, and use full sentences. It is important to remember that there is no universal sign language, but there are many national sign languages. For this reason, being aware of the language spoken by the person is important.<sup>114</sup>

#### ▪ **Down Syndrome**

Down Syndrome is a genetic condition resulting in an extra chromosome. Down Syndrome is characterized by a range of physical, health characteristics, and developmental effects. A common characteristic of Down Syndrome is some degree of an intellectual disability.<sup>115</sup>

Some persons with Down Syndrome may need communication adjustments like the use of communication aids, easy to read materials or the help of a support person.<sup>116</sup>

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<sup>110</sup> Australian Disability Access Book, Section 7.4.

<sup>111</sup> Ibid. Section 7.4.

<sup>112</sup> Australian Disability Access Book, Section 7.6.

<sup>113</sup> Ibid. Section 7.6.

<sup>114</sup> UK's Equal Treatment Bench Book, 421-424.

<sup>115</sup> Australian Disability Access Book, Section 7.9.

<sup>116</sup> Ibid. Section 7.9.

- **Dyslexia**

Dyslexia manifests itself as a difficulty with reading, writing, and spelling. The core challenges of dyslexia are the rapid processing of language-based information and weak short-term and working memory. By adulthood, many people have equipped themselves with coping strategies that allow them to deal with situations in which they experience difficulties. Some people might also rely on technology for many aspects of their daily life.<sup>117</sup>

Various adjustments can be made at all stages of the proceeding. Before the hearing, oral instruction can be followed by written indications and reminders. The instructions shall be given in plain language, through electronic means, and in case of written indications, the formatting style shall be clear (e.g., at least 12 font sizes, great spacing, coloured paper). During the hearing, persons with dyslexia might need regular breaks, clear explanations, single-asked questions, time to think about the information, and the possibility of asking questions and clarifications. In general, they should not be expected to give very precise details or to remember everything and possible misunderstandings should not be regarded as evasiveness and inconsistency.<sup>118</sup>

- **Intellectual disability**

Intellectual disability starts at birth and is characterized by significant limitations in intellectual functioning and adaptive behaviours. There are various types and degrees of intellectual disability. Persons with intellectual disability may have difficulties in communicating, interacting with other people, and living independently. People with intellectual disabilities need more time to understand spoken and written information, and they may have difficulties understanding instructions or abstract concepts. They may also have problems related to attention span and memory and become tired easily.<sup>119</sup>

- **Learning disabilities**

Learning disability is a life-long condition acquired before, during, or soon after birth, that affects intellectual development (a type of intellectual disability). It should not be confused with the “specific learning difficulties” such as dyslexia. Learning disability can be mild, moderate, or severe. People with a learning disability have difficulties to understand and remember new or complicated information, to learn new skills, and to generalize any learning to other situations. Some persons are unable to read or have difficulties in speaking, and some individuals might also have problems in accomplishing daily tasks.<sup>120</sup>

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

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<sup>117</sup> UK’s Equal Treatment Bench Book, 409-410.

<sup>118</sup> Ibid. 411-412.

<sup>119</sup> Ibid. 427.

<sup>120</sup> Ibid. 429.

intermediary, plain language, communication aids, and further explanations about the context and the procedure. Even in evaluating the evidence, the person's learning disability should be taken into account. Another good practice is the use of Makaton and the presence of an interpreter who knows it. Makaton is a language programme that enables persons with communication difficulties to express themselves independently.<sup>121</sup>

- **Psychosocial disability**

Psychosocial disability can include mood conditions (e.g., depression, postnatal depression, bipolar disorder), anxiety conditions (e.g., phobias, panic attacks, social and general anxiety, obsessive-compulsive disorders), and psychotic conditions (e.g., schizophrenia, some forms of bipolar disorder). Psychosocial disabilities may affect the way persons think, feel, behave, and interact.<sup>122</sup>

It is important to not stigmatize mental health conditions and psychosocial disability and be aware that they might be only episodic. Possible adjustments can be various, and they depend on the specific condition and on what triggers the person. Examples of possible adjustments are allowing regular breaks, limiting the number of people in the courtroom, allowing a postponement for medical reasons, allowing video links, setting more specific rules for cross-examination, giving extra time to answer questions, and providing reassurance if necessary.<sup>123</sup>

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<sup>121</sup> Ibid. 430-432.

<sup>122</sup> Australian Disability Access Book, Section 7.11.

<sup>123</sup> UK's Equal Treatment Bench Book, 434-435.

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

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

#### **Assessing accommodation needs**

- Does the defendant/person have any disabilities? If so, what accessibility measures and accommodations are necessary? These support measures should be determined before the beginning of proceedings and should be gender and age appropriate (See 4.2.1 Individual assessment).
- Has the defendant/person with disabilities been contacted as early as possible to ascertain their accommodations and inform about the right to benefit proactively from procedural accommodations throughout the proceedings? (See 4.4. Right to information and communication in accessible formats).

#### **Support people**

- Has the person with disabilities been informed about the right to be assisted by a support/trusted person that they can freely choose? (See 4.2.2 Provision of procedural accommodations)
- Has the support person been informed about the proceedings at stake against the defendant with disabilities and has been facilitated the direct contact between these two?

#### **Language and communication assistance considerations**

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

- Has an intermediary/facilitator (including a third-party) been made available at no cost to the defendant with disabilities to assist with communication throughout the proceedings? (See 4.2.2 Provision of procedural accommodations)
- Has the defendant with disabilities been asked if they can hear what is being asked or discussed, including in the courtroom?
- Is the speech pace appropriate for the defendant to fully comprehend what is being communicated? Has the person been asked if they require breaks or shorter sessions? (See 4.2.2 Provision of procedural accommodations)
- Has the defendant with disabilities and the support person been asked about their communication methods and any adjustments before the beginning of proceedings?
- Has the relevant assistive technology, communication support (including third-party interpreters) and communication tools been made available to support defendants with disabilities at all stages of the proceedings as necessary for their full participation? (See 4.4.2. Right to interpretation and translation)

#### **Information access considerations**

- Has information (for example, documents and forms) been available in the relevant accessible formats? This can include Easy to Read, Braille, larger fonts and audio (See 4.4.2. Right to interpretation and translation)
- Have documents been provided before hearings in a timely manner (and in the relevant accessible format) to allow sufficient time to read and absorb materials?

#### **Physical access considerations**

- Is the venue accessible for people using wheelchair or other mobility aid?
- Has been considered adaptation measures to minimise intimidation, especially in courtroom settings, such as removing formal attire like wigs or cloaks and offering comfort objects to the person with disabilities? (See 4.6. Right to be present at trial and the right to presumption of innocence)

- Is the person using an Assistance/ support dog or other assistance/support animal<sup>124</sup>? If so, when will the court break to allow water and toilet breaks? Is a bowl of water provided?

### **Legal assistance**

- Has been the defendant informed about her/his right to a lawyer and right to free legal aid?
- Has the person been offered access to a lawyer or free legal aid from the first contact with the judicial authorities, and throughout the proceedings? (See 4.5.2. Assessment of the information on the Right to legal aid)
- Has the lawyer been provided with procedural adaptations, such as interpreters, assistive technologies, intermediaries/facilitators, or others, to ensure effective communication between her/him and the defendant with disabilities throughout the proceedings?

### **Participation in the trial**

- Have the person wishes and preferences been prioritised when considering the remote or in-person participation in the trial?
- In case of remote hearings has it been ensured that defendants with disabilities have equal access to all required procedural accommodations as in in-person hearings (See 4.6. Right to be present at trial and the right to presumption of innocence)

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<sup>124</sup> According to the Disability Access Bench Book of the Judicial College of Victoria, Australia, assistance animal is an animal that is trained to perform tasks or functions that help a person with a disability to alleviate the effects of the disability. This includes animals trained to pick things up for people with mobility disabilities, animals trained to assist people who have seizures, or to provide comfort to vulnerable witnesses when waiting for court or when giving evidence from a remote witness facility. The practice is also used currently in the US and UK.

## 5.4. Directory

The following organizations offer a range of services to support individuals with disabilities in navigating the justice system. Some provide specific services such as sign language interpretation and non-profit activities. These services may be financed through government funding or other sources. Others focus on advocacy, representation, and education, with their services provided on a pro bono basis, or offer a mix of advocacy, support, and community services, through their funding models may vary, and they may provide some services for free while charging for others. We recommend contacting each organisation directly, contact details for each organisation is provided.

- **Lietuvos kurčiųjų draugija** (Lithuanian Society of the Deaf) - an association established in 1938. For more than 80 years, it has represented and defended the rights of persons with hearing impairments, provided methodological assistance, and organized national and international events, conferences, and seminars.

Website: <http://www.lkd.lt>

Email: [centras@lkd.lt](mailto:centras@lkd.lt)

- **Lietuvos aklųjų ir silpnaregių sąjunga** (Lithuanian Union of the Blind and Visually Impaired) – an independent, volunteer-based public organization for the blind and visually impaired persons. It operates in the whole territory of Lithuania, it has branches and representatives in all districts and counties. To realize its goals, LASS carries out various non-profit activities.

Website: <https://lass.lt>

Email: [centras@lass.lt](mailto:centras@lass.lt)

- **Lietuvių gestų kalbos vertimo centras** (Lithuanian Sign Language Interpretation Center) - operates under the Agency for the Protection of the Rights of Persons with Disabilities under the Ministry of Social Security and Labor of the Republic of Lithuania. The centre was established to enhance information accessibility for persons with hearing impairments, it offers sign language interpretation services across various sectors like social, legal, educational, healthcare, and more. The centre's services are financed through the Lithuanian national budget.

Website: <https://lgkvc.lrv.lt>

Email: [info@vertimaigestais.lt](mailto:info@vertimaigestais.lt)

- **Psichikos sveikatos perspektyvos** (Mental Health Perspectives) – a non-governmental organization founded in 2000, focusing on mental health, disability and human rights. The organisation promotes a human rights-based approach to mental health and disability through research, advocacy, and education.

Website: <https://perspektyvos.org>

Email: [vilnius@perspektyvos.org](mailto:vilnius@perspektyvos.org)

- **Lietuvos sutrikusio intelekto žmonių globos bendrija „Viltis“** ("Viltis" Society for the Care of People with Intellectual Disabilities) - established in 1989, they advocate for the societal inclusion of individuals with intellectual disabilities. As an association with over 11,000 members, including those with disabilities and their families, "Viltis" has driven progressive reforms and established community services. Emphasizing social partnership and human rights, it actively supports Lithuania's disability inclusion program.

Website: <https://viltis.lt>

Email: [viltis@viltis.lt](mailto:viltis@viltis.lt)

- **Lietuvos sutrikusios psichikos žmonių globos bendrija** (Lithuanian Welfare Society for People with Mental Health Conditions) – the society represents individuals with mental health conditions and psychosocial disabilities, their families, and communities, aiming to enhance their quality of life through advocacy for quality treatment, psychosocial rehabilitation, employment, legal aid, and community-based care services. The Association actively promotes the development of community services, advocates for disability rights in governmental institutions and conducts educational campaigns to improve social inclusion. Currently, it engages over 1,500 individuals across 9 counties, operating employment rooms and an Educational Center for Persons with Disabilities in Vilnius since 2000 and 2014, respectively.

Website: [www.lspzgb.lt](http://www.lspzgb.lt)

Email: [bendrija@lspzgb.lt](mailto:bendrija@lspzgb.lt)

- **„Lietaus vaikai“ Lietuvos autizmo asociacija** (The Lithuanian Autism Association "Children of the Rain") - founded in 2013, established by parents of autistic children, is the largest organization representing people with autism in Lithuania. The association focuses on sharing medical knowledge, advocacy, developing support methodologies, organizing training, and implementing projects. Its primary goal is to ensure that autistic people live inclusively and with dignity.

Website: <https://www.lietausvaikai.lt>

Email: [info@lietausvaikai.lt](mailto:info@lietausvaikai.lt)

## 5.5. Further readings

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

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

2. **ENABLE model disability bench book** provides structured and detailed information regarding access to justice for people with disabilities. The document informed the development of national bench books.

<https://validity.ngo/wp-content/uploads/2024/08/ENABLE-Model-disability-benchbook.pdf>

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

<https://perspektyvos.org/wp-content/uploads/2023/06/LT-National-Briefing-Paper-ENG-FINAL.pdf>

4. **Guide: Accessibility of the Physical Environment for Blind and Visually Impaired** provides recommendations and requirements to improve accessibility for individuals with visual impairments.

[https://lass.lt/wp-content/uploads/2022/06/Fazines-aplinkos-prit\\_2021\\_prieinamas-neregiamas-2.pdf](https://lass.lt/wp-content/uploads/2022/06/Fazines-aplinkos-prit_2021_prieinamas-neregiamas-2.pdf) (in Lithuanian)

5. **Guide: How to Ethically Speak about Mental Health** aims to combat stigma and stereotypes surrounding mental health by addressing the negative impact of derogatory terms. It emphasizes the need for respectful and empathetic language when discussing mental health to promote understanding, open dialogue, and support.

<https://perspektyvos.org/zodziai-yra-svarbus> (in Lithuanian)

6. **Guide: Internet For All** outlines how to make digital information accessible to everyone. It covers topics such as digital accessibility, legal requirements at both international and national levels, the diverse needs of digital users, and strategies to ensure accessibility for users with various abilities and requirements. Additionally, the guide features examples of accessible websites, links to valuable resources, international standards, and relevant legislations.

[https://Inf.lt/wp-content/uploads/2018/12/Internetas\\_visiems.pdf](https://Inf.lt/wp-content/uploads/2018/12/Internetas_visiems.pdf) (in Lithuanian)

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

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

8. **The Official Guidelines for Customizing Services and Environment for the Deaf** offer recommendations on how to adapt services and environments to better accommodate the needs of the deaf-blind community.

[http://www.lkd.lt/uploads/pdf/svarbus\\_dokumentai/OFICIALIOS-REKOMENDACIJOS-DĖL-PASLAUGŲ-IR-APLINKOS-PRITAIKYMO-KURČNEREGIAMS.pdf](http://www.lkd.lt/uploads/pdf/svarbus_dokumentai/OFICIALIOS-REKOMENDACIJOS-DĖL-PASLAUGŲ-IR-APLINKOS-PRITAIKYMO-KURČNEREGIAMS.pdf) (in Lithuanian)

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

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

10. **UN Disability Inclusive Language Guidelines** provide recommendations to ensure inclusive communication. These guidelines align with the United Nations Convention on the Rights of Persons with Disabilities and other authoritative documents, offering practical advice for consistent and respectful language use. They emphasize the importance of combating ableism and celebrating diversity through language that respects the rights and dignity of all individuals:

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

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

12. International Commission of Jurists, [Model Disability Benchbook on the Rights of Persons with Disabilities in Criminal Proceedings](#), 2024