



SLOVAK

BENCHBOOK

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



01

ABOUT THE BENCH
BOOK

A. Background

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 Outdated laws which do not recognise their legal capacity and standing, omission to detect the disability and provide the needed support to access information and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

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

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

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

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

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

⁶ Ibid.

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

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

⁹ With some exceptions mentioned here:

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

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

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

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

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

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

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

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

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

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

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

B. Who is this Bench Book for?

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

C. How to use this Bench Book?

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

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

D. Bench Book Overview

This Bench Book is structured as follows:

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

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

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

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

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

E. Methodology

The content of this bench book was developed by Forum for Human Rights, based on the findings of the national research on barriers of defendants with intellectual and psychosocial disabilities in the accessing criminal justice services¹⁶, carried out within the ENABLE project¹⁷. 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 Forum for Human Rights from March to June 2024. It also relies on the intensive research conducted within the National Briefing Paper, which included desk research and also utilized interviews with CJA, medical professionals, civil society organizations, and persons

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

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

with disabilities that were charged with committing a crime. Therefore, through the National Briefing Paper, main challenges and experiences of individuals in Slovakia were identified to expand on in this bench book.

F. Main definitions and terminology

- **Equity vs Equality** – The words equity and equality are often used interchangeably, but they have a different meaning. Equality means that each individual or group of people is given the same resources or opportunities. Equity recognizes that each person has different circumstances and allocates the exact resources and opportunities they need to reach an equal outcome equal to others. In other words, it's not giving everyone the exact same thing. If we give everyone the exact same thing, expecting that will make people equal, it assumes that everyone started out in the same place - and this can be vastly inaccurate because everyone isn't the same.¹⁸
- **Access vs Accessibility** – Access means the opportunity or right to do something or enter a place. For example, if you have a work badge, you have access to your work premises. Accessibility refers to the design of products, devices, services or environments so as to be usable by everyone and includes information and communications. For persons with disabilities, for example, physical accessibility involves the creation of a barrier-free environment where they can move freely (think of systemic solutions for stairs and heavy doors for persons using a wheelchair) or can independently access information freely (think of availability of documents in Braille or Easy Read format)¹⁹
- **Intermediaries /facilitators** – They are “(...)persons who work, as required, with justice system personnel and persons with disabilities to ensure effective communication during legal proceedings.” Such intermediaries may “support persons with disabilities to understand and make informed choices, making sure that things are explained and talked about in ways that they can understand, and that appropriate accommodations and support are provided.”²⁰

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

¹⁹ UN Disability Inclusive Language Guidelines:

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

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

- **Legal capacity** – legal capacity includes the capacity to be both a holder of rights and an actor under the law²¹. Legal capacity to be a holder of rights entitles a person to full protection of his or her rights by the legal system. Legal capacity to act under the law recognizes that person as an agent with the power to engage in transactions and create, modify or end legal relationships.
- **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 others²². Persons with psychosocial and intellectual disabilities 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, including age-related and degenerative impairments; etc.
- **Procedural accommodations** – refer to all necessary and appropriate “modifications and adjustments in the context of access to justice, where needed in a particular case, to ensure the participation of persons with disabilities on an equal basis with others.”²³ Most of the measures described in this Bench Book amount to “procedural accommodations.”
- **Reasonable accommodations** –represent the necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”²⁴
- **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

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

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

²³ UN International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020), https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf, p 9.

²⁴ Article 2 of the CRPD. Please see more detailed information on this in Annex 4.

enhance their ability to make decisions for themselves. Conversely, substituted decision-making is a model which delegates to others the right to make decisions on behalf of persons with disabilities (most often someone is appointed to be “guardian” by law). The latter system is prevalent in legal systems across the world, even if it violates the autonomy and legal capacity of persons with disabilities and infringes the CRPD.

- **The Medical model vs the Human rights model of disability** - the Medical model of disability places the focus on the person’s condition, which is understood to directly cause their disability; on the other hand, the Human rights model, places the focus on the individual and their inherent dignity acknowledges that it is the barriers created by society that prevent individuals with disabilities from enjoying human rights on an equal basis with others.²⁵ 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.”²⁶
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²⁵ Anna Lawson & Angharad E. Beckett (2021) The social and human rights models of disability: towards a complementarity thesis, *The International Journal of Human Rights*, 25:2, 348-379, DOI: 10.1080/13642987.2020.1783533.

²⁶ The CPRD preamble, e).

02

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

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

The UN Convention on the Rights of Persons with Disabilities (*CRPD/the Convention*) Regarded as a key instrument in the international legal framework – it promotes respect for the persons with disabilities and ensures that they enjoy their human rights and fundamental freedoms fully and equally with others.²⁷

Slovakia ratified the *CRPD* in 2010, and committed to implement its provisions without a single reservation related to conditions of recruitment, hiring, and employment in armed forces, security agencies etc. 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*)²⁸. Among the most relevant General Comments (GC) to the topic of this Bench Book are GC on Article 12 (Equal recognition before the law)²⁹, Article 9 (Accessibility)³⁰, Article 19 (Right to live independently and be included in the community)³¹, Article 5 (Equality and non-discrimination)³². *The Committee* and Special Rapporteur on the Rights of Persons with Disabilities also issued important guidelines for implementing the *CRPD*, including the Guidelines on Article 14 on the right to liberty and security of persons with

²⁷ The *CRPD* Convention and the Optional Protocol entered into force on 3 May 2008. It is the first comprehensive human rights treaty to be open for signatures by regional integration organizations. The *CRPD* was adopted on 13 December 2006 and was opened for signature on 30 March 2007. There were 82 signatories to the Convention, which was the highest number of signatories in history to a UN Convention on its opening day. United Nations Department of Economic and Social Affairs. "Convention On The Rights Of Persons With Disabilities (CRPD)." Accessible [here](#).

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

²⁹ <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-1-article-12-equal-recognition-1>.

³⁰ <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-2-article-9-accessibility-0>.

³¹ <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no5-article-19-right-live>.

³² <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-non-discrimination>.

disabilities³³, as well as the International Principles and Guidelines on Access to Justice for Persons with Disabilities (*the International Principles*).³⁴

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

- Equal recognition before the law (article 12 CRPD)
- Access to justice (article 13 CRPD)
- All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability (Principle 1)
- Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations (Principle 3)
- Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others (Principle 4)
- Persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process (Principle 5)
- Persons with disabilities have the right to free or affordable legal assistance (Principle 6)
- All those working in the justice system must be provided with awareness raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice (Principle 10)

Among the most important obligation, specified by the *CRPD*, that Slovakia (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 grounds³⁵

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

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

³⁵ 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; (...)".

- **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, and that constructs such as “cognitive incapacity” and “mental incapacity”³⁶, 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.”³⁷
- provide the support necessary to enable persons with disabilities to make decisions that have legal effect.³⁸ Such **support measures “must respect the rights, will and preferences of these persons** and should never amount to substitute decision-making.”³⁹
- 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 ⁴⁰
- take measures to **provide gender and age-appropriate individualized procedural accommodations**, according to the will and preference’ of the person concerned.”⁴¹. Such accommodations encompass all the necessary and appropriate modifications and adjustments needed to make decisions for themselves in a particular case⁴², 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.⁴³ Accommodations should

³⁶ 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.

³⁷ Ibid, International Principles, in paragraph 1.2.c.

³⁸ CRPD, GC No 1, para. 16.

³⁹ CRPD, GC No 1, para. 17.

⁴⁰ Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, Recital 6.

⁴¹ 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.

⁴² World Health Organization, “Supported decision-making and advance planning: WHO QualityRights Specialized training,” 1 January 2019, accessible [here](#).

⁴³ UN International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 3.2.d

be organized before the start of proceedings, and all participants should be informed of their availability throughout the course of legal proceedings.⁴⁴ 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.⁴⁵
- 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 request⁴⁶
- 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)⁴⁷
- **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 trial⁴⁸ and that their right to presumption of innocence is duly guaranteed⁴⁹

⁴⁴ Ibid, Principle 3, Guideline 31, p.15.

⁴⁵ Article 21 of the CRPD, UN International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 4.

⁴⁶ 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.

⁴⁷ 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.

⁴⁸ Article 14.3 International Covenant on Civil and Political Rights; Article 8.2 Directive 2016/343/EU

⁴⁹ 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.

- ensure that in cases of defendants with intellectual or psychosocial disabilities, they enjoy legal capacity on an equal basis with others, and their decisions or views are not substituted by those of guardians or experts, which rather provide supported decision-making

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.⁵⁰

Under the Constitution of Slovakia, international human rights treaties which were ratified and published in accordance with the law, take precedence to the laws of Slovakia. Among the international treaties taking precedence in this way, the CRPD is included. Although there is no provision in the Constitution allowing for direct applicability of international treaties, the Constitutional Court utilizes them (such as the European Convention on Human Rights) directly when deciding cases.

Under Art. 2 para. 2 of the Code of Criminal Procedure (Act 301/2005 Coll.), the human rights may be interfered with in cases allowed by law, only to the extent necessary in order to achieve the purpose of criminal proceedings, and while respecting dignity and privacy of individual. Under para. 7, everyone has the right for his matter to be fairly and promptly tried by an independent and impartial tribunal in his presence, and in a manner so that the person can comment on the evidence gathered, unless the Code stipulates otherwise. Under para. 9, everyone facing criminal proceedings has the right to defence. Under para. 18, criminal trials take place orally, with exceptions provided for only by law. The hearings and taking of evidence is directed by the court, but as a ~~general rule, it leaves the questioning of defendants, witnesses, victims etc. to the~~ parties, firstly to the party summoning the person questioned

⁵⁰ 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
IN THE JUSTICE SYSTEM

Lack of procedural accommodations is one of the most apparent and significant deficiencies in the criminal law and procedure in Slovakia. The UN Committee on the Rights of Persons with Disabilities identified lack of reasonable accommodations and procedural accommodations in law and requested not only legislative changes, but also trainings of CJA, law enforcement etc.⁵¹

There is very little to guide CJA as to when and in what manner should procedural accommodation be adopted, leaving them at the discretion of the authorities, and with a very general framework within the legislation, and without best practices or guidelines provided. In terms of legislation, virtually all procedural accommodations have to take place via utilization of general procedural law, e. g. by providing “adequate explanation where necessary”, or allowing recording questioning of a minor where appropriate given the circumstances, particularly where there is doubt as to whether the person is capable of understanding the content of the interrogation, taking into account his or her best interests. Most usually, the majority, if not all the interests of the defendants with disabilities, are to be safeguarded by defence attorneys, which make submissions on their behalf and represent their clients. In cases of defendants with limited legal capacity, such representation is even mandatory, but it is unclear whether the attorneys, especially if not of one’s own choosing, but appointed by courts, are adequately equipped not only to apply the law in a disability-friendly way, but even communicate with and understand their clients.

Simultaneously, there is very little training provided to CJA and other professionals as to how approach to defendants with disabilities should look like. The trainings cover general issues of discrimination at best, and do not help in overcoming knowledge about disabilities, their influence on the overall purpose of the criminal proceedings, or the best practices to conduct them. In general, Slovakia keeps the medical approach to disability in legislation and in practice, not recognizing defendants with disabilities as individuals with full set of human rights, rather viewing disabilities as an impairment to be treated and mitigated.

In terms of right to be present at trial, the legislation does not provide for remote hearings for the defendants, and allows only witness testimony in remote form. Trials

⁵¹ CRPD/C/SVK/CO/1.

in absentia are in principle reserved for fugitives, not as a manner of procedural accommodation.

Moreover, there is little to no data collection and publication regarding criminal proceedings or convictions of persons with disabilities, the types of disabilities, or other data regarding criminal justice system involving persons with disabilities.

European Union has adopted multiple directives aimed at strengthening fair trial in criminal proceedings, and while some attention has been paid on persons with disabilities in this regard, Slovakia has focused entirely on rights of victims with disabilities when transposing the directives. For that reason, while the legislation on victims of crimes includes some disability-friendly provisions, these have little bearing on rights of defendants with disabilities. In terms of Code of Criminal Procedure, there are negligible norms or disability-focused provisions as regards procedural accommodations, apart from rights associated more broadly with right to fair trial, such as free mandatory legal representation.

Denial and limitation of legal capacity (violation of Article 12 of the CRPD) remains the most common reason in Slovakia for the denial of the right to a fair trial and the exclusion of defendants with intellectual and psychosocial disabilities from criminal proceedings on the basis of "incompetency" to stand trial.⁵² This practice represents a human rights violation with serious negative impact on the defendants at stake, both from the procedural participation and fair criminal process outcomes points of view, undermining the purpose of the criminal process in general.⁵³ Denial of legal capacity can no longer be imposed, but persons deprived of legal capacity under older legislation may still be subjected to such deprivations, and limitation of legal capacity may still be imposed by reason of a disability. Although these circumstances have no bearing e. g. on providing mandatory legal representation in criminal proceedings, there are other implications why these practices are harmful even to defendants in criminal proceedings. For example, a person with limited legal capacity may be required to act through a guardian, and persons with disabilities may even be excluded from criminal trial and have mandatory protective treatment (which may involve

⁵² National Briefing Paper on Slovakia, pp. 29-31.

⁵³ Which, in most jurisdictions, is to protect the person, society and the state from crime, as well as to protect the person and society from wrongdoing by persons in positions of power in their work related to the investigation of alleged or committed crimes, so that any person who has committed a crime is punished according to his guilt and no innocent person is held criminally responsible and convicted.

deprivation of liberty) imposed. The protective treatment may be ordered by institutionalization, but apart from regular review of grounds for imposing it there is no measure limiting its length, as long as the protective treatment is deemed to be necessary.

Slovakia has yet to implement mechanisms that allow for the identification of people who require accommodations in criminal proceedings. Code of Criminal Procedure recognizes disability rights explicitly only as regards victims and aggrieved parties in Art. 2 para. 21, stating that the victim's personal situation and immediate needs, age, sex, possible disability and maturity must be taken into account, while fully respecting his or her physical, mental and moral integrity. However, there is no mention whatsoever in the criminal law as to how to identify defendant with a disability. In practice, CJA use mostly information by caregivers of defendants and appoint expert witnesses, which are tasked not only with identifying disability, but also assessing mental state, intent of the defendant, and capacity to stand trial.⁵⁴ These reports may be contested by defendants, and controlling report of another expert witness may be ordered, with discrepancies between the two experts to be considered by the expert concilium at an expert institution and it will comment on both expert witness reports.

These findings above raise serious concerns about the realization of the right to participate equally in the justice processes, the fairness of the outcomes of these trials, and the capacity of criminal justice participants to carry out their duties with the due diligence required in these life-changing matters. Lack of specialisation and training on the subject is commonly noted as one of the main causes of insufficient disability awareness among justice actors.

Intersectional discrimination

Persons with disabilities in Slovakia 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.⁵⁵ For example, defendants with disabilities are left without

⁵⁴ National Briefing Paper on Slovakia, p. 57.

⁵⁵ 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

appropriate support on part of state and resort to finding help from NGOs, such as case of a defendant with a disability of Roma origin that got help from civil society organizations focused on combating discrimination against Roma.⁵⁶

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.

⁵⁶ National Briefing Paper on Slovakia, p. 50.

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.

A. Right to equal participation in the criminal process

Equal recognition before the law and full legal capacity is essential in order to properly ensure that persons with disabilities can fully exercise their human rights on an equal footing with others. The equal recognition before the law necessitates that authorities, in applying the law, cannot discriminate against persons with disabilities. However, inequalities in treatment of persons with disabilities persist, not only in practice, but also having regard to the existing legislation in Slovakia.

Due to intellectual or psychosocial disability, Slovakia still allows limitation of legal capacity, although not deprivation of legal capacity entirely. It allows limitation due to “mental disorder” that is not temporary, and the court procedure can be initiated by third parties, not the person concerned, namely by a family member, a healthcare or social service provider, or anyone with a legal interest. The proceedings take place with participation of the person whose limitation of capacity is decided and with the input of expert witnesses.⁵⁷ Nevertheless, no one should be denied access to justice on the basis of disability.⁵⁸ The UN Committee on the Rights of Persons with Disabilities has denied the notion that disability may be the ground for denying legal capacity and the substitute decision-making taken by guardians instead of the persons concerned.⁵⁹ The limitation of legal capacity creates barriers to access to justice for persons with disabilities and creates significant stigmatization that deprives such persons of equal treatment before the law.

Instead, supported decision-making must be adopted in Slovakia, where persons with disabilities may decide their own matters, although with the appropriate help of family members and people they trust, but without these persons, taking the decisions, on behalf of persons with disabilities themselves. Such approach must be taken even in situations where persons with disabilities are making decisions in the context of criminal proceedings. The UN CRPD found a violation of article 12 of the CRPD where the person with disability could not exercise their legal capacity to plead not guilty, challenge the evidence against them, designate a defense lawyer and challenge any

⁵⁷ National Briefing Paper on Slovakia, p. 29-30.

⁵⁸ International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 1.

⁵⁹ UN CRPD, General Comment no. 1.

decisions. The CRPD recalled in this case that states are obliged to recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life, and to provide access by persons with disabilities to the support they may require in exercising their legal capacity.⁶⁰ It is essential to stress that these rights are to be safeguarded even as regards persons with intellectual or psychosocial disabilities.

One of the essential impairments to full realization of equality before the law is the notion of mental incapacity, or incapacity to stand trial. In Slovakia, although deprivation of legal capacity entirely is no longer permissible, such persons, as well as persons with limited legal capacity,⁶¹ can still be suspected of committing crimes and criminal proceedings may be charged as regards their actions. In criminal proceedings, the crucial issue regarding equal recognition before the law is the insanity defence, as enshrined in Art. 23 of the Criminal Code (Act no 300/2005 Coll.). Under the insanity defence, lack of cognitive capacity or control over one's actions may be a reason for discontinuing the criminal proceedings. However, in such cases, persons with disabilities are placed under the protective treatment in accordance with Art. 73 of the Criminal Code. Such protective treatment in cases of absent or diminished cognition or control of the defendants is automatic. While the protective treatment may take form of ambulatory care by doctors, imposing protective treatment may involve also deprivation of liberty and forced institutionalization, potentially for an indefinite period of time.

The UN CRPD has rejected the insanity defence or unfitness to stand trial, and is of the view that such procedures discriminate against persons with disabilities, since they not only result in indefinite and uncertain periods of forced institutionalization, but also lack fundamental safeguards. Such proceedings lack due process rights in the extent of due process rights that defendants have in criminal trials.

In order to ensure that defendants with disabilities are not deprived of their equal treatment and discriminated against, persons with intellectual or psychosocial disabilities must still 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. While accommodating procedures (see below) is therefore essential to realize full access to justice for defendants with disabilities, the

⁶⁰ Views adopted by the Committee under article 5 of the Optional Protocol concerning communication no 32/2015, 15 October 2019, para 10.6.

⁶¹ Which is still allowed in the Slovak legislation.

procedures and safeguards of criminal proceedings may not be replaced entirely for simplified procedures aimed at confining defendants with disabilities in psychiatric institutions without the human rights guarantees provided through criminal proceedings.

In ensuring full equality before the law, the CRPD introduces the model of inclusive equality, which presents a paradigm shift in understanding of equality and non-discrimination. To properly safeguard these rights, four considerations have to be present: (a) a fair redistributive dimension to address socioeconomic disadvantages; (b) a recognition dimension to combat stigma, stereotyping, prejudice and violence and to recognize the dignity of human beings and their intersectionality; (c) a participative dimension to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion in society; and (d) an accommodating dimension to make space for difference as a matter of human dignity.⁶² In implementing these four dimensions, equality before the law will be realized. Even though the victims with disabilities benefit from mandatory individual assessment that has to be repeated, under Art. 3 para. 7 of the Victims Act, similar procedures should be applied *per analogiam* to situation of defendants with disabilities.

Recommendations for justice professionals

1. Ensure familiarity with and, when possible, draw attention to any legislation that contravenes the CRPD.
2. Avoid using deficit language when referring to witnesses, victims, or defendant with disabilities, opting instead for the terms outlined in Section 1.6 of this Bench Book.
3. Recognize and assume the full legal capacity and right of defendants with disabilities to participate in all stages of the proceedings in all courts. This includes:
 - a) Provide persons with disabilities the support and accommodations necessary to exercise their legal capacity. For more 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 access to procedural accommodations and supports, as well as legal assistance to participate in court proceedings.

⁶² CRPD, General Comment No 6, para 11.

- 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.

Promising Practise

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

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

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

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

B. Right to procedural accommodations

B.1. Individual assessment

In criminal proceedings, great variety of actors and professionals come into contact with persons with disabilities. Not all of them have legal education, or background in protection of human rights. Some others may not be aware of the disability rights and

disability-friendly approaches. Yet another group of practitioners may lack the necessary skills to communicate and work with defendants with disabilities. All these groups, apart from necessary training and assistance of trained professionals, need to have the requisite knowledge to identify individuals with disabilities when they meet them in the context of criminal proceedings. In addition, it is of utmost importance for these professionals to, once identifying a defendant with a disability, be capable of appropriately assessing the barriers these disabilities may create, as well as be capable of identifying the needs defendants with disabilities have. Only then, the criminal justice system may be adapted properly for all the defendants with disabilities that may be charged with crimes.

Too often, the existing disability is only assessed in the context of insanity defence, and only expert witnesses (mostly psychiatrists) have a say in the conclusions to be made and consequences that are to be considered. In Slovakia, the assessment of barriers and needs should in any case be considered immediately when possible, from the first contact of the suspects with police, once it becomes apparent, no matter how informally, that the suspects may have a disability that poses a barrier that needs to be compensated with accommodations. Such assessments should take place regularly, in order to assess also whether needs of a defendant with disability changed or developed throughout the proceedings. “Competent authorities should also be able to ask an independent expert to examine the degree of vulnerability, the needs of the vulnerable person and the appropriateness of any measures taken or envisaged against the vulnerable person.”⁶³ However, the assessment of individuals with disabilities, as mentioned above, should not only be considered by expert witnesses in the context of insanity defence or institutionalization.

Recommendations for justice professionals

1. A practical mechanism to identify disability and individual needs and barriers early in the procedure (individual assessment) should be developed and implemented, ensuring that all necessary measures are taken to ensure that the person with a disability can go through the criminal procedure on an equal basis.

⁶³ Commission Recommendation 2013/C-378/02 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings.

[Good Practice] In some, countries, such as UK and Spain, this assessment can be done by intermediaries. In Spain, facilitators can be provided freely by NGOs like Plena Inclusion.⁶⁴ When prison's officers suspect that the the person has an intellectual disability, they contact Plena Inclusion that conducts an assessment and provides assistance in obtaining the official recognition.⁶⁵

- a) Identification, for example through an individual assessment, should occur early in the criminal justice process at the very beginning of the proceedings, and prior to any actions undertaken as part of the criminal justice proceedings, for instance prior to police interview.
 - b) Police and law enforcement authorities, as well as any other justice actor or individual involved in disability identification, must determine whether someone has a disability and related needs and provide assistance, accommodations, and support from the start of the proceedings. These actors should receive adequate training for these duties and be able to identify disability early on.
 - c) Assessment and communication in this regard should not be used to diagnose or identify disability, but rather to obtain the information required for the competent authority to determine, in consultation with the person with a disability, and decide the provision of procedural accommodations.
2. Identify and disseminate best practices regarding the identification of disability and develop training actions focusing on the human rights model of disability and which adjustments should be made so that persons with disabilities can participate on an equal basis.⁶⁶

⁶⁴ Spain National Paper, Section 3.1.2.2 /page 20.

⁶⁵ Ibid. Section 3.2.1.1/page 30.

⁶⁶ Portugal national paper

[Good Practice] In Bulgaria, the courts use an “NGO assessment of the social functioning of persons with disabilities and their special needs.”⁶⁷ This assessment is designed to be used in all courts addressing cases with persons with disabilities. It aims to increase the effective participation in the trial and to improve the protection of the person’s rights and interests.⁶⁸

3. Information sharing rules and safeguards should be in place when individual assessment is being conducted by justice actors.
4. The defendants should be involved in the development of the individual assessment, should receive it when finalised and should have the right to comment on it, with communication and other support as necessary.
5. Judges and other justice actors should verify that the individual assessment has been completed early in the process.

B.2. Provision of procedural accommodations

As a general rule, the Slovak criminal law does not presuppose that defendants would need procedural accommodations. Accordingly, there are very little explicit provisions that would permit or require such measures to be taken, or outline how these measures should be implemented in practice. Nevertheless, authorities should proceed in accordance with the practices set forth herein, using measures that Slovak law enshrines for conducting court proceedings with minors, vulnerable victims, or other similar procedural accommodations that may be applied on proceedings with defendants with disabilities *mutatis mutandis*.

Recommendations for justice professionals

1. The defendant's right to a fair trial on an equal basis with others must be respected from the first contact with law enforcement officers and throughout all processes, through access to procedural accommodations

⁶⁷ Bulgaria national paper, para. 3.2.6/ page 31.

⁶⁸ Ibid.

- a) All justice actors must ensure that accommodations are available for persons with disabilities to allow for their participation in each procedure, from the first contact with law enforcement authorities and through all processes. Where legislation does not exclude it, the procedural accommodations should be utilized in a way similar to proceedings with other vulnerable persons, such as victims or children.
 - b) Persons with disabilities should be consulted regarding the experienced barriers and accommodation needs. A disclosure from an individual that they have a disability is enough to place an obligation on the authorities to make a full determination, taking into account the individual's views.
 - c) Adequate support services should be made available within the criminal justice system to ensure the provision of procedural accommodations for persons with disabilities.
 - i. Where identification of needs for procedural accommodations needs to be in place, it has to be done at the beginning of the proceedings, at the earliest moment possible.
 - ii. Preparations for procedural accommodations and other adjustments in the hearing must be made prior to the hearing/trial.
2. All participants, including defendants with disabilities, should be informed about their rights and the availability of procedural accommodations throughout the course of the proceedings.
 - a) Ensure that defendants are aware of the possibility to have procedural accommodations throughout the proceedings and know that they can request them at any time.
 - b) It should not be the sole obligation of the defendant to request the accommodations. All justice actors have a proactive duty to initiate the provision of accommodations.
 3. A comprehensive procedure for recognising, requesting, assessing, and providing individual support for persons with disabilities should be developed and implemented.

[Good Practice] In Spain procedural accommodations can be requested by any of the parties by the public prosecutor, the judge or by the person with a disability themselves. The police can request them when .. with a person with a disability.

4. Clear and effective procedures on procedural accommodations must be developed and implemented by all justice actors whenever a person with

disabilities, in particular intellectual and/or psychosocial disabilities, faces the criminal justice system.

- a) A guide on procedural accommodations for the administration of justice should be approved to facilitate justice actor's approach to persons with disabilities.
 - b) All relevant actors must cooperate to establish a more uniform and efficient framework for providing appropriate procedural accommodations for defendants with disabilities. Efficient coordination is necessary among the agents of justice at the state, regional, and local levels.
 - c) Lawyers of persons with disabilities should be provided with procedural accommodations, such as interpreters, assistive technology and intermediaries /facilitators, or the resources necessary to support effective communication with clients, witnesses and other persons with disabilities.
 - d) All procedural accommodations should be gender- and age-appropriate.
5. An intermediary should be called to assist in communication during police interviews with the person with disability suspected of the crime.
6. As a form of procedural accommodation, intermediaries/facilitators should be provided to defendants with disabilities wherever and whenever needed, to enable clear communication between them and the courts, to ensure safe, fair and effective engagement, and to provide the opportunity to fully participate in all stages of proceedings.
- a) A sufficient number of trained intermediaries/facilitators should be made available for persons with disabilities from the start of the proceedings, and at all stages of the administration of justice.
 - b) Systematic training on the role of intermediaries/facilitators should be in place.
 - c) The use of intermediaries/facilitators should not generate any costs for persons with disabilities. Otherwise it would be discriminatory.
 - d) In the absence of sufficient and qualified court-appointed intermediaries/facilitators, courts should work collaboratively with stakeholders who provide such support to persons with disabilities;
7. Since the first contact with the authorities, persons with disabilities should be informed of their right to be accompanied by a support person of their choice, that could include a family member.
- a) Ensure that the trusted person can be present during all stages of the proceeding.
 - b) Identify a procedure to indicate the support person and provide adequate legal provisions to regulate the procedure.
 - c) Allow persons with disability to choose their support person. Do not assume that the support person will necessarily be a family member or

that a person with disability will necessarily want to make use of a support person.

- d) Do not replace the intermediary/facilitator with the support person. The facilitator and the support person have different roles and where needed, they should both be guaranteed at all stages of the proceeding.
8. There should be the possibility to have face-to-face contact with the trusted person. Contact only via phone call might especially not be adequate for some persons and circumstances, for instance for persons with sensory disabilities or deaf persons. As well as make available service animals services to support persons with disabilities when waiting for court or when giving evidence ⁶⁹
9. Ensure that the venue in the justice system, including waiting areas, is always sufficiently adapted and accessible for persons with disabilities – and appropriate to the specific needs of the person.
 - a) For instance, limit exposure to others when necessary.
 - b) Consider seating and positioning to be adapted when needed (for instance lawyers sitting with their back to the defendant in court, may need adaptation)
 - c) Ensure the contact with the justice system is not intimidating – for instance remove wigs or cloaks in meetings or uniforms by police officers, it may be helpful to make the setting less formal and intimidating.
10. Language needs to be adapted to the individual communication needs.
 - a) 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.⁷⁰
 - b) Ensure the pace of the proceedings is well adjusted – ensure for instance rather short sessions, frequent breaks.⁷¹

Systemic recommendations

1. Judiciaries should develop and adopt rules/guidelines that recognise the right to receive procedural, age and gender-appropriate accommodations, including

⁶⁹ 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.

⁷⁰ Ibid p.6.

⁷¹ Justice Intermediary Starter Kit, Module 7 Accommodations, p.5.

support, necessary to enable defendants with disabilities to exercise their legal capacity, and participate effectively in all proceedings in court.

2. Justice actors and national authorities should consult closely with and actively involve persons with disabilities and their representative organizations in all discussions and decision-making regarding procedural accommodations.

3. In the long-term procedural accommodations – including the possibility of an intermediary or facilitator – should be included in national legislation and rules applicable to the Courts to ensure the full implementation of the CRPD in the justice systems.

4. 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.

5. Even where NGOs provide the resources to ensure intermediaries in the proceedings, the State has the obligation to provide all resources (financial, human and other) for intermediaries/ facilitators and should be taking on this responsibility.

C. Right to information and communication in accessible formats

As disabilities manifest in a variety of ways, there exists a broad scope of various accommodations that may be required in order to make court procedures more accessible to persons with disabilities. Accessibility as a principle is enshrined in the CRPD as a self-standing right that requires states to fulfil essential obligations that allow full participation of persons with disabilities in society. Even in the absence of specific individuals needing individualized procedural accommodations, facilities and infrastructure must be created or reconstructed by states in a way that ensures physical accessibility as well.

On top of the primary aspect of physical accessibility, there are situations, such as cases of criminal proceedings against defendants with intellectual or psychosocial disabilities, which require expanding measures designed to ensure accessibility beyond the physical sense of barrier-free infrastructures. These may include measures involving communication experts and other specialists, specialized documents and

other materials, measures using information technology and specialized equipment, or changes to the way court proceedings are traditionally conducted.

C.1. Right to information in accessible formats

Defendants with intellectual or psychosocial disabilities need accessible formats of information and they need a broad scope of information related to a great variety of issues, not only regarding their rights as defendants. These information, even if they stem from strict wording of the law, such as Code of Criminal Procedure, are often useless when provided to defendants with disabilities in the technical wording, or verbatim quoting of the legislation. The information each defendant must be provided with must be tailored to the needs of specific disabilities, and replacing technical language, terminology, and lengthy statutory provisions should be the standard procedure for defendants with disabilities. The provision of Art. 34(5) of the Code of Criminal Procedure, requiring “adequate explanation where necessary”, should be interpreted in practice to always necessitate further explanations to defendants with intellectual or psychosocial disabilities, as the standard procedure in Slovakia still remains signing a written list of defence rights, that are usually simply quoting statutory provisions.⁷²

Moreover, on top of information about rights of defendants, variety of other aspects of criminal procedure must also be explained to defendants with disabilities in more detail, such as information about their obligations, what is expected of a person, what actions are being taken, and how the procedure works, what are the roles of various actors in criminal proceedings, what to expect during a process, or where to get help with understanding the process. Where possible, easy-read language tailored to needs of persons with intellectual or psychosocial disabilities should be adopted and used in official communications, such as summons. The methods of accessible communication as described should always be applied through the entire proceedings, from initial contact with the police, but cannot be confined to initial provision of information by the police, and such accessible communication must be used in subsequent procedures as well.

C.2. Right to communication

~~The communication is a key right in access to justice for defendants with disabilities, in order to ensure that everyone can understand the proceedings and participate in~~

⁷² National Briefing Paper on Slovakia, p. 58-59.

them. Under Article 4 of the CRPD, States are obligated to undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communication technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost.⁷³ Apart from traditional written forms of accessible communication, such as Braille, communication and support services must be enshrined in criminal proceedings even through professionals that facilitate communication with people with disabilities, such as note-takers, sign language interpreters, tactile interpreters. Other technical methods of communication to be considered 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.

C.3. Right to interpretation and translation

Interpretation and translation is a right closely linked to accessible communication, even though Slovakia and its Code of Criminal Procedure lack any provisions as regards interpretation and translation in the context of persons with disabilities. It must ensure the facilitation of the effective role of persons with disabilities as direct and indirect participants of the justice process, especially for persons with visual or hearing disabilities. Especially as regards persons with hearing or speech impediments, as well as persons having trouble understanding written text, interpretation and translation is fundamental to provide these persons with access to justice. Similar obligations to ensure interpretation and translation apply throughout the proceedings, much like concerning right to accessible information and communication set out above.

Recommendations for justice professionals (Right to information in accessible formats)

1. Every person with disability has the right to make choices for themselves and should have access to all the relevant information and support required to do so, from the first contact with law enforcement authorities.

⁷³ Status of the Convention on the Rights of Persons with Disabilities (2006), accessible [here](#).

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

Recommendations for justice professionals (Right to communication, interpretation and translation)

1. Provide support for communication and access to information through communication facilitators /intermediaries
2. Ensure that all communication support persons are able to interpret effectively, accurately and impartially, both receptively (i.e. understanding what persons with disabilities are saying) and expressively (i.e. having the skill

necessary to convey information back to those persons), while using any necessary specialized vocabulary (e.g. legal or medical) and respecting professional and ethical standards;

3. Written information should be available in a range of accessible formats: justice actors must ensure the elaboration of and provision of access to easy-to-read documents
 - a) Ensure that information about court procedures, including notices that require a response or an action to be taken (e.g. summonses, subpoenas, writs, orders and sentences), is provided in accessible format.⁷⁴
4. Ensure adequate training on communication tools and methods for all justice professionals.
 - a) Ensure the language barrier is overcome through training of justice actors.

[Good practice] 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.⁷⁵

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.⁷⁶ These include
 - a) Assistive listening systems and devices;

⁷⁴ 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.

⁷⁵ Australian Disability Access Bench Book, available at [Disability Access Bench Book \(judicialcollege.vic.edu.au\)](http://judicialcollege.vic.edu.au).

⁷⁶ 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.

- 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 browser⁷⁷ and an example of use.⁷⁸
 - b) An example of a “communication board”⁷⁹
 - c) Easy to read guidelines⁸⁰
 - d) How to write a social story⁸¹ and an example of use.⁸²

⁷⁷ Aragonese Center of Augmentative and Alternative Communication (ARASAAC) website available at [AAC Symbols and shared resources - ARASAAC; the Augmentative and Alternative Systems of Communication \(AAC\) are ways of expression different from spoken language, that aim at increasing and/or compensating for the difficulties of communication and language of many people with disabilities. For instance, they can be used to better communicate with persons presenting cerebral palsy \(CP\), intellectual disability, autism spectrum disorders \(ASD\), neurological diseases such as amyotrophic lateral sclerosis \(ALS\), multiple sclerosis \(MS\) or Parkinson’s disease, muscular dystrophies, traumatic brain injuries, aphasia.](#)

⁷⁸ 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 \(ohchr.org\)](#).

⁷⁹ Access Ability Australia (AAA), Communication Board. Workshops and Meetings, available at [City-of-Mandurah-Workshops-and-Meetings-Communication-Board-V1.pdf \(accessabilityaustralia.com\)](#); [Communication boards use symbols to share ideas, wants, needs, and thoughts, assisting individuals with communication challenges. They are typically used with persons with intellectual disabilities, autism spectrum, learning disabilities, traumatic brain injuries, dementia, or deafness.](#)

⁸⁰ Mencap, Am I talking myself clear? Mencap’s guidelines for accessible writing (2002) available at [guidelines for accessible writing.pdf \(funding4sport.co.uk\)](#); [For instance, they can be employed to communicate with people with intellectual disabilities, learning disabilities, or autism spectrum.](#)

⁸¹ Autism Services, Education, Resources and Training (ASERT) website, available at [How to Create a Social Story — PAAutism.org, an ASERT Autism Resource Guide; Social stories help people to react to social situations that may be challenging like appearing in court, being detained or being arrested. They are typically used to communicate with people with autism spectrum.](#)

⁸² Access Ability Australia (AAA), The Capital. Social Story, available at [A-visit-to-The-Capital-Social-Story-V1.pdf \(accessabilityaustralia.com\)](#).

D. Right to access to a lawyer and legal aid

D.1. Assessment of the information on the Right of access to a lawyer

It has been shown that in Slovakia, lawyers and defence attorneys are often the only persons capable of ensuring that defendants with disabilities have their interests safeguarded, as they are their clients and often, other actors in the justice system themselves view defence attorneys as the sole persons responsible for the rights of defendants with disabilities.⁸³ In particular due to absence of broader disability-friendly framework, right of access to a lawyer is therefore fundamental to protect rights of defendants with disabilities throughout the criminal proceedings. Accordingly, the defendants with disabilities should be assisted when exercising their right to consult with and appoint a defence lawyer. **The European Court of Human Rights held that failure to provide legal aid to persons with disabilities may violate their right to a fair trial where they have difficulties understanding the judicial proceedings, thus preventing them from adequately ensuring the protection of their interests.**⁸⁴ Additionally, there may often be instances where defence lawyers will be necessary *ex officio* and provided free of charge (see below).

The lack of knowledge (from the most trivial to the most specific) among lawyers can substantially affect the fate of persons with disabilities in general and that of individuals with intellectual and/or psychosocial disabilities in particular. The lawyer has a primary responsibility to ensure that the fundamental rights and freedoms of their client are respected and substantial training is needed to ensure their ability to do so. Training of attorneys to cover the issues outlined in this Bench Book is therefore essential.

Access to a lawyer must be provided to defendants with disabilities not only in criminal proceedings, but also any subsequent proceedings, such as when imposing or reviewing protective treatment, or other types of court procedures. In order to ensure access to a lawyer is maintained, capacity of persons with disabilities to choose and instruct defence lawyers must be considered imperative and protected, even should persons be restricted in their legal capacity.

⁸³ National Briefing Paper on Slovakia, p. 59.

⁸⁴ *Nenov v Bulgaria*, App no. 33738/02 (ECtHR 2009), para 52.

D.2. Assessment of the information on the Right to legal aid

In Slovakia, legal aid for defendants is mandatory and provided automatically only in case where they are deprived of or limited in legal capacity. As these situations may exclude many other defendants with disabilities, such defendants may have legal aid provided only if they prove they lack the means to pay their own defence lawyers. In such cases, the law enforcement and judges should carefully consider that persons with disabilities, due to their specific socio-economic position, often face difficulties in paying costs of living, much like the defence counsel, and may also have trouble verbalizing or proving the need for free legal aid. Careful considerations should therefore be made as regards provision of legal aid, as defendants with disabilities may need legal aid even when they do not express the need themselves.

Recommendations for justice professionals (Right to access to a lawyer)

1. The right to access to a lawyer must be guaranteed from the pre-trial stages of the proceeding, before the first actions in criminal proceedings, and throughout the trial.
 - a) Afford defendants with disabilities the right to legal assistance from the first contact with the law enforcement, regardless of the nature of the crime they are accused of, and on terms that are no less favourable than those for persons without disabilities.
 - b) Inform the defendants of their right to have access to a lawyer.
 - c) The public defence system should ensure equal access to lawyers that provide high-quality services to all defendants, including those with disabilities;
 - d) Draft and regularly update a list of legal representatives with expertise in disability, who are knowledgeable of the rights and procedural accommodation requirements of persons with disabilities;
 - e) Make procedural accommodations, such as interpreters, assistive technology and intermediaries/facilitators, or the resources necessary to obtain such accommodations, available to lawyers to support effective communication with persons with disabilities in the discharge of their professional duties;
 - f) To ensure the quality of lawyers' work and create a controlling mechanism by the national Bar Associations, emphasis should be put also on lawyers' supportive role, being sufficiently proactive, also maintaining personal and sufficiently frequent contact with clients.

- g) Provide basic training on the rights of persons with disabilities to all lawyers.
- h) When a person is detained, including placed under forensic detention/security measures, they need to have effective access to a lawyer.

Recommendations for justice professionals (Right to Legal aid)

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

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

In order to ensure their access to justice, defendants with disabilities must have the ability to be present at trial, with necessary procedural accommodations in order to effectively participate in it, and must be presumed innocent. To effectively implement right to be present at trial, physical accessibility of court buildings, barrier-free infrastructure and similar matters, as outlined above, are only one component of access to justice. For the purpose of safeguarding right to be present in one's own trial, it is simultaneously essential that defendants with disabilities are informed about the trial taking place, the time and place the defendants are expected to appear before the court, and what is expected of the defendants. Simultaneously, it is essential that

defendants are informed about the consequences incurred by not appearing. In conjunction with right to accessible communication set out above, these information must always be provided to defendants with disabilities in an accessible format, taking into account their specific disabilities.

In cases where specific diversions from ordinary criminal trial take place, it is similarly imperative to ensure that defendants with disabilities are not deprived of their right to attend a trial. In Slovakia, a defendant may be convicted by a criminal order (Art. 353 et seq. Code of Criminal Procedure). In such cases, conviction and sentence may be made without hearing or a full trial, without the presence of the defendant. It is therefore imperative that, on top of all the formal and procedural requirements related to criminal orders and right to a fair trial, special steps are taken to ensure respect for rights of defendants with disabilities. In the first place, apart from serving a criminal order on the defendant, it must be served in an accessible format that person with disability can understand, as outlined repeatedly above. Secondly, defendants with disabilities must again be properly informed what is expected of them, but also what are their procedural remedies, how can they challenge the criminal order, what will happen should they do so, and where can they get help in order to challenge such criminal orders.

Recommendations for justice professionals

1. Ensure the right to be present in trial and to defend themselves in person, to be respected for defendants with disabilities.
 - a) The exceptions according to the right to be present at trial apply equally to persons with disabilities.
 - b) Where applicable, ensure the contact with the justice system is not intimidating considering the special circumstances of the hearing – for instance, removing wigs or cloaks in meetings or uniforms by police officers, it may be helpful to make the setting less formal and intimidating.
2. Identify and carefully consider for whom the remote hearing might be (un)suitable, respecting the person's will and preferences or pursuing the 'best interpretation of the will and preference' when the person cannot express them directly.
 - a) If using remote hearings, ensure adequate training, IT tools, and good internet connection for justice professionals and equally such access to the person with disability.
 - b) Ensure access to procedural accommodations, in remote hearings,
 - i. including where applicable the participation of intermediaries,

- ii. provide communication support also in remote hearings, including through third parties, for example: note-takers, qualified sign language and oral interpreters, relay services and tactile interpreters, where and when necessary
 - c) Ensure that during a remote hearing, the role of each person taking part in the online hearing is clear, to all, including to the defendant with disability.
 - d) Ensure the pace of the proceedings is well adjusted – ensure for instance rather short sessions, and frequent breaks.
 - 3. Ensure that information given to defendants with disabilities about when, where, and how to attend a trial is accessible for persons with disabilities, as well as information about the consequences of non-participation and what is expected of the defendant.
 - 4. Ensure that accessible information are provided even to defendants that are sentenced without a trial or a hearing, that information provided is in accessible format for persons with disabilities and provides information about all remedies available against such decisions.
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ANNEXES

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

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

Setting the Scene:

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

Ensuring Accessibility Needs and Barriers:

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

Practical Considerations:

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

Other Considerations:

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

B. 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.”⁸⁵

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

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

- **Acquired Brain Injury**

The term Acquired Brain Injury (ABI) refers to any damage to the brain that occurs after birth. ABI may be caused by various circumstances (e.g., accident, stroke, tumours, or disorders such as Parkinson’s disease). Acquired Brain Injury may lead to changes in physical and sensory abilities, or to changes in the ability to think and learn (e.g., memory loss, lack of concentration, difficulty with abstract thinking). It may also cause changes in behaviour and personality (e.g., lack of motivation, mood swings, feeling flat or depressed, impulsive or uninhibited behaviour). Finally, ABI may create communication difficulties (e.g., slow or slurred speech, difficulty following conversations) and medical difficulties (e.g., epilepsy, seizure).⁸⁶

Some reasonable adjustments should be made to assist persons with ABI who have difficulties in communication. Examples of these adjustments are the use of technologies, the use of clear and concise language, the repetition of some indications

⁸⁵ CRPD, Preamble, (e).

⁸⁶ Australian Disability Access Book, Section 7.2.

and concepts, and the allowance of extra time to answer.⁸⁷ During the hearing, other useful adjustments are regular breaks, late start times, shortened days, and a quiet environment.⁸⁸

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

Attention Deficiency Hyperactivity Disorder (ADHD) is a disorder characterized by inattentiveness, impulsiveness, and hyperactivity that show up from the age of seven years and it might continue in adulthood. This disorder might affect a trial because the person might struggle to focus and listen to the judge.⁸⁹

For this reason, reasonable accommodations can consist of giving management instructions or orders one at a time, not asking for over-complex particulars or schedules, and writing down what actions need to be taken. Moreover, breaks, summing up the current stage of the process, or using short sentences can be useful. Finally, these persons should be allowed to provide written answers to written questions and to have the hearing in a room with minimal outside noises and reduced distractions.⁹⁰

- **Autism spectrum condition**

Autism spectrum condition (ASC) is a lifelong developmental disability, and it affects the relationships and interactions of the person with the environment and other people. ASC is a spectrum condition so people can experience it in very different ways. For instance, not all persons with ASC have some degree of a learning disability. People with ASC may experience delayed or impaired language comprehension and expression. They may also have difficulties using and understanding the social context of language and impaired social skills. For example, they may interpret words literally, avoid eye contact, or have difficulties understanding their own or other people's emotions. Some persons with ASC may also have repetitive, ritualistic, or unusual behaviours, and they may be sensitive to sounds, touch, light, or other sensory perceptions.⁹¹

In these cases, reasonable adjustments include the use of clear, concise and plain language, a calm voice tone, extra time to answer and avoidance of sarcasm, and too

⁸⁷ Ibid. Section 7.2.

⁸⁸ UK's Equal Bench Book, 388.

⁸⁹ Ibid. 392.

⁹⁰ Ibid.392.

⁹¹ Australian Disability Access Book, Section 7.3.

many gestures or distractions. The questions should be precise and direct, and the judge should start the questions with the person's name to avoid misunderstandings. Also, allowing extra time for processing each question and providing an answer. The judge should also be careful to not consider avoiding eye contact or other behaviours as a lack of respect.⁹² Other possible adjustments are clear explanations about the procedural stages, circulation of written indications, schedules, and chronologies of deadlines, allowance of regular breaks, and patience. The courtroom should be quiet and with low lights, and the person should be allowed to choose where to seat.⁹³

- **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 everything in black, white, and grey. Visual Impairment/Low Vision is a partial loss of vision that cannot be corrected through glasses.⁹⁴

Reasonable adjustments include ensuring documents are in accessible formats (e.g., Braille), requiring general support and guidance from the support staff when this is needed, making necessary physical adjustments in the courtroom, allowing support persons to be present, and guaranteeing access to the assistance dog. The persons should also be allowed to familiarise themselves with the physical environment, and they should not be asked to recall information or events based on their vision. Finally, good practices for judges and legal professionals are announcing themselves before speaking and asking the defendants about their specific needs.⁹⁵

- **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.⁹⁶

⁹² Ibid. Section 7.3.

⁹³ UK's Equal Access Bench Book, 398.

⁹⁴ Australian Disability Access Book, Section 7.4.

⁹⁵ Ibid. Section 7.4.

⁹⁶ Australian Disability Access Book, Section 7.6.

Possible reasonable adjustments are providing interpreters of the sign language, allowing the presence of a support person, facing the deaf persons, keeping eye contact, and giving the needed time to answer.⁹⁷ Other possible good practices involve choosing a quiet room with good lighting, allowing the use of induction loop, or writing information and indications. When the judge and the other professionals in the court speak, they should not shout or exaggerate with hand gestures or facial expressions, but they should speak in a steady rhythm, make a little pause after every sentence to allow the translation, look at the deaf person, and use full sentences. It is important to remember that there is no universal sign language, but there are many national sign languages. For this reason, being aware of the language spoken by the person is important.⁹⁸

- **Down Syndrome**

Down Syndrome is a genetic condition resulting in an extra chromosome. Down Syndrome is characterized by a range of physical, health, characteristics, and developmental effects. A common characteristic of Down Syndrome is some degree of intellectual disability.⁹⁹

Some persons with Down Syndrome may need communication adjustments like the use of communication aids, or the help of a support person.¹⁰⁰

- **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 persons might also rely on technology for many aspects of their daily life.¹⁰¹

Various reasonable adjustments can be made at all stages of the proceeding. Before the hearing, oral instruction can be followed by written indications and reminders. The instructions shall be given in plain language, through electronic means, and in case of

⁹⁷ Ibid. Section 7.6.

⁹⁸ UK's Equal Treatment Bench Book, 421-424.

⁹⁹ Australian Disability Access Book, Section 7.9.

¹⁰⁰ Ibid. Section 7.9.

¹⁰¹ UK's Equal Treatment Bench Book, 409-410.

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.¹⁰²

- **Intellectual disability**

Intellectual disability is characterized by significant limitations in intellectual functioning and adaptive behaviours. There are various types and degrees of intellectual disability. Persons with intellectual disability may have difficulties in communicating, interacting with other people, and living independently. People with intellectual disabilities need more time to understand spoken and written information, and they may have difficulties understanding instructions or abstract concepts. They may also have problems related to attention span and memory and become tired easily.¹⁰³

- **Learning disabilities**

Learning disability is a life-long condition acquired before, during, or soon after birth, that affects intellectual development. It should not be confused with the “specific learning difficulties” such as dyslexia. Learning disability can be mild, moderate, or severe. People with a learning disability have difficulties to understand and remember new or complicated information, to learn new skills, and to generalize any learning to other situations. Some persons are unable to read or have difficulties in speaking, and some individuals might also have problems in accomplishing daily tasks.¹⁰⁴

There is a wide range of possible reasonable adjustments in the case of defendants with learning disabilities. During the hearing, there can be adjustments including a visit to the tribunal before the start of the trial, live links or screens, frequent breaks, the use of an intermediary, plain language, communication aids, and further explanations about the context and the procedure. Even in evaluating the evidence, the person’s learning disability should be taken into account. Another good practice is the use of Makaton and the presence of an interpreter who knows it. Makaton is a language

¹⁰² Ibid. 411-412.

¹⁰³ Ibid. 427.

¹⁰⁴ Ibid. 429.

programme that enables persons with communication difficulties to express themselves independently.¹⁰⁵

- **Mental health disability**

Mental health disability can include mood disorders (e.g., depression, postnatal depression, bipolar disorder), anxiety disorders (e.g., phobias, panic attacks, social and general anxiety, obsessive-compulsive disorders), and psychotic disorders (e.g., schizophrenia, some forms of bipolar disorder). Mental health disabilities may affect the way persons think, feel, and interact.¹⁰⁶

It is important to not stigmatize mental health problems and be aware that they might be only episodic. Possible adjustments can be various, and they depend on the specific problem and on what triggers the person. Examples of possible adjustments are allowing regular breaks, limiting the number of people in the courtroom, allowing a postponement for medical reasons, allowing video links, setting more specific rules for cross-examination, giving extra time to answer, and providing reassurance if necessary.¹⁰⁷

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

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

Assessing accommodation needs

- 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).

¹⁰⁵ Ibid. 430-432.

¹⁰⁶ Australian Disability Access Book, Section 7.11.

¹⁰⁷ UK's Equal Treatment Bench Book, 434-435.

- Has the defendant/person with disabilities been contacted as early as possible to ascertain her/his accommodations and inform about the right to benefit proactively from procedural accommodations throughout the proceedings? (See 4.4. 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 she/can hear what is being asked or discussed, including in the courtroom?
- Is the speech pace appropriate for the defendant to fully comprehend what is being communicated? Has the person been asked if she/he requires breaks or shorter sessions? (See 4.2.2. 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 animal¹⁰⁸? 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

¹⁰⁸ 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.

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- 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)

D. Directory

The following organizations provide many of their services pro bono, which is very beneficial for people with disabilities and their families who may need legal and social support without financial costs.

- **Slovak Association of Physically Disabled People (Slovenský zväz telesne postihnutých)** provides assistance to people with physical disabilities in the areas of social support, legal advice, education, and integration into society.

Website: <https://www.sztp.sk>

- **Association for the Protection of Patients' Rights in the Slovak Republic (Asociácia na ochranu práv pacientov SR)** focuses on protecting patients' rights, including those of people with disabilities. It provides legal advice, support in resolving complaints and conflicts.

Website: <https://www.aopp.sk>

- **Union of the Blind and Visually Impaired of Slovakia (Únia nevidiacich a slabozrakých Slovenska)** provides services to blind and visually impaired individuals, including social counselling, job search assistance, educational courses, and technical support.

Website: <https://unss.sk>

- **Slovak Humanitarian Council (Slovenská humanitná rada)** brings together several organizations that provide assistance, services, care, counselling and organise various activities for the benefit of socially disadvantaged and handicapped people.

Website: <https://shr.sk>

- **Slovak Disability Forum (Slovenské fórum osôb so zdravotným postihnutím)** brings together organisations of persons with various types of disabilities: persons with mental, psychological, hearing, physical, visual disabilities, chronic diseases and persons with other types of disabilities. It focuses on defending the rights and interests of citizens with disabilities at the national level. It provides legal and social counselling.

Website: <https://sfozp.sk>

- **Mental Health League (Liga za duševné zdravie)** focuses on supporting and assisting people with mental disorders. It provides psychological counselling, legal services, educational programs, and awareness campaigns.

Website: <https://www.dusevnezdravie.sk>

E. 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. **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>

3. **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/>

4. **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>

5. **International protection of persons with disabilities** by Ján Svák is a scientific publication in Slovak that deals with the international legal protection of persons with disabilities.

<https://www.komisarprezdravotnepostihnutych.sk/getmedia/e4e94b03-06c0-4f74-8707-58dbd1daf9cb/Medzinarodnopravna-ochrana-osob-so-zdravotnym->

postihnutim.aspx?disposition=preview&ReturnUrl=%2fZverejnovanie%3flibrary%3dPublikacie

6. **Your rights in the European Union** is a booklet in Slovak that will help understand how the EU works, understand the history and development of the rights of people with disabilities in the EU and familiarize yourself with the rights that people with disabilities have under EU law. It contains a list of agencies that can be contacted in case of violation of rights or in case of need for additional information. At the end, the challenges that people with disabilities continue to face are also clarified.

<https://sfozp.sk/wp-content/uploads/2024/02/vase-prava-v-europskej-unii.docx>