



NATIONAL

DISABILITY BENCHBOOK

ROMANIA

This Disability Bench Book was developed by the Centre for Legal Resources within the project “Enabling Inclusion and Access to Justice for Defendants with Intellectual and Psychosocial Disabilities” (ENABLE – 101056701 – JUST-2021-JACC). The project seeks to promote access to justice and fairer criminal proceedings for defendants with intellectual and psychosocial disabilities in 8 EU countries¹.

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Publication date

August, 2024

Grant Information

ENABLE – 101056701

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¹ <https://validity.ngo/projects-2/enabling-inclusion-and-access-to-justice-for-defendants-with-intellectual-and-psychosocial-disabilities/>

Acknowledgments

We would like to express our sincere gratitude to all the international and local partners, organisations and institutions for their collaboration and support during the development of this bench book. We thank all contributors for sharing their invaluable insights, experiences and expertise, personal and professional stories, reflections, knowledge, and recommendations, of which: Elisabeta Moldovan, Alina Ursoi, Raul Alexandru Nestor, Mariana Dumitrache, Roberta Secuianu, Oana Dodu.



**Co-funded by
the European Union**

Co-funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. Neither the European Union nor the granting authority can be held responsible for them.

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“PROCEDURAL ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES ARE CURRENTLY ONLY MINIMALLY IMPLEMENTED. ALTHOUGH THEY HAVE STARTED TO CAPTURE THE ATTENTION OF PROFESSIONALS AND PUBLIC OPINION, THEY ARE STILL AT AN EARLY STAGE OF DEVELOPMENT.”

ROMANIAN NATIONAL BRIEFING PAPERS

INTERVIEW WITH A CRIMINAL JUSTICE PROFESSIONAL



01

ABOUT THE BENCH BOOK

A. Background

Irrespective of whether they are victims of, witnesses to or alleged perpetrators of crime, persons with disabilities have significant difficulties in accessing justice and engaging with criminal justice actors (CJA). 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 significant exclusion from justice processes and violations of their fair trial rights⁴. Outdated laws do not recognise the legal capacity and standing of individuals with psychosocial and intellectual disabilities, and omit to detect the disability and provide the needed support to access information and communicate. Further, outdated laws do not offer procedural accommodations, they lack access to effective legal advice and perpetuate attitudinal barriers of the 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, 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 disabilities. 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

² <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 International Synthesis Report, ENABLE, <https://validity.ngo/wp-content/uploads/2024/08/Executive-Summary-International-Synthesis-Report.pdf>

⁶ International Synthesis Report, ENABLE, <https://validity.ngo/wp-content/uploads/2024/08/Executive-Summary-International-Synthesis-Report.pdf>

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

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)

domestic or sexual violence.¹¹ 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.¹² 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 tasks¹³ or to use procedural documents written in accessible language¹⁴.

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

In Romania, access to justice continues to require improvements and additional safeguards so that all individuals can enjoy effective access to judicial proceedings. For defendants with intellectual and/or psychosocial disabilities, the barriers to effective and unrestricted access to justice are even more evident, as, beyond the general shortcomings of the national judicial system, there are specific shortcomings that hinder the proper functioning of judicial procedures for persons with disabilities.

A primary shortcoming can thus be noted at the legislative level, as Romanian legislation deals superficially with the situation of cases involving suspects or defendants with intellectual and/or psychosocial disabilities; moreover, no data are collected on the number of persons with disabilities involved in judicial proceedings, so as to identify the procedural challenges and their frequency. In addition, there is little or no concern for training legal professionals in dealing with people with intellectual and/or psychosocial disabilities.

While the challenges of the justice system arise in relation to all categories of litigants, this bench book will focus on the limitations of access to justice for suspects and defendants with intellectual and/or psychosocial disabilities.

The purpose of this Bench Book is to inform *CJA* and other relevant Romanian stakeholders about best practices to ensure the effective participation of the defendants with intellectual

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 International Synthesis Report, ENABLE, <https://validity.ngo/wp-content/uploads/2024/08/Executive-Summary-International-Synthesis-Report.pdf>

¹³ Spain National Study, Enable project, April 2023, p.29

¹⁴ Lithuania National study, Enable project, April 2023, p.9.

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, officials of the National Penitentiary Administration¹⁵ 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 who experience these types of disabilities, such as injured persons 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 of Romania, 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/or psychosocial disabilities and the justice system - provides an overview of the barriers that people with disabilities face in realizing their right to access justice.

Chapter 4 – Implementing procedural rights for defendants with disabilities - identifies practical tools to enable defendants with intellectual and/or psychosocial disabilities to

¹⁵ They may not be classified as criminal justice actors, but the person who works in a National Penitentiary Administration unit, at the level of the Convicted Offenders Registry Service, must be aware of the existence of persons with disabilities and the most appropriate way of working with them.

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:

- ✓ the schematic algorithm of needs assessment and provision of accommodations throughout the criminal proceedings (Annex 1)
- ✓ a checklist for Criminal Justice Professionals working with defendants with intellectual and psychosocial disabilities in criminal proceedings (Annex 2)
- ✓ to explain most common barriers and adjustments required by people with intellectual disabilities (Annex 3)
- ✓ relevant case-law of the European Court of Human Rights - persons deprived of their liberty (Annex 4)
- ✓ 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 5)
- ✓ to provide you with useful sources of information for further reading (Annex 6).

E. Methodology

The content of this bench book was developed by the Centre for Legal Resources, 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 the Centre for Legal Resources from March to August 2024.

F. Main definitions and terminology

- **Person with disabilities** – “Persons with disabilities include those who (even without presenting a medical/ official document) 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”¹⁸. Persons with psychosocial and intellectual disabilities refers to diverse communities, particularly those who face human rights violations on the basis of

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/>

¹⁸ UN Convention on the Rights of Persons with Disabilities, Article 1

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.

- **Equity vs Equality** – The words equity and equality are often used interchangeably, but they have a different meaning. Equality means that each individual or group of people is given the same resources or opportunities. Equity recognizes that each person has different circumstances and allocates the exact resources and opportunities they need to reach an outcome equal to others. In other words, it's not giving everyone the exact same thing. If we give everyone the exact same thing, expecting that will make people equal, it assumes that everyone started out in the same place - and this can be vastly inaccurate because everyone isn't the same.¹⁹
- **Access vs Accessibility** – Access means the opportunity or right to do something or enter a place (or to have access to a particular type of facility necessary to ensure fair equality of opportunity). 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)²⁰
- **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.”²¹
- **Legal capacity** – “legal capacity includes the capacity to be both a holder of rights and an actor under the law²². Legal capacity to be a holder of rights entitles a person to full protection of his or her rights by the legal system. Legal capacity to act under the law recognizes that person as an agent with the power to engage in transactions and create, modify or end legal relationships”. Please see more detailed information on this in Annex 4.

¹⁹ <https://www.internationalwomensday.com/Missions/18707/Equality-versus-Equity-What-s-the-difference-as-we-EmbraceEquity-for-IWD-2023-and-beyond>

²⁰ UN Disability Inclusive Language Guidelines:

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

²¹ International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020), Glossary of Terms.

²² CRPD Committee GC No 1, para 12, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>

- According to Article 37 of Romanian Civil Code "legal capacity is a person's ability to enter into civil legal acts on their own." Apart from other cases provided by law, the persons deprived of capacity in Romania are (a) a minor under the age of 14 years; and (b) a person who has been granted special tutorship. Therefore, **legal capacity is the capacity of a person to assume obligations and exercise rights.**

- **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.” Please see more detailed information on this in Annex 4.

- **Supported decision-making vs Substituted decision-making** - Supported decision-making is a model entailing that persons with disabilities are provided with a range of support options, including the support of people they trust (e.g. family, friends, peers, advocates, lawyers, interpreters, facilitators/intermediaries), so that they enhance their ability to make decisions for themselves. Conversely, substituted decision-making is a model 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.²⁴ CRPD embraces the Human rights model,

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 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

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”²⁵.

- **Intersectional discrimination** - Persons with disabilities in Romania also face other forms of discrimination and exclusion, which can impede/ restrict their access to justice.²⁶ Intersectional discrimination (involves two or more grounds of discrimination) is when two or more discriminatory criteria operate simultaneously and interact inseparably with each other and can produce certain types of discrimination, specific adverse situations faced by people with these characteristics. For example, a Roma person with disabilities who is discriminated against because of belonging to both categories (disability and ethnicity) from a combination of the two criteria that cannot be analysed/identified on their own. Multiple and intersectional discrimination is not yet or adequately reflected in law and practice. The intersectional approach, however, is essential to expose situations of discrimination that may be invisible through an individual analysis of discrimination criteria. The use of discrimination criteria independently of each other can lead to the invisibility of a minority within a minority group - both in the public sphere, but also for that minority group, as they are subject to a risk of discrimination including from the minority group. Victims of intersectional discrimination may experience more discrimination than is visible by approaching discrimination criteria independently of each other and are more exposed to structural inequalities in society, at risk of poverty, social exclusion and marginalisation.

²⁵ The CRPD preamble, p. e)

²⁶ UN OHCHR, 'Report - Right of access to justice under Article 13 of the Convention on the Rights of Persons with Disabilities' (December 2017), A/HRC/37/25, paragraph 16. As the CRPD clarifies in 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 with a disability is discriminated against in any form on the basis of disability, concurrently with, color, sex, language, religion, ethnicity, gender or other status. Intersectional discrimination may take the form of direct or indirect discrimination, denial of reasonable accommodation or harassment." CRPD GC No. 6, paragraph 19.

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

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

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

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>

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,

- **ensure that access to the procedure** 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 free access to justice recognized by law to all citizens..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 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,

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; (...”

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

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

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 fully guaranteed⁴⁹

- EU Instruments

Under EU law, persons who are suspected or accused of an offence have rights according to EU legislation, that must be respected in all EU countries, including the right to information, the right to interpretation and translation, the right to have a lawyer, the right to be presumed innocent and to be represented at trial, and, the right to legal aid.

The EU acquis on procedural rights consists of the following instruments:

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

- Directive on the **right to interpretation and translation in criminal proceedings (2010/64/EU)**⁵⁰
- Directive on **right to information** in criminal proceedings (2012/13/EU)⁵¹
- Directive on the right of **access to a lawyer** in criminal proceedings (2013/48/EU)⁵²
- **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)⁵³
- **Directive on legal aid** for suspects and accused persons in criminal proceedings (2016/1919/EU)⁵⁴
- Directive on procedural safeguards for **children suspected or accused in criminal proceedings** (2016/800/EU)

The European Commission has also issued two relevant recommendations in the past years.

- Commission the **Recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings** (2013)⁵⁵
- **Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions** (2022)⁵⁶

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

⁵⁰ Directive 2010/64/EU of the European Parliament and of the Council – Articles 1, 2, 4 and 5;

⁵¹ Directive 2012/13/EU of the European Parliament and of the Council– On the right to information in criminal proceedings – Articles 3, 4, 6 and 7;

⁵² Directive 2013/48/EU of the European Parliament and of the Council – On right to access to a lawyer in criminal proceedings, including EAW and on the right to have a third party informed about deprivation of liberty and communicate with third persons – Articles 3, 4, 11 and 13

⁵³ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings – Article 6 – 8 and Recital 42;

⁵⁴ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings – Article 4 and 9;

⁵⁵ Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings – Section 2 and 3.

⁵⁶ The Recommendation prohibits discrimination, including on the basis of disability (Article 13), provides minimum standards for material detention conditions for detainees (access to appropriate care, nutritious diet or visits from families or legal representatives). It also stresses that Member States should “take special care to meet the needs of and ensure accessibility for detainees with disabilities or serious medical conditions with regards to material detention conditions and detention regimes” (Article 76). According to Article 75 of the Recommendation: “[P]ersons with disabilities or other persons with serious medical conditions (should) receive appropriate care comparable to that provided by the national public health system which meets their specific needs. In particular, Member States should ensure that persons who are diagnosed with mental health related medical conditions receive specialised professional care, where needed in specialised institutions or dedicated sections of the detention facility under medical supervision, and that continuity of healthcare is provided for detainees in preparation of release, where necessary.” Brussels, 8.12.2022 C(2022) 8987 final

European Union by relevant EU legislation, such as Directives and Recommendations of the European Commission.⁵⁷

- Romania & International legislation

Romania ratified the CRPD through Law no. 221 from 11th November 2010 without any reservations.

Article 11, Romanian Constitution provides: “(1) The Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to. (2) Treaties ratified by Parliament, according to the law, are part of national law.”

Article 20, Romanian Constitution: “ (1) Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to. (2) Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions.”

The international legislation trumps the national provision and applies with prior, in case of any conflicting provisions. In addition, the national laws must be interpreted in accordance with the international provisions and principles. Exceptionally, according to the “lex mitior” principle (most favorable law), the national laws will take precedence only if they contain more safeguards.

EU Directives on rights of defendants/accused implemented by Romania:

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

⁵⁷ 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)

about the accusation; the right of access to the materials of the case and the right to challenge the possible failure or refusal of the competent authorities to provide information. In addition, the final part of the Emergency Ordinance no. 18/2016 specifically mentions the transposition of Article 4.4 and Article 5.2 from the Directive which provides that the Letter of Rights shall be drafted in simple and accessible language.

- **Right of access to a lawyer in criminal proceedings** (Directive 2013/48/EU) was transposed into the domestic legislation by Law no. 236/2017 to amend Law no. 302/2004 on international judicial cooperation in criminal matters (explicitly transposed Article 10.4, 10.5 and 10.6 from the Directive which provides the right of access to a lawyer in European arrest warrant proceedings). Article IX of Law 122/2024 transposed Art. 3 paras. (1)-(4), Art. 4, Art. 5 para. (1)-(3), Art. 6 paras. (1) and (2), Art. 7 para. (1), Art. 8 para. (1) and (3), Art. 9, Art. 10 para. (2), Art. 12 para. (1) and (2), Art. 13 and Art. 15 para. (2) of the Directive.
- Legal aid (Directive 2016/1919) In March 2021, Law no. 51/2021 amended Law no. 302/2004 and explicitly transposed Article 5 of the Directive allowing legal aid in European arrest warrant proceedings.
- Strengthening of certain aspects of the presumption of innocence and on the right to be present at the trial in criminal proceedings (Directive (EU) 2016/343). Article 8.4 from the Directive was transposed into the national legislation by Law no. 228/2020, allowing the possibility of holding trials in the absence of suspects or accused persons, because a suspect or accused person cannot be located despite reasonable efforts having been made.

Romanian Criminal Procedure Code, Articles 8-12 (certain procedural rights):

- **Art. 8: Fairness and reasonableness of criminal proceedings**
Judicial bodies have the obligation to conduct criminal prosecution and trial with due process of law and respect for the rights of the parties and subjects of the proceedings, so that the facts constituting criminal offenses are established in time and completely, no innocent person is held criminally liable, and any person who has committed a criminal offense is punished according to the law within a reasonable time.
- **Art. 9: Right to liberty and security**
(1) The right of every individual to liberty and security of person is guaranteed during criminal proceedings.
(2) Any measure involving deprivation or restriction of liberty shall be ordered exceptionally and only in the cases and under the conditions provided by law.
(3) Any arrested person shall have the right to be informed promptly and in a language they understand of the reasons for their arrest and shall have the right to appeal against the measure.
(4) Where it is established that a measure depriving or restricting a person's liberty has been unlawfully ordered, the competent judicial authorities shall

order the revocation of the measure and, where appropriate, the release of the detained or arrested person.

(5) Any person against whom a measure involving deprivation of liberty has been unlawfully or unjustly imposed in the course of criminal proceedings shall be entitled to compensation for the damage suffered, in accordance with the law.

- **Art. 10: Right of defense**

(1) The parties and subjects of the main proceedings shall have the right to defend themselves in person or through legal counsel.

(2) The parties, the subjects of the main proceedings and the lawyer shall have the right to have the time and facilities necessary for the preparation of their defense.

(3) The suspect has the right to be informed immediately and before being heard about the fact for which criminal proceedings are being conducted and its legal classification. The accused shall have the right to be informed immediately of the fact for which criminal proceedings have been initiated against him/her and the legal classification thereof.

(4) Before being heard, the suspect and the accused shall be informed that they have the right not to make any statement.

(5) The judicial bodies have the obligation to ensure the full and effective exercise of the right to defense by the parties and the main procedural subjects throughout the criminal proceedings.

(6) The right of defence must be exercised in good faith, in accordance with the purpose for which it has been recognized by law.

(7) Any non-exercise of the right to be assisted by a chosen lawyer during the criminal proceedings must be voluntary and unequivocal and shall not prevent the subsequent exercise of this right at any time during the criminal proceedings. Where the right to be assisted by a chosen lawyer is not exercised, the suspected or accused person shall be informed by the judicial authorities, in simple and accessible language, of the content of the right and the possible consequences of non-exercise of that right.

- **Art. 11: Respect for human dignity and privacy**

(1) Any person who is being prosecuted or tried must be treated with respect for human dignity.

(2) Respect for privacy, inviolability of the home and secrecy of correspondence shall be guaranteed. Restrictions on the exercise of these rights shall be permissible only as provided by law and only if necessary in a democratic society.

- **Art. 12: Official language and right to an interpreter**

(1) The official language in criminal proceedings is Romanian.

(2) Romanian citizens belonging to national minorities have the right to express themselves in their mother tongue before the courts of law, the procedural documents being drawn up in Romanian.

(3) The parties and subjects of the proceedings who do not speak or do not understand the Romanian language or are unable to express themselves shall be provided, free of charge, with the opportunity to acquaint themselves with the

documents in the case file, to speak, as well as to present their conclusions in court, through an interpreter. In cases where legal assistance is mandatory, the suspect or accused person shall be provided free of charge with the possibility of communicating, through an interpreter, with the lawyer in order to prepare for a hearing, to lodge an appeal or any other request relating to the outcome of the case.

(4) Authorized interpreters shall be used in court proceedings in accordance with the law. Authorized interpreters shall also include authorized translators, according to the law.

As a member state of the European Union and a party to the European Convention on Human Rights, Romania has undertaken a general obligation to ensure a fair trial for all persons brought before its courts. However, the practical consequences of this obligation (such as optimal and predictable trial time, impartiality of the courts, respect for the presumption of innocence and the right to a defense) are far from being tailored to the disabilities of the persons concerned.

RIGHT TO A FAIR TRIAL

States Parties to the **CRPD** have an obligation *to ensure effective access to justice for persons with disabilities on an equal basis with others, including by providing procedural and age-appropriate adjustments to facilitate their active role as direct and indirect participants, including as witnesses, in all legal proceedings, including the investigative and other preliminary stages.*⁵⁸

At international level, the right to a fair trial is governed by the European Convention on Human Rights⁵⁹. Essentially, a fair trial requires (i) a reasonable time to resolve the case, (ii) the provision of an independent and impartial court, and (iii) the provision of fair trial guarantees to all persons without discrimination.

Similarly, the right to a fair trial is a fundamental principle of Romanian justice, enshrined at constitutional level⁶⁰. Specific illustrations of this principle can be found in the Civil Procedure Code and the Criminal Procedure Code - for example, in order to ensure the impartiality of the court, Romanian law includes grounds for absolute or relative incompatibility of the judge, which can be invoked by the parties or ex officio. In addition, there are procedural rules which allow parties to signal that the optimal and foreseeable time limit for the trial has been exceeded.

⁵⁸ Article 13 CRPD.

⁵⁹ Article 6 of the European Convention on Human Rights: Everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, in the determination of any criminal charge against him or her or of any violation of his or her rights and obligations in a suit at law. The judgment must be pronounced in public, but the press and the public may be denied access to the courtroom for the whole or part of the trial in the interests of morality, public order or national security in a democratic society, when the interests of minors or the protection of the privacy of the parties to the trial so require, or to the extent deemed absolutely necessary by the court when, in special circumstances, publicity would be prejudicial to the interests of justice.

⁶⁰ According to Article 21 para. 3 of the Romanian Constitution, the parties have the right to a fair trial and to the settlement of cases within a reasonable time.

However, the undifferentiated nature of access to a fair trial is not sufficiently exploited by national legislation. Thus, although Art. 13 of the Convention on the Rights of Persons with Disabilities (hereinafter CRPD) states that States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations to facilitate their active role as direct and indirect participants, including as witnesses, in all legal proceedings, including the investigative and other preliminary stages, in Romania there are only isolated provisions for the management of legal proceedings involving persons with intellectual and/or psychosocial disabilities. Therefore, although access to justice is guaranteed to all persons, the Romanian legislator failed to regulate measures ensuring de facto equality between typical litigants and those with intellectual and/or psychosocial disabilities.

03

PERSONS WITH
INTELLECTUAL AND
PSYCHOSOCIAL
DISABILITIES IN THE
JUSTICE SYSTEM

A total of 923,578 people with disabilities were living in Romania on December 31, 2023. Of these, 98.28% (907,715 persons) were in family care and/or living independently (non-institutionalized) and 1.72% (15,863 persons) were in public residential social care institutions for adults with disabilities (institutionalized) coordinated by the Ministry of Labour and Social Solidarity through the National Authority for the Protection of the Rights of Persons with Disabilities.⁶¹

Thus, last year, about 1 in 20 people in Romania had a certificate of disability - a total of about 900,000 people, of which about 77,000 are children.

A recent study carried out by the Centre for Legal Resources has shown that Romania has yet to implement mechanisms that allow for the identification of people who require accommodations in the early stages of criminal proceedings, resulting in situations where a disability is discovered when people are already serving their sentence in detention⁶². At the same time, when a person was discovered to have an intellectual and/or psychosocial disability, the (forensic doctor's) evaluation was requested to evaluate/confirm individual's "incompetency" to stand trial, rather to assess what are the support needs to enable their effective participation in proceedings. In its turn, a defendant found "incompetent" to stand trial, is usually subjected to a period of forced institutionalization, often in a forensic psychiatric facility, or, sometimes, in a prison or penitentiary hospital. The period of confinement, at least in some jurisdictions, may be indefinite, either by legal design or by custom and practice.⁶³

According to Art. 184 para. (28) of the Criminal Procedure Code⁶⁴, the period during which the suspect or defendant was hospitalized for psychiatric examination is deducted from the duration of the sentence, and according to Article 72 of the Criminal Code⁶⁵, that period is also deducted from the prison sentence or from the fine. Involuntary confinement for psychiatric expertise is considered by most doctrines as a deprivation of liberty procedural measure, which requires the person's consent, but can be imposed by the authorities if the person refuses. Article 184 para. (3)⁶⁶ provides that the expertise must be carried out with the person's consent and in the presence of a lawyer, and refusal to submit to the expertise

⁶¹ ANPDPD, "Statistics" section, available at: <https://anpd.gov.ro/web/transparenta/statistici/>

⁶² National Briefing Papers, Romania, 2023, available at: https://www.crj.ro/wp-content/uploads/2023/07/CLR_Enable_National-Briefing-Papers_EN_compressed-1.pdf

⁶³ Implementing the Convention on the Rights of persons with disabilities in criminal justice systems, A briefing paper, July 2022

⁶⁴ Art. 184 para. (28) CPC: "The period during which the suspect or the accused was hospitalized in a specialized institution for the purpose of psychiatric expertise shall be deducted from the duration of the sentence, under the conditions of Article 72 of the Criminal Code."

⁶⁵ Art. 72 CC: "(1) The period during which a person has been subject to a preventive measure deprivation of liberty shall be deducted from the duration of the prison sentence pronounced. The deduction shall also be made when the convicted person has been prosecuted or tried, at the same time or separately, for several concurrent offences, even if convicted for an act other than the one that led to the preventive measure. (2) The period during which a person has been subject to a preventive measure deprivation of liberty shall also be deducted in the case of a conviction for a fine, by removing all or part of the days of the fine."

⁶⁶ Art. 184 para. (3) CPC: "The forensic psychiatric expertise shall be carried out after obtaining the written consent of the person to be subjected to the expertise, expressed in the presence of a chosen lawyer or ex officio, before the judicial body, and in the case of a minor, in the presence of the legal guardian."

or to be committed may lead to the issuance of a warrant for the person's arrest or to involuntary commitment, if the forensic committee deems it necessary.

In practice, the judge of rights and freedoms does not have precise legal criteria to determine the necessary duration of involuntary detention, which may lead to unjustified extensions of the detention, even if the medical investigations could be completed more quickly. As the Criminal Procedure Code has not provided for the possibility to revoke the measure of involuntary detention, in practice there will be a possibility that the measure will be ordered by the judge of rights and freedoms for 30 days and the medical examinations will be completed after only 10 days, leaving the defendant unnecessarily in the custody of the medical institution for another 20 days. Such an inconvenience could be avoided only if the law of criminal procedure were to require the forensic medical committee to specify an estimated period of time within which the medical investigations could be carried out, and such a statement is necessary even in the address to the prosecuting authority or the court on the need to take the measure of involuntary confinement.

These circumstances 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.

Despite transposing the CRPD into national law, the Romanian state fails to satisfactorily provide procedural accommodations and facilitate the active participation of persons with intellectual and/or psychosocial disabilities in legal proceedings. The CPC mandates informing suspects and defendants about the capacity in which they will be heard, the criminal act for which they are suspected or for which criminal proceedings have been initiated, their legal status, and the rights and obligations arising from this capacity, but does not provide explicit requirements for adapting the communication to the level of understanding of the suspect or defendant.. Moreover, internal regulations and procedures to ensure full understanding by the accused are absent, and mandatory legal assistance is limited to specific circumstances such as medical confinement, severe charges or when the judicial body considers that the suspect or defendant would not be able to defend himself or herself.⁶⁷

Effective procedures for handling cases involving persons with intellectual and/or psychosocial disabilities are not clearly established, and procedural accommodations for defendants with disabilities are inadequate. Data on the effectiveness of flexible hearing methods (or using remote hearing techniques such as video conferencing) or the intervention of medical professionals is unavailable, making it difficult to assess the system's adaptability. Interviews with criminal justice professionals indicate a lack of specific provisions or restrictions regarding procedural accommodations, leading to inconsistent practices based on subjective judgment.

⁶⁷Art. 90 - Mandatory legal assistance provided to a suspect or defendant, CPC

Training and awareness for criminal justice professionals

Currently, there are no university or postgraduate courses or accredited training modules on access to justice and equal recognition before the law for persons with disabilities. While the National Institute of Magistracy planned to introduce relevant training starting in 2023⁶⁸, the Romanian Bar does not offer any such training for lawyers. However, the National Administration of Penitentiaries has created materials to raise awareness among prison officers about the issues faced by persons with disabilities. Additionally, the Centre for Legal Resources (CLR), with the support of the Public Prosecutor's Office of the High Court of Cassation and Justice and the Ministry of Justice, has conducted 20 training courses to strengthen the capacity of legal and psychosocial professionals in implementing ECHR decisions regarding the rights of persons with intellectual and/or psychosocial disabilities.

Statistics and data on access to justice

No data is collected on the number of people with disabilities facing the justice system, which could otherwise reveal barriers and potential solutions for effective access to justice. As of 2021, Romania lacks comprehensive data collection systems on access to justice for persons with disabilities. Key ministries, including Justice, Internal Affairs, and the Public Ministry, do not gather data on court actions, procedural accommodations, or legal assistance for individuals with disabilities, while the National Administration of Penitentiaries and the National Authority for the Rights of Persons with Disabilities also have significant gaps in data collection.⁶⁹

Experiences about the access to justice of defendants with disabilities

In Romania, the experiences of defendants with intellectual and psychosocial disabilities reveal significant barriers to accessing justice. Interviews conducted by the CLR highlighted that individuals often do not remember being informed of their rights or were not informed at all, and they faced inconsistencies in legal representation, with some not having a lawyer during critical phases. Police interactions varied, with reports of both professional and discriminatory behavior, and there was a lack of procedural accommodations to help defendants understand the proceedings. Additionally, remote hearings were problematic due to communication issues, and many felt ignored or misunderstood throughout the process, indicating a need for clear explanations, consistent legal support, and greater consideration of their disabilities in criminal proceedings.

A few quotes from the interviews⁷⁰:

The police did not inform me of my rights. Only after about 4 hours the public defender came and informed me of my rights.

They told me I could have a lawyer, but I didn't have a lawyer. I never had a lawyer.

⁶⁸ NIM response no. 882/27.02.2023 to CLR's request for public information no. 60/15.02.2023.

⁶⁹ According to " Diagnosis of the situation of people with disabilities in Romania ", 2021, [RO], available at: <https://anpd.gov.ro/web/wp-content/uploads/2022/03/Diagnoza-situatiei-persoanelor-cu-dizabilitati-in-Romania.pdf>

⁷⁰ National Briefing Papers, Romania, Experiences about the access to justice of defendants with disabilities, pages 44-49, available at: https://www.crj.ro/wp-content/uploads/2023/07/CLR_Enable_National-Briefing-Papers_EN_compressed-1.pdf

A lawyer came, they made a record of what they found at home. At every judicial term for extending the preventive warrant I had a different lawyer. I am disabled, I don't have money for a lawyer. At the moment I don't have a lawyer, I'm waiting to meet them at the next term. I meet them directly at the court, not before. But there was nobody to help me understand.

The lawyer helped me to understand what I should do and what happens. The lawyer was nice to me. There was no one else to help me.

At first it was okay. They were nice to me (i.e. the police officers). The moment they took me to the station they started to make fun of me and laugh at the situation (at the act I had committed). They called me crazy. I wasn't really asked what happened. There were only 2 policemen and one of them was writing what he wanted.

I was arrested and stayed 30 days under arrest and then sent to a Psychiatric Hospital. I didn't know what was going on. My lawyer did not visit me, nor did my relatives, friends or people I trusted.

I was arrested and taken straight to the psychiatric ward after 5 hours at the police station. After the trial was over I was informed that I would be transferred to a psychiatric and safety measures hospital.

I didn't like that they lied a lot (the police segment). They didn't really listen to me and they wrote what they wanted anyway. At court they lied to me as well. They told me I was going for a psychological consultation and in fact they brought me here (psychiatric hospital and for safety measures).

Decisions were taken too lightly, with little time allocated.

I did not feel that my voice was heard. They didn't listen to me. I felt I was discriminated against on the basis of ethnicity.

I felt that my voice was partly heard.

I wish there had been someone to tell me what was going on.

I would have liked to have been listened to more.

I don't know what would have helped. I don't know if a psychologist would have helped me.

I was supposed to serve half of my sentence, 2 years and a half, then they gave me a 6-month deferment, then I found myself serving another 3 months and I don't know why, because I had no misconduct. I had no problems with people

anywhere. I don't know anything about the case because I don't have a lawyer. I ended up a nobody's man.

Good Practices

Timisoara Penitentiary and the Association Ceva de Spus have been collaborating for more than 3 years in order to increase the degree of acceptance and social inclusion of people with disabilities.

The initiative was taken by the Timișoara Penitentiary, who wanted the inmates to take part in awareness-raising activities where correct and complete information is provided about different types of disabilities and the specific needs of the affected persons.

The self-advocacy group "Ceva de Spus" was set up in Timisoara in 2010 and aims to draw attention to the challenges faced by people with disabilities, with the aim of improving their quality of life by defending and promoting their rights and combating discrimination.

The members of Ceva de Spus meet 2-3 times a year with prisoners, with whom they carry out various awareness-raising activities and present them with positive examples and success stories in order to fight stereotypes and prejudices related to disabilities.

It is important to mention that many of the measure or accommodations outlined for defendants in this bench book are also relevant for injured persons and witnesses with disabilities.

04

IMPLEMENTING
PROCEDURAL RIGHTS FOR
DEFENDANTS WITH
INTELLECTUAL AND
PSYCHOSOCIAL
DISABILITIES

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

According to national law, if a forensic report finds that the suspect or defendant "suffers from a serious illness that prevents him or her from taking part in the criminal proceedings", the Criminal Procedure Code provides for the suspension of criminal proceedings (Art. 312⁷¹) and trial (Art. 367⁷²). In the case of suspension of criminal proceedings, the criminal investigation body is obliged to check periodically, but not later than 3 months, whether the reasons for the suspension persist. If not, the proceedings are resumed. If the trial is suspended, it is resumed *ex officio* as soon as the accused is able to participate, but time must be allowed to verify the reasons for the suspension. However, national law does not specifically regulate the procedure for verifying the continuation of the suspension, and in practice a new forensic expert examination is not carried out, as it is not appropriate to take such evidence 3 months or 6 months after the suspension, and the court has discretion to verify.

Post-suspension health assessment requires the adoption of a common working procedure that does not subject the person with disabilities to procedures that could further affect their medical situation. It would be desirable to provide for a review of the medical situation to be carried out by a doctor and for the report drawn up by that doctor to be endorsed by one of the doctors on the committee which initially drew up the expert report on the basis of which the suspension of the trial was ordered.

In cases in which a public defender has been appointed, he is not obliged to contact the defendant or his family, which is why in practice it is common practice to summon the defendant by issuing a warrant for his presence. We note the absence of a procedure for executing the arrest warrant issued in respect of this category of persons, the police being instructed to bring the person before the judicial authorities, which has sometimes led to overzealousness on the part of police officers who wanted to ensure directly that the person concerned could not be transported to the judicial authority's premises⁷³.

In accordance with international principles, including those stipulated in the CRPD, it is essential that all persons, including persons with disabilities, have equal and non-discriminatory access to justice. In this context, measures should be adopted to remove barriers to the effective participation of persons with disabilities in judicial proceedings and

⁷¹ Art. 312 para. (1) Where it is established by a forensic medical examination that the suspect or defendant is suffering from a serious illness which prevents him or her from taking part in the criminal proceedings, the criminal investigation body shall submit its proposals to the prosecutor together with the case file, with a view to ordering the suspension of the criminal proceedings.

⁷² Art 367 para. (1) Where it is established on the basis of a forensic medical report that the accused is suffering from a serious illness which prevents him from participating in the trial, the court shall order, by order, the stay of the trial until the state of health of the accused allows him to participate in the trial.

⁷³ The practical aspects have been taken from the statements of the criminal justice experts who took part in the third ENABLE working meeting.

to ensure that persons with disabilities are not subjected to proceedings that could aggravate their condition.

International standards in this area provide a point of reference and the following recommendations detail how these standards can be implemented in practice.

Recommendations for justice professionals

1. **Recognize and assume the full legal capacity and right of defendants with disabilities to participate in all stages of the proceedings and in all courts**
 - a. Provide persons with disabilities with the necessary support and accommodations to enable them to exercise all their rights under the law without any kind of restriction.;
 - b. Ensure that **constructs such as “cognitive incapacity” and “mental incapacity,”** as determined, for instance, by functional or mental status assessments, are not used to restrict the free access to justice recognized to other citizens.
 - c. 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.
 - d. Establishment of concrete and common working procedures for situations of functional or mental assessment by judicial authorities.
2. Ensure that **any assessments** conducted on defendants with disabilities before and during court proceedings are **aimed at determining the procedural accommodation and support** required to ensure their full and effective participation in the proceedings;
 - a. Such assessments must take into considerations the will and preference of the individual with disability.
3. **Ensure safe, fair and effective engagement of the persons with disabilities in the proceedings and the opportunity to fully participate in proceedings**
 - a. Ensure the provision of adjustments and accommodations and supports, including intermediaries/facilitators, wherever and whenever needed, to enable clear communication among and between persons with disabilities and courts; and – support services or person.
4. **Review policies, guidelines and practices**
 - a. Review all policies, guidelines and practices that directly or indirectly restrict the legal capacity of persons with disabilities, including those that establish and apply doctrines of **“unfitness to stand trial” and “incapacity to plead”**, which prevent persons with disabilities from participating in legal processes based on

questions about or determinations of their capacity;

- b. Review all policies, guidelines and practices that authorize **medical professionals** to be the sole or preferred “experts” in determining how and to what extent and with what support persons with disabilities can participate in legal proceedings;
- c. Review legislative framework to remove the use of deficit language when referring to a witness, victim or defendant with disabilities.

Promising Practise

In Portugal, the law guarantees that all persons have legal capacity through the scheme of an “accompanied adult,”⁷⁴ 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.⁷⁵

In Spain, Law 8/2021⁷⁶ 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

According to Article 13 of the CRPD, States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including by providing procedural and age-appropriate accommodations to facilitate their active role as direct and indirect participants, including as witnesses, in all legal proceedings, including the investigative and other preliminary stages.

However, one of the primary shortcomings of national criminal law is the insufficient provision for requesting procedural adaptations to better accommodate the specific needs of suspects and defendants with disabilities. Thus, although accessibility is a key principle of the United Nations Convention on the Rights of Persons with Disabilities, the Romanian legal framework lacks procedural adaptations to ensure that persons with disabilities can address the judicial bodies on equal and non-discriminatory terms. The notion of procedural accommodations may include (i) independent facilitators or intermediaries in judicial processes, (ii) accommodations in the environment in which suspects and/or defendants with intellectual and/or psychosocial disabilities are heard, or (iii) support for

⁷⁴ Law n. º 49/2018. Available at <https://dre.pt/dre/detalhe/lei/49-2018-116043536>. In: FENACERCI, p.38

⁷⁵ FENACERCI, p. 15.

⁷⁶ Law 8/2021, Ley de 2 de junio, por la que se reforma la legislación civil y procesal para el apoyo a las personas con discapacidad en el ejercicio de su capacidad jurídica, «BOE» No. 132, 3 June 2021.

communication with suspects and/or defendants with intellectual and/or psychosocial disabilities (e.g. co-opting a psychologist in the team of investigators).

Recommendations

- a. Identify accommodation needs at the beginning of proceedings.
- b. Consult persons with disabilities about their accommodation needs. A disclosure from an individual that they have a disability is enough to place an obligation on the authorities to make a full determination, taking into account the individual's views.
- c. Prepare accommodations before hearings/trials. Ensure accommodations are gender- and age-appropriate
- d. Make defendants aware of their right to accommodations and that it can be requested at any time.
- e. Provide intermediaries/facilitators for defendants with disabilities for communication assistance
- f. Allow individuals to choose their support person. Do not assume that the support person will necessarily be a family member or that a person with disability will necessarily want to make use of a support person.
- g. Ensure the support person's presence throughout proceedings.
- h. Allow face-to-face contact with the support person.
- i. Ensure venue accessibility, including by limiting exposure to others when necessary, adapting seating and positioning as needed, and creating a non-intimidating environment by removing formal attire.
- j. Adapt language to individual needs. Specifically, the following has to be considered: Speed and tone of delivery, level of vocabulary, level of grammar, complexity of questions, ability to narrate independently, questions related to time, orientation and distance, level of literacy. Ensure the pace of the proceedings is well adjusted – ensure for instance rather short sessions, frequent breaks.
- k. After the meeting, confirm important dates and actions to make sure they have been written down correctly.
- l. Be aware of any indications of stress, discomfort, fatigue, or diminished concentration as the proceedings unfold.

B.1. Individual assessment

The variety of intellectual and/or psychosocial disabilities that litigants may have allows the conclusion that disabilities are not always visible or noticeable. Therefore, informing the prosecution and the court of the suspect's/defendant's disability is essential to ensure a fair trial.

As the criminal process is a speedy procedure, early informing of a suspect's or defendant's possible disability is likely to improve the latter's effective access to justice. This will allow prosecutors/indicators and subsequently the court to take into account the specific disabilities of the suspect/defendant in the management of the case.

Despite the great importance of informing without delay the possible disabilities of the suspect or defendant, the Romanian legislator has addressed this issue briefly in criminal law. Thus, while an individual assessment procedure is provided for victims of crime⁷⁷, where personal characteristics of the victim can be identified in order to determine appropriate support measures, for suspects and defendants, irrespective of disability, the

⁷⁷ Art. 3⁹ of Law 211/2004 on measures to ensure information, support and protection of victims of crime

- (1) *Victim assessment is the process of identifying assistance and protection needs and appropriate support and protection services.*
- (2) *The assessment is based on the following criteria:*
- (a) *the type of offence and the circumstances of its commission insofar as they are available or can be provided by the competent bodies;*
 - (b) *the physical and psychological impact that the commission of the crime has had on the victim;*
 - (c) *the personal characteristics of the victim;*
 - (d) *details of the perpetrator of the crime, in so far as available;*
 - (e) *the type of relationship or state of dependence on the offender;*
 - (f) *the victim's communication difficulties, if any;*
 - (g) *the victim's criminal history and, where appropriate, information on membership of criminal groups;*
 - (h) *any other relevant aspects.*
- (3) *The assessment of victims shall be carried out by the Service for the Support of Victims of Crime, respectively the departments and social service providers referred to in Article 31, with a view to ensuring that victims have access to psychological, medical, social assistance and legal support as quickly as possible, depending on the victim's individual needs.*
- (4) *Where necessary, state or private health care providers may be involved in the assessment, in accordance with the law, with the consent of the victim.*
- (5) *The assessment referred to in paragraph 1 shall be carried out by the victim's legal representative. (1) may also be carried out by private social service providers, under the terms of the law.*
- (6) *The victim may be accompanied during the assessment by a person whom he or she considers trustworthy, if he or she so requests, unless this is contrary to his or her interests.*
- (7) *In order to avoid secondary victimisation, the victim shall be assessed as soon as possible after identification so that the number of statements, medical/psychological/social assessments is kept to a minimum.*
- (8) *The Directorates-General shall be obliged to create a special Register of victims of crime referred to the support and protection services, in which data on victims who have benefited from the support and protection measures provided by the Service for the Support of Victims of Crime, respectively the departments and social service providers referred to in Article 31, shall be recorded.*
- (9) *The special register of victims of crime referred to the support and protection services shall contain, at least, data on: the identity of the victim, the most recent place of residence, the victim's National Identity Card, the victim's contact details, date of birth, nationality, gender, type of crime, the services to which the victim was referred, the date of referral and the referral procedure, the need for special protection measures.*
- (10) *The data contained in the special register on victims of crime referred to the support and protection services shall be stored for a period of 1 year for the purpose of using them in the support and protection of victims of crime or providing them to the judicial authorities at their request. At the end of the 1 year period, the stored data shall be deleted.*
- (11) *The General Directorates shall transmit to the Ministry of Justice every six months the statistical data contained in the special register on victims of crime referred to the support and protection services. Statistical data on victims of trafficking in human beings shall also be transmitted to the National Agency against Trafficking in Human Beings.*
- (12) *The National Agency against Trafficking in Human Beings shall provide the Ministry of Justice with statistical data on the assistance and protection measures for victims of trafficking in human beings at national level every six months.*

provisions of Art. 105 (hearing by an interpreter)⁷⁸ and Art. 106 (special rules concerning the hearing of a person)⁷⁹ CPC are applicable.

Consequently, to the extent that the suspect/defendant does not voluntarily disclose the existence of an intellectual/psychosocial disability to the investigators, the identification of this circumstance remains the responsibility of the prosecution/state. However, in a context where criminal justice professionals are not trained in intellectual and/or psychosocial disabilities, the risk that suspects and defendants with disabilities encounter barriers to access to justice and a fair trial increases exponentially.

Moreover, the lack of clear procedures for identifying and registering the disabilities of suspects or defendants in criminal cases creates the potential for abuse by the judiciary. Thus, even if the judicial body notices signs of a possible intellectual and/or psychosocial disability of the suspect or defendant, it is crucial not only to regulate how this information is confirmed and how the judicial body conducts itself but also to ensure effective implementation of these regulations in practice. Proper application and adherence to such guidelines are essential to safeguard the rights and fair treatment of individuals with disabilities within the criminal justice system.

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 equitable basis.
 - a. Identification, for example through an individual assessment, should occur early in the criminal justice process **at the very beginning of the proceedings**,

⁷⁸ Article 105 Hearing by an interpreter: (1) Whenever the person to be heard does not understand, speak or express themselves well in the Romanian language, the hearing shall be conducted through an interpreter. The interpreter may be appointed by the judicial bodies or chosen by the parties or the injured party, from among the authorized interpreters, according to the law. (2) Exceptionally, if urgent procedural measures are required or if an authorized interpreter cannot be provided, the hearing may take place in the presence of any person who can communicate with the person being heard, but the judicial body shall be obliged to resume the hearing by interpreter as soon as this is possible. (3) If the person being heard is deaf, has hearing or speech deficiencies, the hearing shall be conducted with the participation of a person who is able to communicate by means of special language. In this case the communication may also be in writing. (4) In exceptional cases, if there is no authorized person who can communicate by means of special language present and the communication cannot be made in writing, the hearing of the persons referred to in paragraph. (3) shall be conducted with the assistance of any person who is able to communicate, and the provisions of par. (2) shall apply accordingly.

⁷⁹ Article 106 Special rules regarding the hearing: (1) If, during the hearing of a person, such person shows visible signs of excessive fatigue or symptoms of a disease that affect their physical or psychological capacity to participate in the hearing, judicial bodies shall order cessation of the hearing and, if the case, shall procure that the person is examined by a physician. (2) A detained person may be heard at the detention facility through videoconference, in exceptional situations and if judicial bodies decide that this does not harm the proper conducting of the trial or the rights and interests of the parties. (3) In the situation set by par. (2), if a person subject to hearing finds themselves in any of the situations set by Art. 90, their hearing may be conducted only in the presence of their counsel at the detention facility.

and prior to any actions undertaken as part of the criminal justice proceedings, for instance prior to police hearing.

- 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, including through access to restricted medical data or by actively seeking the opinion of specialists.

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.⁸⁰ 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.⁸¹

- 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 equitable basis.⁸²

Good Practice

In Bulgaria, the courts use an “NGO assessment of the social functioning of persons with disabilities and their special needs.”⁸³ 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.⁸⁴

3. **Information sharing rules and safeguards should be in place when individual assessment is being conducted by justice actors.**

⁸⁰ Spain National Paper, Section 3.1.2.2 /page 20.

⁸¹ Ibid. Section 3.2.1.1/page 30.

⁸² Portugal national paper

⁸³ Bulgaria national paper, para. 3.2.6/ page 31.

⁸⁴ Ibid.

4. Depending on the outcome of the initial assessment of the disability, the possibility of declaring the hearing non-public, possibly to set a different location for the hearing and of the procedural acts the performance of which involves the person with a disability, including the possibility of using remote operational communication technology when the person with disabilities can only move with great difficulty or is hospitalized in a medical facility under supervision.
5. The defendants should **be involved in the development of the individual assessment**, should receive it when finalised and should have the right to express a view on it, with communication and other support as necessary.

B.2. Provision of procedural accommodations

Procedural accommodations are vital in ensuring access to justice for persons with disabilities and realizing a range of human rights including the rights to legal capacity, participation, information, interpretation, lawyer and legal aid. It is difficult to outline all possible accommodations for persons with disabilities, as these are case specific and depend on individual situations.

Under Article 13(1) CRPD national authorities must:

“ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.”

According to the International Principles, States should enact legislation and produced guidelines that enable “persons with disabilities to request procedural accommodations, including modifications of or support in legal processes, with appropriate protection of their privacy.”⁸⁵ Throughout the course of legal proceedings, all participants must be “advised of the availability of procedural accommodations if needed and desired because of disability.”⁸⁶

The insufficient accessibility of judicial procedures is a pressing problem of the Romanian judicial system. Thus, beyond the minimal regulations in this area, there are no accessible materials (e.g. documents in Braille) or specialists in sign language at the level of judicial bodies.

Moreover, the sometimes excessive formalism of court proceedings is an additional obstacle to access to justice for people with intellectual and/or psychosocial disabilities - on the

⁸⁵ International Principles, para 32(k)

⁸⁶ Ibid, para 32(l)

contrary, there is no obligation in Romanian law to draft procedural documents in accessible language or to draft communications in an easy-to-read form.

Further, the information obtained from semi-structured interviews with criminal justice professionals shows that: "Procedural accommodations for people with disabilities are currently only minimally implemented. Although they have started to capture the attention of professionals and public opinion, they are still at an early stage of development. The field of procedural adaptations is only at the micro level, leaving considerable room for expansion and evolution. Although some adaptations are already covered, it is essential to step up efforts to integrate them more deeply into the procedural framework."⁸⁷

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**
 - a. **All justice actors must ensure that accommodations are available for persons with disabilities to allow for their participation in each procedure, from the first contact with law enforcement authorities and through all processes.**
 - b. **Persons with disabilities** should be consulted regarding the experienced barriers and accommodation needs. A disclosure from an individual that they have a disability is enough to place an obligation on the authorities to make a full determination, taking into account the individual's views.
 - c. **Adequate support services** should be made available within the criminal justice system to ensure the provision of procedural accommodations for persons with disabilities.
 - 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.**
- i. Preparations for procedural accommodations and other adjustments in the hearing must be made prior to the first 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.

⁸⁷ National Briefing Papers, Romania, 2023, available at: https://www.crj.ro/wp-content/uploads/2023/07/CLR_Enable_National-Briefing-Papers_EN_compressed-1.pdf

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 dealing 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 (as well as the type of disability)**.
5. A **neutral 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 specialists 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. Identify a procedure to indicate the support person and provide adequate legal provisions to regulate the procedure. 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.
 - b. Ensure that the trusted person can be present during all stages of the proceeding.
 - c. 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.
 - d. Allow face-to-face contact with the support person.
 - 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 support animals services to support persons with disabilities when waiting for court or when giving evidence.
 - 9. Ensure that the venue in the justice system, including waiting areas, is always sufficiently adapted and accessible for persons with disabilities – and appropriate to the specific needs of the person.**
 - a. For instance, **limit exposure to others** when necessary.⁸⁸
 - 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.⁸⁹

⁸⁸ UK bench book

⁸⁹ Ibid p.6

- b. Ensure the pace of the proceedings is well adjusted – for instance rather short sessions, frequent breaks.⁹⁰

Systemic recommendations

1. Central authorities should develop and adopt rules/guidelines that recognise the right to receive procedural, age and gender-appropriate accommodations, including 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 established through infra-legal measures such as protocols and procedures to ensure the full implementation of the CRPD in the justice system as to avoid hindrance at the legislative level.
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

According to Article 2 CRPD: “*Universal design*’ means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design” and “shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.”

The CRPD Committee’s General Comment No.2 highlights that this means that:

“[p]ersons with disabilities and other users should be able to move in barrier-free streets, enter accessible low-floor vehicles, access information and communication, and enter and

⁹⁰ Justice Intermediary Starter Kit, Module 7 Accommodations, p.5

move inside universally designed buildings, using technical aids and live assistance where necessary.”⁹¹

Moreover, the Committee notes that “both urban and rural areas, access should be available for persons with disabilities to the natural and heritage parts of the physical environment that the public can enter and enjoy.”⁹²

In the case of *Farcas v Romania*, the ECtHR recognised that where a court is physically inaccessible to the applicant (e.g. due to a disability resulting in a reduction of mobility), this may violate the applicant’s right to access court and thus their right to a fair trial.⁹³

RIGHT TO INFORMATION

According to the provisions of Article 83 in conjunction with the provisions of Article 78 of the Criminal Procedure Code, the suspect and the accused have the right to be informed about their rights in the criminal proceedings and about the crime for which they are being investigated and its legal classification.

We thus note that the right to information and its requirements are common to all suspects and/or defendants in criminal proceedings, regardless of whether or not they have intellectual and/or psychosocial disabilities.

In addition, Law no. 255/2013 transposed into Romanian law the provisions of Directive 2012/13/EU/22-May-2012 on the right to information in criminal proceedings. Similar to the regulation in the Criminal Procedure Code, the standard of the right to information is not differentiated according to whether the suspect or defendant has a disability or not - thus, the only tool regulated in favour of persons with intellectual and/or psychosocial disabilities is that information relevant to the litigant shall be provided in a simple and accessible language, taking into account any special needs of vulnerable suspects or vulnerable defendants.

However, the above regulation is not sufficient to remove the barriers faced by a suspect/defendant with intellectual and/or psychosocial disabilities - first of all, the issue of disclosure of disability remains. Thus, to the extent that the judicial body does not know or understand the suspect/defendant's disability, plain language and accessible information will not be able to be implemented. In addition, the legal provisions cited are of a superficial nature and it is advisable to regulate clear criteria defining the standard of simple and accessible, *as well as putting in place safeguards to ensure that the judicial authority makes sure that the person with a disability has understood the message being communicated and the effects of that communication. To this end, the JPA with whom the person with a disability will interact should present the message he or she wishes to communicate and then be able to ensure that the interlocutor has understood this message, while also making it clear that he or she can ask for further explanations or call a legal professional or support person.*

⁹¹ CRPD Committee, General Comment No. 2 on Article 9: Accessibility (2014) para. 15.

⁹² Ibid. para. 16.

⁹³ *Farcas v Romania*, App no. 32596/04 (ECtHR 2010), para 48.

Given the international legal framework on providing information in an accessible way and the insufficient regulation in national legislation, practical recommendations and guidelines will be found below.

RIGHT TO INTERPRETATION AND TRANSLATION

The right to access interpretation and translation services during criminal proceedings contributes to ensuring a fair trial and to creating an adequate framework for the effective exercise of the right of defence.

In Romanian law, the right to interpretation is regulated in the chapter on the principles of criminal procedure. Thus, it is stipulated⁹⁴ that the parties and parties to the proceedings who do not speak or understand Romanian or who cannot express themselves are provided, free of charge, with the possibility to take note of the documents in the case file, to speak and to make submissions in court through an interpreter.

In cases where legal assistance is compulsory, the suspect or accused person shall be given the opportunity, free of charge, to communicate, through an interpreter, with the lawyer for the purpose of preparing for the hearing, lodging an appeal or any other request relating to the outcome of the case.

In the doctrine of Romanian criminal procedural law, it has been held that the standard laid down by Romanian law regarding the right to an interpreter is higher than that imposed by the European Convention on Human Rights, since the case-law of the European courts has held that the right to an interpreter, enshrined in Article 6 para. 3(e) of the Convention, does not confer on individuals the right to choose the language used at hearings.⁹⁵ Thus, under the European Convention on Human Rights, the right to an interpreter should be guaranteed only to persons who do not speak or understand the language in which the proceedings are conducted, while the others are obliged to use that language if it is proved that they know it. On the other hand, the Romanian legislator has provided that Romanian citizens belonging to national minorities have the right to express themselves in their mother tongue before the courts, even if they know Romanian.

The right of access to translation and interpretation services in criminal proceedings is an additional guarantee for ensuring effective access to justice and a tool for building an effective defence. However, it should be noted that the Romanian legislator did not intend to provide additional guarantees for persons with intellectual and/or psychosocial disabilities, for whom access to an interpreter is clearly essential. Given the approach of the text of the law in question, which does not contain an express mention of persons with disabilities, we consider that access to interpreting services by persons with disabilities can be achieved by considering the mention of persons who cannot express themselves in Article 12 of the Criminal Procedure Code.

⁹⁴ Article 12 para. (3) CPC.

⁹⁵ The New Criminal Procedure Code commented on 15-Jun-2015, Hamangiu, art. 12.

It should be noted that the right to interpretation and translation in criminal proceedings has not always been regulated in national law, having been introduced following the transposition of Directive 2010/64/EU into national law. Thus, Art. 109 of Law 255/2013 for the implementation of Law 135/2010 on the Criminal Procedure Code and for the amendment and completion of some normative acts containing criminal procedural provisions provides that Art. 1, Art. 2 para. (1)-(5), Art. 3 para. (1), (2), (5), (7) and (9) and Art. 4 of Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings. These provisions require the regulation of (i) appropriate assistance measures for persons with hearing and speech impairments, (ii) mechanisms to verify whether suspects or accused persons speak and understand the language in which criminal proceedings are conducted and whether they need the assistance of an interpreter, and (iii) safeguards to allow for the written translation of all essential documents in a criminal proceeding, such as any decision depriving a person of liberty, any indictment or indictment, and any judgment.

Recommendations for justice professionals

1. **Every person with disability has the right to make choices for themselves and should have access to all the relevant information and support required to do so, from the first contact with law enforcement authorities.**
 - a. Information should be shared with defendants at all stages of the proceedings, including but not limited to the pre-trial phase, during the trial, and post-trial information.
 - b. **Information on existing support resources and accommodations** for persons with disabilities, as well as on how to access and use them, should be available – and clearly communicated to persons with disabilities.
 - c. **An appointment of an intermediary / facilitator should be considered**, who can significantly help in communication and ensuring that all relevant information is transmitted to the defendant.
2. **The police and other justice professionals must ensure that the person with disability understand their rights and procedures.**
3. **Justice professionals must ensure that at all stages of the proceedings, defendants with disabilities are provided with accessible and understandable information about their rights,**
 - i. including the right not to incriminate oneself;
 - ii. including in relation to what will happen in any legal procedure,
 - iii. the rules of the places of detention, if applicable, and
 - iv. 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 them, 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.*

Communication (+Right to 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**.⁹⁶
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.
 - b. Ensure rapid forms of communication between the judicial authority and certain categories of interpreters. For certain persons with disabilities, it is very difficult for the judicial authority to provide the services of an interpreter, sometimes the number of authorized interpreters is very small. Therefore, an operative communication, possibly by videoconference, with these categories

⁹⁶ 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.

of interpreters is extremely convenient.

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.⁹⁷

- 5. At all stages of the proceedings ensure to provide the technical and other support necessary for defendants with disabilities to use any form of communication as necessary for their full participation.⁹⁸ These include**
 - a. Assistive listening systems and devices;
 - b. Open, closed and real-time captioning, and closed caption decoders and devices;
 - c. Voice, text and video-based telecommunications products;
 - d. Videotext displays;
 - e. Computer-assisted real-time transcription;
 - f. Screen reader software, magnification software and optical readers;
 - g. Video description and secondary auditory programming devices that pick up audio feeds for television programs.
- 6. Provide communication support, including through third-parties, for example:**
 - a. Note-takers;
 - b. Qualified sign language and oral interpreters;
 - c. Relay services;
 - d. and Tactile interpreters, where and when necessary.
- 7. Provide justice professionals with communication tools to use in communication with persons with disabilities. For instance:**

⁹⁷ Australian Disability Access Bench Book, available at [Disability Access Bench Book \(judicialcollege.vic.edu.au\)](http://Disability Access Bench Book (judicialcollege.vic.edu.au)).

⁹⁸ 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.

- a. The [AAC pictograms browser](#)⁹⁹ and an [example of use](#).¹⁰⁰
- b. An example of a “[communication board](#)”¹⁰¹
- c. [Easy to read guidelines](#)¹⁰²
- d. How to write [a social story](#)¹⁰³ and an [example of use](#).¹⁰⁴

D. Right to access to a lawyer and legal aid

For suspects or defendants with intellectual and/or psychosocial disabilities, legal assistance may or may not be compulsory. In this respect, with regard to the prosecution phase, national law provides that legal aid is compulsory where the suspect or defendant has been ordered to be placed in medical confinement, where the judicial body considers that the suspect or defendant would be unable to defend themselves, or in cases where the law provides for life imprisonment or imprisonment for more than five years for the offence committed.

The regulation described above presents several challenges: firstly, the condition that the judicial body must assess whether the suspect or defendant could defend themselves is ambiguous. Consequently, the discretion of the judicial body is broad, as the requirement for mandatory legal assistance is determined solely at their discretion. Additionally, the assessment of the suspect's or defendant's actual ability to prepare their defense may be influenced by the judiciary's experience. This could potentially downplay the importance or difficulty of preparing an effective defense, which may limit the right to a fair trial for the suspect or defendant.

⁹⁹ 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.](#)

¹⁰⁰ 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 \(ohchr.org\)](#).

¹⁰¹ 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.](#)

¹⁰² Mencap, Am I making myself clear? Mencap's guidelines for accessible writing (2002) available at [guidelines for accessible writing.pdf \(funding4sport.co.uk\)](#); [For instance, they can be employed to communicate with people with intellectual disabilities, learning disabilities, or autism spectrum.](#)

¹⁰³ 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.](#)

¹⁰⁴ Access Ability Australia (AAA), The Capital. Social Story, available at [A-visit-to-The-Capital-Social-Story-V1.pdf \(accessabilityaustralia.com\)](#).

The recommendations set out below are therefore intended to ensure that all persons with disabilities are adequately protected in criminal proceedings in accordance with international standards, regardless of ambiguities or limitations in national regulations.

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.¹⁰⁵
 - g. Provide basic training on the rights of persons with disabilities to all lawyers.
 - h. **When a person is detained, including placed under medical confinement as a safety measure they need to have effective access to a lawyer within the time limit provided by law in order to be able to challenge the measure and to effectively exercise the right of defense.**

Recommendations for justice professionals

Right to legal aid

¹⁰⁵ Czechia national paper.

- 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 and establish flexible communication between them with a view to applying best practice in this area**
- 4. Inform persons with disabilities of their right to legal aid and other possibilities, such as recourse to the services of an expert party or access to representation through civil society organizations. Also, when a person is detained or when there is a risk that legal proceedings may lead to their detention, it is particularly urgent that they have effective access to a lawyer and legal assistance, and that detention or any other custodial measure can only be enforced if the personalized conditions of detention are ensured in relation to the disability assessment.**
- 5. Initial and continuing training for lawyers who would be providing legal aid to persons with disabilities should be provided.**

When a person is deprived of their liberty, or there is any risk of a legal proceeding leading to their deprivation of liberty, 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

RIGHT TO BE PRESENT AT TRIAL

Similar to the rights considered so far, the right to be present at the trial is not subject to the circumstances of whether the suspect or defendant has an intellectual and/or psychosocial disability.

Thus, the court proceedings may take place in the defendant's absence, if the latter is missing, evades trial or changes their address without informing thereupon the judicial bodies (and, following the controls carried out, their new address remains unknown). Moreover, the trial may take place in the absence of the accused if, although legally summoned, he or she is unjustifiably absent from the trial. At the same time, the accused, even if deprived of his liberty, may request in writing to be tried in his absence, represented by his chosen lawyer or by a lawyer of his own choice.

On the other hand, where the defendant is in detention, his or her presence at the trial is mandatory - also in this situation, or if the defendant has requested to be tried in absentia,

the court may, on request or of its own motion, order that the defendant make submissions during the proceedings and be heard by videoconference in the presence of his or her chosen or appointed counsel.

In all cases, if the court deems it necessary for the defendant to be present, it may order the defendant to be heard by video conference.

It should also be taken into account the possibility for incarcerated persons to have recourse to certain judicial proceedings (e.g. challenging the regime of execution of the sentence or challenging a report on the application of an administrative sanction) for which the current law (Law no. 254/2013) provides for the possibility of summoning and bringing the convicted person, and the decision of the court in whose district the place of detention is located is definitive.¹⁰⁶

While the law provides that the convicted person may be heard, at the place of detention, by the judge responsible for supervising deprivation of liberty, on the complaint lodged against the decision of the judge responsible for supervising deprivation of liberty, although an adversarial procedure is provided for, which is the responsibility of the court in whose district the place of detention is situated, the appeal being heard in open court, with the convicted person and the prison administration being summoned, the provisions of Article 39, paragraph. (16) of the same law require that **the convicted person is brought to the trial only at the request of the court**, in which case he is heard.

Therefore, the presence of the person deprived of liberty in the courtroom is left to the discretion of the court, only the summons procedure being mandatory. Such a legislative provision is liable to affect the detainee's very right to a defense, as he is unable to appear before the court, sometimes without the possibility of using the services of a chosen defense counsel, and there is a real risk that a decision will be handed down on the basis of evidence unknown to the defendant. By not being present at the trial, the convicted person will not be aware of all the documents in the case file, and the administration of the place of detention will not be obliged to bring to his knowledge all the evidence considered by the committee for the determination, individualization and change of regime for the enforcement of custodial sentences or the position adopted by the representative of the detention facility before the court hearing the appeal.

PRESUMPTION OF INNOCENCE

The presumption of innocence is a fundamental principle of criminal justice; in this respect, Article 4(4) of the Charter of Fundamental Rights of the European Union states that the presumption of innocence is a fundamental principle of criminal justice. Article 1 of the Criminal Procedure Code provides that every person shall be presumed innocent until proven guilty by a final criminal judgment. Obviously, national legal provisions are an

¹⁰⁶ Article 39 para. (3) of Law no. 254/2013, "the decision establishing the regime of execution of custodial sentences shall be communicated to the convicted person together with the indication of the existing appeal and the deadline for exercising it. The convicted person may lodge a complaint against the manner in which the enforcement regime is determined with the judge supervising deprivation of liberty within 3 days from the date on which the decision on the determination of the enforcement regime of deprivation of liberty was communicated to him/her."

application of international standards, such as the Universal Declaration of Human Rights.¹⁰⁷

However, the presumption of innocence may be rendered ineffective if, in the period between the submission of the case to the criminal court and the delivery of a final judgment, the defendant does not effectively exercise his rights or if positions of officials or materials are disseminated in the public space that would refer to the guilt of the person with disabilities (a mass media which contributes to the violation of the presumption of innocence could be directly sanctioned by the National Council for Combating Discrimination or the National Audiovisual Council). **Thus, in the absence of procedural adaptations for persons with intellectual and/or psychosocial disabilities, overturning the presumption of innocence, i.e. waiting for a final judgment of conviction, may be simply a matter of time.** These persons must be guaranteed a right to address themselves personally to the judicial authority, to submit written statements or relevant medical documents, so that there is an assurance that at the level of the judicial authority their situation is known and analyzed in relation to all personal and real circumstances.

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

¹⁰⁷Article 11 of the Universal Declaration of Human Rights.

- 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.

05

ANNEXES

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

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. 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 require measures that would also facilitate their participation in proceedings.

Assessing accommodation needs

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

Support people

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

Language and communication assistance considerations

- Is the language used to communicate with the defendant with disabilities simple and easy to understand?
- Has an intermediary/facilitator (including a third-party) been made available at no cost to the defendant with disabilities to assist with communication throughout the proceedings? (See 4.2.2 Provision of procedural accommodations)
- Has the defendant with disabilities been asked if they can hear what is being asked or discussed, including in the courtroom?

- Is the speech pace appropriate for the defendant to fully comprehend what is being communicated? Has the person been asked if they require breaks or shorter sessions? (See 4.2.2 Provision of procedural accommodations)
- Has the defendant with disabilities and the support person been asked about their communication methods and any adjustments before the beginning of proceedings?
- Has the relevant assistive technology, communication support (including third-party interpreters) and communication tools been made available to support defendants with disabilities at all stages of the proceedings as necessary for their full participation? (See 4.4.2. Right to interpretation and translation)

Information access considerations

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

Physical access considerations

- Is the venue accessible for people using wheelchair or other mobility aid?
- Has the adaptation of 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 been considered? (See 4.6. Right to be present at trial and the right to presumption of innocence)

Legal assistance

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

Participation in the trial

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

C. 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.”¹⁰⁸

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).¹⁰⁹

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,

¹⁰⁸ CRPD, Preamble, (e).

¹⁰⁹ Australian Disability Access Book, Section 7.2.

the use of clear and concise language, the repetition of some indications and concepts, and the allowance of extra time to answer.¹¹⁰ During the hearing, other useful adjustments are regular breaks, late start times, shortened days, and a quiet environment.¹¹¹

- **Agoraphobia**

Agoraphobia is a phobia that usually consists of the fear of traveling away from a person's safe space -e.g., home- or of being trapped somewhere. This phobia can manifest in various ways and with varying severity. A person with agoraphobia might fear being distant from home but also being in unfamiliar routes and places, in wide open spaces, in crowded places, in confined spaces -e.g., trains or lifts-. Sometimes people might also fear standing in long lines or being left alone. When persons with agoraphobia are in the feared places, they might experience a panic attack. These persons might also become anxious even thinking about going to these places and tend to avoid them.¹¹²

Possible adjustments for the hearing include choosing a location for the venue in a place close to the person's house and on the ground floor, taking evidence in written form or through electronic means, limiting the number of persons in the courtroom, and allowing the defendant to sit next to the door, having a companion, and taking breaks when needed.¹¹³

- **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.¹¹⁴

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.¹¹⁵

- **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

¹¹⁰ Ibid. Section 7.2.

¹¹¹ UK's Equal Bench Book, 388.

¹¹² Ibid. 389.

¹¹³ Ibid. 389.

¹¹⁴ Ibid. 392.

¹¹⁵ Ibid.392.

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.¹¹⁶

In these cases, reasonable adjustments include the use of clear, concise and plain language, a calm voice tone, extra time to answer and avoidance of sarcasm, and too many gestures or distractions. The questions should be precise and direct, and the judge should start the questions with the person's name to avoid misunderstandings. Also, allowing extra time for processing each question and providing an answer. The judge should also be careful to not consider avoiding eye contact or other behaviours as a lack of respect.¹¹⁷ 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.¹¹⁸

- **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.¹¹⁹

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.¹²⁰

Reasonable accommodation may also include the use of information in the form of audiobooks. The blind defendant may also be informed of all the rights recognized by law by hearing material containing all relevant information, and the judicial body may proceed to explain matters heard but not understood by the defendant.

¹¹⁶ Australian Disability Access Book, Section 7.3.

¹¹⁷ Ibid. Section 7.3.

¹¹⁸ UK's Equal Access Bench Book, 398.

¹¹⁹ Australian Disability Access Book, Section 7.4.

¹²⁰ Ibid. Section 7.4.

- **Cerebral palsy**

Cerebral Palsy is a group of disorders affecting a person's ability to move including muscle control, coordination, tone, posture, and balance.¹²¹ It is usually the result of one or more non-progressive abnormalities in the brain happening before the growth and development are complete. It can be caused by insufficient oxygen getting to the brain at birth, toxins, or genetic factors. Language therapists or someone familiar with the speech patterns of the individual can be helpful to communicate. Some persons also use communication aids like speech synthesizers or word boards.¹²²

Reasonable adjustments are guaranteeing physical access to the courtroom, the toilet, and all the tribunal's facilities, and allowing the use of communication aids and devices in case cerebral palsy affects communication abilities. Good practices also include organizing frequent breaks, allowing support persons to participate, and discussing with the defendants their needs.¹²³

- **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.¹²⁴

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.¹²⁵ 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.¹²⁶

- **Deafblindness**

Deafblindness consists of a loss of vision and hearing. Deafblindness varies from person to person. For instance, some persons may be fully blind and hard of hearing, and other individuals may be deaf with some sight. Some people may also experience of complete or nearly complete loss of both sights.¹²⁷

¹²¹ Australian Disability Access Book, Section 7.5.

¹²² UK's Equal Treatment Bench Book, 403.

¹²³ Australian Disability Access Book, Section 7.5.

¹²⁴ Australian Disability Access Book, Section 7.6.

¹²⁵ Ibid. Section 7.6.

¹²⁶ UK's Equal Treatment Bench Book, 421-424.

¹²⁷ Australian Disability Access Book, Section 7.7.

Persons who are deafblind may require the presence of interpreters who are expert in tactile sign language.¹²⁸

- **Dissociation**

Dissociation is a way that the mind copes with too much stress and it can be linked to trauma, or to a mental health problem or it can be a side effect of alcohol or medication. Persons who experience dissociation feel detached from their body and the world around them. This feeling can last from hours to up to months. Persons may be unable to remember information about themselves or they may experience the world as foggy or unreal. They may feel like they are seeing their emotions from outside, or they may feel disconnected from their body. They may also switch from different parts of their personality, use different names, or shift identity. People who have regular experiences of dissociation may be diagnosed with a dissociative disorder.¹²⁹

Reasonable adjustments can consist of recording evidence when the person is not experiencing dissociation, providing an intermediary, allowing a support person, and allowing the person to give evidence in several different identities.¹³⁰

- **Dementia and Alzheimer's Disease**

Dementia is not a specific disease, but it is a collection of symptoms that are caused by disorders affecting the brain. Alzheimer's Disease is one form of dementia. Dementia has impacts on thinking, memory, behaviour, visuospatial awareness, senses, and the ability to perform everyday tasks.¹³¹

Dementia can affect people in different ways and with different intensity. For this reason, good practice consists of assessing each situation and establishing the adjustments considering the specific kind of dementia and the personal circumstances of the defendant. Examples of reasonable adjustments are allowing regular breaks, letting a support person participate in the hearing, and adjusting pace and tone when speaking.¹³² Possible adjustments in the case of Alzheimer's Disease involve providing an intermediary, allowing a support person in the hearing, and recording evidence when the person is lucid.¹³³

- **Down Syndrome**

¹²⁸ Ibid. Section 7.7.

¹²⁹ Ibid. 407.

¹³⁰ Ibid. 407-408.

¹³¹ Australian Disability Access Book, Section 7.10.

¹³² Ibid. Section 7.10.

¹³³ UK's Equal Treatment Bench Book, 395-396.

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.¹³⁴

Some persons with Down Syndrome may need communication adjustments like the use of communication aids, or the help of a support person.¹³⁵

- **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.¹³⁶

Various reasonable adjustments can be made at all stages of the proceeding. Before the hearing, oral instruction can be followed by written indications and reminders. The instructions shall be given in plain language, through electronic means, and in case of written indications, the formatting style shall be clear (e.g., at least 12 font sizes, great spacing, coloured paper). During the hearing, persons with dyslexia might need regular breaks, clear explanations, single-asked questions, time to think about the information, and the possibility of asking questions and clarifications. In general, they should not be expected to give very precise details or to remember everything and possible misunderstandings should not be regarded as evasiveness and inconsistency.¹³⁷

- **Eating Disorders**

Eating disorders are characterized by an abnormal attitude to food affecting eating habits and behaviours. Eating disorders are often linked to anxiety, depression, or obsessive-compulsive disorders. There are various kinds of eating disorders including anorexia nervosa, bulimia, binge eating disorder, and EDNOS (eating disorders not otherwise specified). During a trial, persons with an eating disorder might appear tired, uninterested or they might have difficulties in focusing.¹³⁸

Reasonable adjustments might include frequent breaks, lunch at agreed times, and avoidance about comments of the person's physical appearance.¹³⁹

- **Epilepsy**

Epilepsy is a neurological disorder characterized by epileptic seizures. There are many types of seizures and persons can experience epilepsy in various ways depending on which part

¹³⁴ Australian Disability Access Book, Section 7.9.

¹³⁵ Ibid. Section 7.9.

¹³⁶ UK's Equal Treatment Bench Book, 409-410.

¹³⁷ Ibid. 411-412.

¹³⁸ Ibid. 413-414.

¹³⁹ Ibid. 415.

of the brain is affected. Some seizures can last for a few seconds (petit-mal or absence of seizures) and they can cause the individual to stop, stare, blink, or look vague. Some seizures can last for a few minutes (grand-mal or tonic-clonic seizures), and they can cause unconsciousness, body stiffness, and twitching. After these seizures, individuals usually experience a period of drowsiness, confusion, and headaches. In some individuals stress and specific lighting can trigger seizures.¹⁴⁰

Reasonable adjustments include providing a safe chair and trying to reduce the stress of the courtroom environment. In case of photosensitivity, flashing lights or fluorescent strip lighting shall be avoided. General knowledge about how to behave in case of a tonic-clonic seizure can be very useful to keep the person safe and to avoid alarm. In case of convulsions, harmful objects near the person should be removed and a cushion should be put under the head. During convulsions, the person should not be restrained or moved except in case of immediate danger, and nothing should be put in the mouth of the person. When the convulsions stop, the person should be put in the recovery position (i.e., on the side).¹⁴¹

- **Hallucinations**

Hallucinations consist of the experience of seeing, hearing, smelling, or feeling things that do not exist outside their mind. Hallucinations may occur in persons with schizophrenia, bipolar disorder, dementia, Alzheimer's, Parkinson's disease, or Charles Bonnet Syndrome, but also as a consequence of drug use, alcohol withdrawal, extreme tiredness, or recent bereavement. Hearing voices is a recognized symptom of schizophrenia, bipolar disorder, and dementia. Visual hallucinations are also common with schizophrenia and Parkinson's disease.¹⁴²

If the person is experiencing hallucinations during the hearing, it is important to consider whether it is possible to continue. In case the hearing continues, possible reasonable adjustments consist in adopting a calm manner, allowing evidence to be given behind screens or at another time, focusing on one question at a time and repeating questions. Other solutions are the use of an intermediary and of evidence in written form.¹⁴³

Reasonable adjustments include increased breaks and shorter days, availability of water, and easy access to toilets.¹⁴⁴

- **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

¹⁴⁰ Ibid. 415-416.

¹⁴¹ Ibid. 415-416.

¹⁴² Ibid. 419.

¹⁴³ Ibid. 419.

¹⁴⁴ Ibid. 246.

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.¹⁴⁵

- **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.¹⁴⁶

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 programme that enables persons with communication difficulties to express themselves independently.¹⁴⁷

- **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.¹⁴⁸

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.¹⁴⁹

- **Motor disabilities**

¹⁴⁵ Ibid. 427.

¹⁴⁶ Ibid. 429.

¹⁴⁷ Ibid. 430-432.

¹⁴⁸ Australian Disability Access Book, Section 7.11.

¹⁴⁹ UK’s Equal Treatment Bench Book, 434-435.

Motor disability may depend on impairment of one or both lower, upper or back limbs, general muscle weakness, a specific disease (e.g. amyotrophic lateral sclerosis) or an injury. People with motor disabilities may use aids such as a cane, crutches or a wheelchair.¹⁵⁰

In the case of a defendant with reduced mobility, accessibility of the courtroom is essential. The entrance and route to the courtroom must be accessible, as well as the route to and from the witness box. The courtroom must also have adequate facilities, accessible toilets and safe procedures in case of fire or when elevators cannot be used. In addition, wheelchair users should be able to occupy a seat from which they have a good view of the judge and lawyers. Finally, the defendant should not be required to stand up for the judge, and his or her assistive devices should not be touched or moved without his or her consent¹⁵¹ If the person suffers from an upper extremity impairment, he or she may need help opening doors, drinking water, handling objects, and flipping through pages. The person should also be allowed to sit in a comfortable position without twisting.

- **Multiple Sclerosis**

Multiple sclerosis is a disease affecting nerves in the brain and spinal cord. It causes problems with muscle movement, balance, and vision. There are different types of multiple sclerosis, and they can affect persons in very different ways. Some persons experience the relapsing-remitting type that consists of one short-lived episode and subsequent symptom-free periods. Other persons experience secondary progressive type of multiple sclerosis that can deteriorate rapidly.¹⁵²

The symptoms of multiple sclerosis vary widely and consulting the person is an effective way to understand the individual needs and the extra aid and assistance that should be organized. In general, reasonable adjustments for a defendant with multiple sclerosis are frequent breaks, shortened days, availability of water, and the use of a fan or air conditioning because extreme heat can cause a relapse. If the person has mobility impairment, the same reasonable adjustments described in the section on Mobility Impairment should apply.¹⁵³

- **Pathological and Demand Avoidance**

Pathological demand avoidance (PDA) consists of avoiding everyday demands and expectations to an extreme extent. People with PDA have usually a need for control that is often anxiety related. These persons may have difficulties with smaller implied demands within larger explicit demands, time and time-keeping demands, advance planning, expectations, and praise. Some people may also face problems with internal demands like personal expectations and desires or bodily demands. A distinctive characteristic of the person with PDA is the use of social strategies to avoid demands. The PDS Society says that there is a hierarchy of avoidance approaches. First, the person makes attempts to distract,

¹⁵⁰ Ibid. 437.

¹⁵¹ Ibid. 437-428.

¹⁵² Ibid. 439-440.

¹⁵³ Ibid. 440.

make excuses, and delay; then the person feels physical incapacity with a reduction of meaningful conversations and withdrawal to fantasy; then there is a phase of taking control in which there is complete compliance but a later breakdown; finally, the person experience panic accompanied by agitation, aggression, shut down, running away, self-harm.¹⁵⁴

The problem of the legal process is that is full of direct and indirect demands, and it is characterized by strong uncertainty. Possible reasonable adjustments are trying to reduce uncertainty with an explanation of the various steps and requests, not giving many simultaneous tasks, and making the demands more indirect. Moreover, the judge can explain the reasons behind deadlines, or, where possible, give the individual some autonomy and flexibility. Regular breaks and patience when the person refuses to do something are also useful.¹⁵⁵

- **Persecutory Delusions**

Paranoia consists of unfounded beliefs that other people intend to harm the individual. Delusions are paranoid thoughts. Paranoia has a range of severity and the most severe forms consist of persecutory delusions. Persons with persecutory delusions have strong paranoid convictions and no facts or reason can change the person's thinking. This is a form of psychosis. Persons might experience persecutory delusions all the time or only occasionally when under stress. They can be related to some serious mental illness problems like delusional disorder, schizophrenia, and bipolar disorder.¹⁵⁶

It is important to avoid disregarding the person's evidence only because of the delusions. Indeed, there are very specific delusions -e.g., a delusion concerning only a specific individual- and the severity of delusions might vary. For this reason, the weight of the evidence coming from the person should be assessed case by case. There are also some indications to respond to a delusion during a trial. The judge and the other legal professionals shall listen to the person, not dispute the delusion, and not engage with the delusion or try to use logic to shift it. They shall simply focus on the elements that are verifiable and be careful with their body language and way of communicating.¹⁵⁷

D. Relevant case-law of the European Court of Human Rights - persons deprived of their liberty

In the context of a unified and highly predictable case law, national law does not regulate the manner or the criteria on the basis of which a person with disabilities can be granted personalized conditions of detention upon reception in prison. In several situations where persons with disabilities have been incarcerated, depending on the assessment made upon incarceration, an attempt has been made to create minimum conditions, but still with reference to the existing material basis.

¹⁵⁴ Ibid. 446-447.

¹⁵⁵ Ibid. 447-448.

¹⁵⁶ Ibid. 448-449.

¹⁵⁷ Ibid. 449-450.

In view of ECHR jurisprudence, a practical mechanism should be developed and implemented to identify disabilities and individual needs and barriers at the beginning of the execution of a custodial sentence, ensuring that all necessary measures are taken to ensure that the person with disabilities can serve the sentence legally without the risk of degrading treatment.

Irrespective of the convicted person's place of residence, if the convicted person is a person with disabilities, on the basis of the assessment, the National Penitentiary Administration should determine the detention facility that offers personalized conditions of detention, and at the level of that facility, the convicted person should be informed in the format he or she understands of all the rights and obligations he or she has as a convicted person.

The administration of the place of detention involved in the identification of the disability should determine whether the convicted person has a disability and the related needs and provide assistance, accommodation and support from the moment of registration in the prison.

These actors should receive adequate training for these duties and to be able to identify the disability at an early stage and avoid incarceration that would constitute torture or degrading treatment.

- Grimailovs v. Latvia¹⁵⁸, 2013, p. 150; Yunusova and Yunusov v. Azerbaijan¹⁵⁹, 2016, p. 138)

Details of the factual situation - Grimailovs v. Latvia: The applicant, a detainee with a pre-existing spinal condition, alleged that he had been assaulted by the police during his arrest and that the conditions of detention and medical care provided were inadequate, which led to deterioration in his health.

Details of the factual situation - Yunusova and Yunusov v. Azerbaijan: The applicants, who suffered from serious health conditions, claimed that their continued detention without sufficient medical care had aggravated their health. Ms. Yunusova was suffering from hepatitis C, diabetes and other medical conditions, while Mr. Yunusov was suffering from chronic hypertension. The applicants complained about poor conditions in detention, citing insufficient heating, inadequate food and medication, and refusal of requests for medical examinations by their chosen doctors. In addition, Ms. Yunusova reported that she was subjected to both verbal and physical violence at the hands of a guard and a cellmate.

Article 3 of the European Convention on Human Rights¹⁶⁰ cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to transfer him to a public hospital, even if he is suffering from an illness that is particularly difficult to treat.

However, this provision does require the State to ensure that prisoners are **detained in conditions which are compatible with respect for human dignity, that the manner and**

¹⁵⁸ Grimailovs v. Latvia, available at: [http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-121610%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-121610%22]})

¹⁵⁹ Yunusova and Yunusov v. Azerbaijan, available at: [http://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-163330%22\]}](http://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-163330%22]})

¹⁶⁰ Article 3 - Prohibition of torture: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured, for example by the provision of necessary medical care.

- Enea v. Italy¹⁶¹, 2009, paragraph 58

Details of the factual situation: The applicant, who uses a wheelchair due to ill-health, challenged the conditions of his detention under the special regime. He claimed, in particular, that his state of health was incompatible with the special prison regime to which he was subjected, that the regime violated his right to respect for his family life and his correspondence, and that he was not guaranteed the right to a court to challenge the extension of the regime. The Italian courts initially rejected his requests to suspend the execution of his sentence on health grounds, stating that his condition was being properly managed in the prison hospital ward. After several requests and medical assessments, the court placed him under house arrest in October 2008 due to his deteriorating health following brain surgery.

The conditions of detention of a person who is ill must ensure that his or her health is protected, regard being had to the ordinary and reasonable demands of imprisonment. Although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees or place them in a civil hospital, even if they are suffering from an illness which is particularly difficult to treat, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty. The Court cannot rule out the possibility that in particularly serious cases situations may arise where the proper administration of criminal justice **requires remedies to be taken in the form of humanitarian measures.**

- Serifis v. Greece¹⁶², 2006, paragraphs 34-36

Details of the factual situation: The applicant, who suffers from multiple sclerosis and paralysis of the left hand due to a traffic accident, has been detained in Korydallos Penitentiary since July 2002. Despite the seriousness of his condition, which requires specialized and multidisciplinary medical care, the applicant has encountered significant delays in receiving adequate medical treatment during his detention. His applications for conditional release and transfer to a specialized hospital were repeatedly rejected, and during the first two years of his detention he received only sporadic medical care in the

¹⁶¹ Enea v. Italy, available at: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-94072%22%7D>

¹⁶² Serifis v. Greece, available, in French, at: <http://hudoc.echr.coe.int/eng#%7B%22languageisocode%22%3A%22FRE%22%2C%22appno%22%3A%2227695/03%22%2C%22documencollectionid%22%3A%22CHAMBER%22%2C%22itemid%22%3A%22001-77815%22%7D>

prison hospital ward. It was only in the summer of 2004 that he started to receive adequate treatment, including regular physiotherapy.

The Court found that, notwithstanding the seriousness of the applicant's illness (paralysis and multiple sclerosis), the authorities had, during his detention, delayed in providing him with medical care corresponding to his real needs, which subjected him to hardship or difficulties of an intensity beyond the inevitable limit of suffering inherent in detention, in violation of Article 3 of the Convention.

- Holomiov v. Moldova¹⁶³, 2006, paragraphs 117-122

Details of the factual situation: During his detention, the applicant suffered from several serious medical conditions, including chronic hepatitis, kidney failure and other urological and psychological disorders. Despite numerous recommendations for emergency surgery and specialized care, the medical treatment provided in prison was inadequate and sporadic. The applicant's requests for adequate medical treatment and transfer to specialized hospitals were often refused or delayed, which led to a deterioration in his state of health.

The Court emphasized that the key issue for its assessment was not the lack of medical care in general, but rather the lack of medical care appropriate to the applicant's specific condition. In the present case, the Court pointed out in particular that the applicant, although suffering from serious kidney disease which posed serious risks to his health, had been detained for almost 4 years without adequate medical care. The Court therefore found that the applicant's suffering amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

- Mozer v. Republic of Moldova and Russia¹⁶⁴, 2016, paragraph 183

Details of the factual situation: The applicant was incarcerated in various detention centers in Transnistria, suffering from chronic bronchial asthma and other serious health problems. Despite numerous requests for specialized treatment and transfer to civilian hospitals, he was kept in poor conditions, with a lack of adequate medical care for his severe medical conditions. He was transferred between several detention centres, each with inadequate conditions such as overcrowding, lack of ventilation, poor hygiene and absence of specialized medical staff. At some point his health deteriorated significantly and doctors recommended his transfer to a specialized hospital. However, requests for transfer and improvement of conditions were refused or ignored and the applicant continued to suffer from asthma attacks and other complications.

¹⁶³ Holomiov v. Moldova, available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-77850%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-77850%22]})

¹⁶⁴ Mozer v. Republic of Moldova and Russia, available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-161055%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-161055%22]})

In some cases, the unjustified refusal to transfer a person deprived of liberty to a civilian hospital for treatment, where the specialists and equipment necessary for the treatment did not exist in the prison, may constitute a violation of Article 3.

- Dorneanu v. Romania¹⁶⁵, 2017, paragraphs 93-100

Details of the factual situation: The applicant was serving a sentence while suffering from advanced prostate cancer with a poor prognosis. His medical condition, including bone metastases and severe deterioration, made it extremely difficult for him to endure the conditions of his imprisonment.

In relation to a person deprived of liberty who, at the time of his admission to a prison, was already suffering from an illness with a fatal prognosis in the short term, the Court pointed out that, as the applicant's illness progressed, it was impossible for him to cope with it in a prison environment.

The Court thus considered that it was the responsibility of the national authorities to take special measures in this regard on humanitarian grounds. However, as the national authorities failed to pay due regard to the appropriateness and necessity of maintaining the deprivation of the applicant's liberty, the Court found a violation of Article 3 (see also Gülay Çetin v. Turkey, 2013, paragraphs 114-125).

- Iacov Stanciu v. Romania¹⁶⁶, 2012, paragraphs 180-186

Details of the factual situation: The applicant, sentenced to 12 years and 6 months in prison in 2002 and released on parole in 2011, challenged the conditions of detention in Ploiești, Margineni, Bucharest-Rahova and Jilava penitentiaries, alleging severe overcrowding, poor hygiene, and lack of adequate medical care and activities. The applicant complained that he developed a number of chronic and serious illnesses during his detention.

The applicant complained that he had developed a number of chronic and serious illnesses during his detention, the Court found that the conditions of detention to which the applicant was exposed amounted to inhuman and degrading treatment, and thus to a violation of Article 3 of the Convention. In particular, the Court was not satisfied that the applicant received adequate medical care during his detention. There was no comprehensive record of his state of health or of the treatment prescribed and applied. Thus, it was not possible to monitor his health regularly and systematically. There was no comprehensive therapeutic strategy to cure his ailments or prevent their worsening. Consequently, the applicant's health has seriously deteriorated over the years.

¹⁶⁵ Dorneanu v. Romania, available at: [http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-179193%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-179193%22]})

¹⁶⁶ Iacov Stanciu v. Romania, available, in Romanian, at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-123577%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-123577%22]})

- Z.H. v. Hungary¹⁶⁷, 2012, paragraph 29; Grimailovs v. Latvia, 2013, paragraph 151, with further references

Details of the factual situation - Z.H. v. Hungary: Claimant with profound disabilities, including deafness and a medium degree intellectual disability. Arrested in April 2011 for robbery, the applicant, who was illiterate and communicated in a non-standard form of sign language, faced difficulties in understanding and participating in legal proceedings. During his detention, he alleged that conditions were inadequate and he was ill-treated by other detainees. Although special measures were put in place to address his needs, their effectiveness was questioned. Despite being provided with a sign language interpreter, the complainant argued that the interpreter's sign language was different from his own, affecting his ability to understand the charges and the legal process.

As regards the treatment of persons with disabilities, the Court held that the authorities, when deciding to deprive a person with a disability of his liberty and to detain him in custody, should take particular care to ensure that the conditions appropriate to the special needs arising from his disability are guaranteed.

- Price v. the United Kingdom¹⁶⁸, 2001, paragraphs 25-30

Details of the factual situation: The applicant, a person with severe physical disabilities and kidney problems, was arrested and was initially held in a police station cell which was not adapted to her needs, and she had to endure discomfort, cold and inaccessibility problems. Although she was transferred to a prison medical unit, which had more appropriate facilities, she faced difficulties related to the lack of adequate support for her personal hygiene and privacy needs, including inadequate exposure and delays in attendance. Conditions, including inadequate temperature control and lack of accessibility, were considered degrading and insufficient for people with severe disabilities in detention.

The Court found that it amounted to degrading treatment, contrary to Article 3 of the Convention, to detain a person with severe disabilities in conditions in which he was suffering from cold, at risk of developing scabs because the bed was too hard or inaccessible and he could only go to the toilet or maintain his hygiene with great difficulty.

- D.G. v. Poland¹⁶⁹, 2013, paragraph 177

Details of the factual situation: The applicant was diagnosed with paraplegia in 2000. He was sentenced to eight years imprisonment and experienced a number of health problems during his incarceration. When he was detained, he faced inadequate conditions for his disability, including insufficient medical care and unsanitary, ill-adapted living quarters. Despite temporary releases for medical treatment, including surgery and ongoing

¹⁶⁷ Z.H. v. Hungary, available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-114276%22%5D%7D>

¹⁶⁸ Price v. the United Kingdom, available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-59565%22%5D%7D>

¹⁶⁹ D.G. v. Poland, available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-116410%22%5D%7D>

physiotherapy, the applicant suffered significantly from the inability of the prison system to fully respond to his special needs. His complaints about his conditions of detention led to multiple investigations and legal challenges, with his temporary release extended several times due to health problems until his final release in 2010.

The Court found that it constituted a breach of Article 3 to detain a wheelchair-bound person suffering from paraplegia and a range of other health problems in circumstances where she did not have an unlimited and continuous supply of incontinence pads and catheters, unrestricted access to a shower, was left to her roommates for necessary assistance and could only maintain her hygiene with great difficulty.

- Zarzycki v. Poland¹⁷⁰, 2013, paragraph 125

Details of the factual situation: The applicant was a prisoner with disabilities who had both forearms amputated. The applicant alleged that the conditions of his detention were inappropriate for his disability, as he was not provided with the special care necessary to perform basic tasks independently and experienced significant delays and difficulties in obtaining prosthetics, which proved to be insufficient for his needs. The authorities, however, argued that the applicant was largely self-sufficient, received the necessary assistance from his cellmates, and that they made efforts to meet his needs, including facilitating the process of obtaining prostheses and providing him with additional privileges such as longer family visits and more frequent showers.

The Court noted in particular the proactive attitude of the prison administration towards the applicant (he was provided with basic mechanical prostheses free of charge and was also granted a small reimbursement of the cost of the biomechanical prostheses). The Court thus considered that the authorities had provided the claimant with the appropriate day-to-day assistance justified by his special needs. The Court therefore found that, although a person deprived of his liberty with amputated forearms was more vulnerable to the hardships of detention, the treatment of the applicant in the present case did not reach the threshold of severity which would constitute degrading treatment contrary to Article 3 of the Convention.

- Vincent v. France¹⁷¹, 2006, p. 103; see also Grimailovs v. Latvia, 2013, p. 157-162

Details of the factual situation: The applicant, a paraplegic following an accident, was incarcerated in several prisons in France. Initially incarcerated in Nanterre, he encountered difficulties due to the lack of appropriate wheelchair facilities, such as being unable to use

¹⁷⁰ Zarzycki v. Poland, available at:

<http://hudoc.echr.coe.int/eng#{%22languageisocode%22:%22ENG%22,%22appno%22:%2215351/03%22,%22docum%22:%22CHAMBER%22,%22itemid%22:%22001-117210%22}}>

¹⁷¹ Vincent v. France, available, in French, at:

<https://hudoc.echr.coe.int/eng#{%22languageisocode%22:%22FRE%22,%22appno%22:%2226253/03%22,%22docum%22:%22CHAMBER%22,%22itemid%22:%22001-77641%22}}>

the facilities in his cell and being transported in a minibus unsuited to his state of health. Transferred to Fresnes, he continued to experience difficulties in accessing activities and facilities due to the lack of appropriate facilities, leading to increased dependency and increased risks in the event of a fire. Although Fresnes saw some improvements, problems persisted, including limited access to activities and difficulties in using sanitary facilities. At Cergy-Pontoise, it again faced similar problems, with limited access to activities and an inadequate shower. Finally, he was transferred to Meaux-Chauconin, a center better adapted for people with disabilities, where he made no complaints.

The Court held that the detention of a person with a disability in a prison in which he was unable to move around and, in particular, to leave his room independently constituted degrading treatment.

- Arutyunyan v. Russia¹⁷², 2012, paragraph 77

Details of the factual situation: The applicant, prior to his arrest, had multiple serious medical conditions, including diabetes, kidney failure, and various complications from previous surgeries. He was detained in a facility that did not have adequate accommodations for his disabilities. The facility, which had no elevator, required him to go up and down four floors several times a week for medical treatments, including complicated hemodialysis sessions. Despite numerous complaints and requests for transfer to a specialized medical facility, his health deteriorated significantly due to inadequate care and physical difficulties caused by the conditions of detention.

The Court found in particular that, for almost 15 months, the plaintiff, who was a person with disabilities and dependent on a wheelchair for mobility, was obliged at least 4 times a week to climb up and down 4 flights of stairs on his way to and from lengthy, complicated and tiring medical procedures vital to his health, which undoubtedly caused him unnecessary pain and exposed him to an unreasonable risk of serious damage to his health.

- Engel v. Hungary¹⁷³, 2010, paragraphs 27 and 30; see also Helhal v. France¹⁷⁴, 2015, paragraph 62; Topekhin v. Russia¹⁷⁵, 2016, paragraph 86

Details of the factual situation - Engel v. Hungary: The applicant became paralyzed and incontinent as a result of a serious injury. Despite his severe physical disability, the penitentiary failed to provide adequate assistance, including a proper bath chair, adequate transportation and help with basic personal needs. The complainant was dependent on his roommates for help with toileting, bathing and dressing. The lack of adequate facilities and

¹⁷² Arutyunyan v. Russia, available at: [http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-108397%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-108397%22]})

¹⁷³ Engel v. Hungary, available at: [http://hudoc.echr.coe.int/eng#{%22languageisocode%22:\[%22ENG%22\],%22appno%22:\[%2246857/06%22\],%22itemid%22:\[%22001-98814%22\]}](http://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22ENG%22],%22appno%22:[%2246857/06%22],%22itemid%22:[%22001-98814%22]})

¹⁷⁴ Helhal v. France, available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-152644%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-152644%22]})

¹⁷⁵ Topekhin v. Russia, available at: [http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-162765%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-162765%22]})

proper care, coupled with abusive transportation practices and inadequate medical supervision, contributed to the degrading treatment experienced by plaintiff.

Details of the factual situation - Helhal v. France: The applicant, paraplegic due to a prison accident, was moved between several prisons, including Uzerche, which was not adapted for his special needs. Despite receiving some medical care and physiotherapy, the conditions were inadequate and the applicant depended on other prisoners for assistance with daily activities such as toileting and personal hygiene. The courts refused to suspend the sentence on medical grounds, finding that although the conditions were difficult, they did not meet the criteria for suspension.

The Court also found that leaving a person with a severe physical disability to rely on her roommates to help her to go to the toilet, bathe and dress/ undress contributed to the finding that the conditions of detention amounted to degrading treatment.

- Potoroc v Romania¹⁷⁶, 2020, p. 77

Details of the factual situation: The applicant suffers from serious medical conditions, including brain damage, hemiparesis and severe psycho-organic syndrome (progressive illness comparable to pre-senile dementia), requiring constant medical care and assistance. The applicant has faced multiple health problems during his detention. Despite medical reports confirming that the prison system could, in theory, provide adequate care, there were significant doubts as to the effectiveness of that care because of the deterioration of the applicant's health and the need for continuous personal assistance.

In general, the Court has expressed doubts as to the appropriateness of assigning responsibility for the care of a seriously ill person to unqualified persons.

- Hüseyin Yıldırım v. Turkey¹⁷⁷, 2007, paragraph 84

Details of the factual situation: The applicant, with serious health problems following a car accident, was detained despite his poor medical condition. After undergoing several medical interventions, his health deteriorated, requiring continuous specialized care. During court hearings and transfers, he was transported in conditions unsuitable for a person in his condition, with little or no support for his specific medical needs. The prison authorities failed to provide him with the necessary care and failed to ensure that transportation conditions met his health needs.

¹⁷⁶ Potoroc v Romania, available at:

<http://hudoc.echr.coe.int/eng#{%22languageisocode%22:%22ENG%22,%22appno%22:%2237772/17%22,%22documentcollectionid%22:%22CHAMBER%22,%22itemid%22:%22001-20262%22}}>

¹⁷⁷ Hüseyin Yıldırım v. Turkey, available, in French, at:

<http://hudoc.echr.coe.int/eng#{%22languageisocode%22:%22FRE%22,%22appno%22:%222778/02%22,%22documentcollectionid%22:%22CHAMBER%22,%22itemid%22:%22001-80410%22}}>

The Court found that the transfer of a prisoner with a disability amounted to degrading treatment because responsibility for him was entrusted to gendarmes who were certainly not qualified to foresee the medical risks involved in moving a person with disabilities.

E. Directory

The following organizations support people with intellectual and/or psychosocial disabilities. We recommend that you contact each organization directly, depending on the specific activities they undertake.

- **The Centre for Legal Resources, Bucharest** - a non-governmental organization, established in 1998, which actively advocates for the establishment and operation of a legal and institutional framework that safeguards the observance of human rights and equal opportunities and free access to fair justice.

Website: www.crj.ro/en/

Email: office@crj.ro

- **Ceva de Spus Association, Timisoara** – a group of self-represented people with intellectual and physical disabilities. The self-representative group "Ceva de Spus" was set up in Timisoara in 2010 and aims to draw attention to the challenges faced by people with disabilities, with the aim of improving their quality of life by defending and promoting their rights and combating discrimination.

Website: www.cevadespus.ro/en/

Email:

Elisabeta Moldovan, co-president

eli@cevadespus.ro

Alina-Ancuța Ursoi, support person

alina@cevadespus.ro

- **Tonal Association, Sibiu** – is a Center for Counseling, Therapy and Existential Assistance for people with mental health problems or in psychological distress, their friends and families. It exists and operates in Sibiu, Romania. It operates as a therapeutic micro-community. They use art and artistic creation in therapy. They have developed 2 creative and art therapy workshops. They develop intervention, education and prevention programs in the area of mental health and mental illness.

Website: www.tonal.ro

Email: office@tonal.ro

- **Pro ACT Suport Association, Bucharest** - was established in 2011 in Bucharest with the aim to improve the quality of life of disadvantaged people by providing social

services and promoting professional practices in the social-community and educational fields.

Website: www.proactsuport.ro/en/about-us/

Email: office@proactsuport.ro

- **Estuar Foundation, Bucharest** - was established in 1993 with the mission to offer social and alternative options to adults with mental health problems for their inclusion in the Romanian community. They respond to the changing needs of their beneficiaries, adults with mental health problems. Since 2013 they are recognized by the Romanian state as having public utility status.

Website: www.estuar.org

Email: office@estuar.org

- **Support Association for People with Special Needs - Luceafărul, Neamt** - is constituted by parents of children with disabilities from Piatra Neamt in 2003, being the first organization in Neamt county that has as beneficiaries children and young people with various forms of disabilities. The association carries out activities in the field of social and educational assistance for children and adults with disabilities.

Website: www.asociatialeluceafarul.ro

Email: aspnsluceafarul@yahoo.com

F. 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>
- ENABLE Model Disability Benchbook: https://validity.ngo/wp-content/uploads/2024/08/Model-Disability-Bench-Book-Last-version_30-July.pdf
2. **ENABLE national briefing paper for Romania** on the barriers faced by defendants with intellectual and/or psychosocial disabilities in the criminal justice system. The findings from this study were used to develop this bench book:
https://www.crij.ro/wp-content/uploads/2023/07/CLR_Enable_National-Briefing-Papers_EN_compressed-1.pdf
3. **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>

4. **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/>
5. **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>
6. **The Justice Intermediary Starter Kit (JISK)** has been designed to promote Justice Intermediaries around the world for people with disabilities with 12 free downloadable Modules: <https://justiceintermediary.org/>