

ONLINE ANNUAL CONFERENCE ON THE RIGHTS OF PERSONS WITH DISABILITIES 2020

ACCESS TO JUSTICE



420SR31

21-23 October 2020

Table of Contents

Annual Conference on the Rights of Persons with Disabilities 2020 Access to Justice

ONLINE SEMINAR, 21-23 October 2020

With the support of the European Consortium of Foundations on Human Rights and Disability (EFC) and the European Disability Forum (EDF).

Table of Contents

I. General information

- List of speakers
- List of participants

II. Speakers' contributions

Markus Scheffer

- CV
- Article 13 of the UNCRPD – effective access to justice for persons with disabilities on an equal basis with others

Inmaculada Placencia Porrero

- CV
- The European Union's policies for strengthening the rights of persons with disabilities

Katarzyna Janicka-Pawlowska

- CV
- Implementation of EU legislation safeguarding the rights of persons with disabilities in criminal proceedings

Sabrina Wittmann-Puri

- CV
- Recent case law of the ECtHR on disability law

Julie Brohée

- CV
- New CJEU rulings on disability law

Steven Allen

- CV
- Children with disabilities' access to justice

Javier Güemes

- CV

Aart Hendriks

- CV
- Deprivation of liberty and access to justice – also in times of COVID-19

Damjan Tatić

- CV
- Procedural accommodation for persons with disabilities – best practices

Josep Maria Sole Chavero

- CV
- Supported decision-making system – innovative approaches

III. Background documentation

1. United Nations documents

1.	UN Convention on the rights of Persons with Disabilities and Optional Protocol
2.	United Nations Committee on the Rights of Persons with Disabilities, “General comment no. 1 on Article 12 of the Convention - Equal Recognition before the Law”, adopted by the Committee at its tenth session (31 March – 11 April 2014), document no.: CRPD/C/GC/1
3.	United Nations Committee on the Rights of Persons with Disabilities, “General comment no. 2 on Article 9 of the Convention – Accessibility”, adopted by the Committee at its eleventh session (31 March–11 April 2014), document no: CRPD/C/GC/2
4.	Initial report of the European Union to the Committee on the Rights of Persons with Disabilities, 3 December 2014
5.	Committee on the Rights of Persons with Disabilities considers initial report of the European Union, 28 August 2015
6.	Special rapporteur on the rights of persons with disabilities reports on legal capacity (2018); report on participation (2016)
7.	Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 15 March 2015, document no. A/HRC/28/68
8.	OHCHR studies on employment (2012), political participation (2011) and on access to justice (2018)

2. European Union documents

a) General

9.	Treaty on the European Union
10.	Treaty on the Functioning of the European Union
11.	Charter of Fundamental Rights of the EU

b) Criminal and Administrative context

12.	<u>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</u>
13.	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
14.	Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order
15.	Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA
16.	Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
17.	Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA
18.	Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty
19.	Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings
20.	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
21.	Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims

f. Accessibility

22.	Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (Text with EEA relevance)
23.	Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC
24.	Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)
25.	Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)

26.	Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council
27.	Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws
28.	Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles

g. Other relevant EU documents

29.	European Union Agency for Fundamental Rights, Handbook on European law relating to access to justice, 2016
30.	Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings 2013/C 378/02
31.	European Union Agency for Fundamental Rights, Legal capacity of persons with intellectual disabilities and persons with mental health problems, 2013
32.	European Union Agency for Fundamental Rights, Legal capacity of persons with intellectual disabilities and persons with mental health problems: report, July 2013

3. Council of Europe

33.	European Convention of Human Rights
34.	Council of Europe Disability Strategy 2017-2023
35.	Council of Europe, A study on the Equal Recognition before the law, March 2017
36.	Council of Europe, A study on Freedom from exploitation, violence and abuse of persons with disabilities
37.	European Social Charter, Collected Texts, 7 th Edition, 1 January 2015

38.	Recommendation Rec (99) 4 of the Committee of Ministers to member states on principles concerning the legal protection of incapable adults
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4. Case law

a) CRPD Committee

39.	<i>JH v. Australia</i>, no. 35/2016, 31 August 2018
40.	<i>Ivinovic v. Croatia</i> , no.13006/13, 18 September 2014
41.	<i>Budjuso and Others v. Hungary</i> , 9 September 2013
42.	<i>Alajos Kiss v. Hungary</i> , no. 38832/06, 20 May 2010

b) Court of Justice of the European Union

43.	<i>A</i> , C-679/16, 25 July 2018
44.	<i>Petya Milkova v Izpalnitelen direktor na Agensiata za privatizatsia i sledprivatizatsionen kontrol</i> , C-406/15, 9 March 2017
45.	<i>État belge v Oxycure Belgium SA</i> , C-573/15, 9 March 2017
46.	<i>Mohamed Daouidi v Bootes Plus SL and Others</i> , C-395/15, 1 December 2016
47.	<i>Invamed Group Ltd and Others v Commissioners for Her Majesty's Revenue & Customs</i> , C-198/15, 26 May 2016
48.	Gérard Fenoll v Centre d'aide par le travail "La Jouvène" and Association de parents et d'amis de personnes handicapées mentales (APEI) d'Avignon, 26 March 2015
49.	<i>Fag og Arbejde (FOA) v Kommunernes Landsforening (KL)</i> , C-354/13, 18 December 2014
50.	<i>Wolfgang Glatzel v Freistaat Bayern</i> , C-356/12, 22 May 2014
51.	<i>Z. v A Government department and The Board of management of a community school</i> , C-363/12, 18 March 2014
52.	<i>Commission v. Italy</i> , C-312/11, 4 July 2013
53.	<i>HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab DAB</i> (C-335/11) and <i>Lone Skouboe Werge v Dansk Arbejdsgiverforening</i> (C-337/11), 11 April 2013
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55.	<i>Reinhard Prigge and Others v Deutsche Lufthansa AG</i>, C-447/09, 13 September 2011

56.	<i>S. Coleman v Attridge Law and Steve Law</i>, C-303/06, 17 July 2008
57.	<i>Sonia Chacón Navas v. Eurest Colectividades SA</i>, C-13/05, 11 July 2006

c) European Court of Human Rights

58.	Factsheet, Persons with disabilities and the European Convention on Human Rights
59.	<i>Cînta v. Romania</i> , no. 3891/19, 18 February 2020
60.	<i>L.R. v. North Macedonia</i> , no. 38067/15, 23 January 2020
61.	<i>Nikolyan v. Armenia</i> , no. 74438/14, 3 October 2019
62.	<i>Savran v. Denmark</i> , no. 57467/15, 1 October 2019 (Referral to the Grand Chamber)
63.	<i>Glaisen v. Switzerland</i> (dec.), no. 40477/13, 25 June 2019
64.	<i>Bayram v. Turkey</i> (dec.) no. 49428/12, 2 April 2019 (French only)
65.	<i>Rooman v. Belgium</i> [GC], no. 18052/11, 31 January 2019
66.	<i>Ilseher v. Germany</i> [GC], nos. 10211/12 and 27505/14, 4 December 2018
67.	<i>Mockutė v. Lithuania</i> , no. 66490/09, 27 February 2018
68.	<i>Enver Şahin v. Turkey</i> , no. 23065/12, 30 January 2018 (available only in French)
69.	<i>Ābele v. Latvia</i> , nos. 60429/12 and 72760/12, 5 October 2017
70.	<i>Carvalho Pinto de Sousa Morais v. Portugal</i> , no. 17484/15, 25 July 2017
71.	<i>A.-M.V. v. Finland</i> , no. 53251/13, 23 March 2017
72.	<i>Kacper Nowakowski v. Poland</i> , no. 32407/13, 10 January 2017
73.	<i>Béláné Nagy v. Hungary</i> [GC], no. 53080/13, 13 December 2016
74.	<i>Hiller v. Austria</i> , no. 1967/14, 22 November 2016
75.	<i>Cervenka v. the Czech Republic</i> , no. 62507/12, 13 October 2016
76.	<i>A.N. v. Lithuania</i> , no. 17280/08, 31 May 2016
77.	<i>I.C. v. Romania</i> , no. 36934/08, 24 May 2016
78.	<i>Kocherov and Sergeyeva v. Russia</i> , no. 16899/13, 29 March 2016
79.	<i>Çam v. Turkey</i> , no 51500/08, 23 February 2016
80.	<i>Topekhin v. Russia</i> , no. 78774/13, 10 May 2016
81.	<i>Blokhin v. Russia</i> , no. 47152/06, 23 March 2016

82.	<i>Guberina v. Croatia</i> , no. 23682/13, 22 March 2016
83.	<i>M.S. v. Croatia</i> (No. 2), no. 75450/12, 19 February 2015
84.	<i>Y. v Turkey</i> (dec.), no. 648/10, 17 February 2015
85.	<i>Centre for legal resources on behalf of Valentin Câmpeanu v. Romania</i> [GC], no. 47848/08, 17 July 2014
86.	<i>Anatoliy Rudenko v. Ukraine</i> , no. 50264/08, 17 April 2014
87.	<i>Káтай v. Hungary</i> , no. 939/12, 18 March 2014
88.	<i>L.B. v Greece</i> , no. 552/10, 3 October 2013
89.	<i>Nencheva and others v. Bulgaria</i> , no. 48609/06, 18 June 2013 (available only in French)
90.	<i>Grimailovs v. Latvia</i> , no. 6087/03, 25 June 2013
91.	<i>Lashin v. Russia</i> , no. 33117/02, 22 January 2013
92.	<i>Kedzior v. Poland</i> , no. 45026/07, 16 January 2013
93.	<i>Sykora v. Czech Republic</i> , no. 23419/07, 22 November 2012
94.	<i>Bureš v. Czech Republic</i> , no. 37679/08; 18 October 2012
95.	<i>R.P. and Others v. the United Kingdom</i> , no. 38245/08, 9 October 2012
96.	<i>X v. Finland</i> , no. 34806/04, 3 July 2012
97.	<i>Đorđević v. Croatia</i> , no. 41526/10, 24 July 2012
98.	<i>D.D. v. Lithuania</i> ; no. 13469/06; 14 February 2012
99.	<i>Stanev v. Bulgaria</i> [GC], no. 36760/06; 17 January 2012
100.	<i>V.C. v. Slovakia</i> , no. 18968/07, 8 November 2011
101.	<i>Jasinskis v. Latvia</i> , no. 45744/08, 21 December 2010
102.	<i>Farcaș contre la Roumanie</i> , no. 32596/04, 14 September 2010 (available only in French)
103.	<i>Shtukaturov v. Russia</i> ; no. 44009/05; 27 June 2008

d) European Committee of Social Rights

104.	<i>International Association Autism-Europe (IAAE) v. France</i> , Collective Complaint No. 13/2002
105.	<i>International Federation for Human Rights (FIDH) v. Belgium</i> , Complaint No. 75/2011)
106.	<i>MDAC v Bulgaria</i> , Complaint No. 41/2007)

5. Reports, studies and articles

107.	Special Rapporteur on the rights of persons with disabilities, Committee on the Rights of Persons with Disabilities, Special Envoy of the Secretary-General on Disability and Accessibility, International Principles and Guidelines on Access to Justice for Persons with Disabilities , 2020
108.	Council of Europe, Promoting equality and non-discrimination for persons with disabilities (2017)
109.	Council of Europe, A study on the Equal Recognition before the law Contribution towards the Council of Europe Strategy on the Rights of Persons with Disabilities
110.	The Advocates Gateway, "A Question of Practice" - short training film
111.	Inclusion, Europe, Key Elements of a System for Supported Decision-Making, 2008
112.	Choices. A platform on supported decision-making
113.	Commissioner for Human Rights, WHO GETS TO DECIDE?, Right to legal capacity for persons with intellectual and psychosocial disabilities, CommDH/IssuePaper(2012)2, 20 February 2012

General Information

Annual Conference on the Rights of Persons with Disabilities 2020
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21-23 October 2020, Online
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420SR31
21-23 October 2020, Online
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420SR31
21-23 October 2020, Online
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420SR31
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Speakers' Contributions

Markus Schefer



The Right to Access to Justice Art. 13 CRPD

Markus Schefer

Annual Conference on the Rights of Persons with Disabilities 2020 - Access to Justice
21 October 2020, online

Article 8 UDHR

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 10 UDHR

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

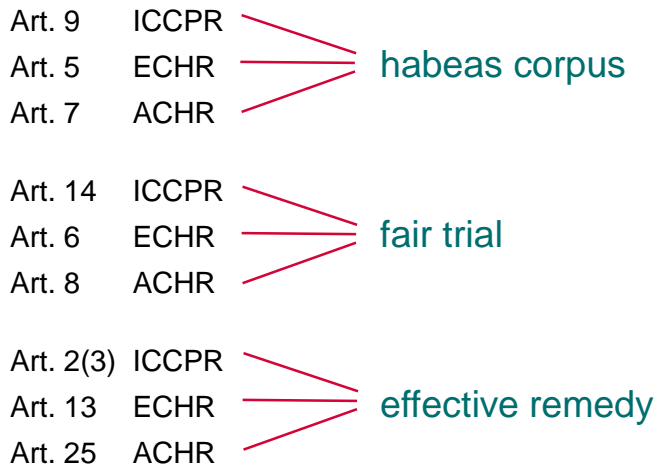
Procedural Guarantees in Human Rights Law

Art. 9	ICCPR	}	habeas corpus
Art. 5	ECHR		
Art. 7	ACHR		

Art. 14	ICCPR	}	fair trial
Art. 6	ECHR		
Art. 8	ACHR		

Art. 2(3)	ICCPR	}	effective remedy
Art. 13	ECHR		
Art. 25	ACHR		

Procedural Guarantees in Human Rights Law



The right to access to justice (Art. 13 CRPD), Markus Schefer, Annual Conference on the rights of persons with disabilities 2020 - Access to justice, 21. October 2020

Universität Basel, Juristische Fakultät 5

Art. 13 CRPD - Access to Justice

1. 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, 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.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

The right to access to justice (Art. 13 CRPD), Markus Schefer, Annual Conference on the rights of persons with disabilities 2020 - Access to justice, 21. October 2020

Universität Basel, Juristische Fakultät 6

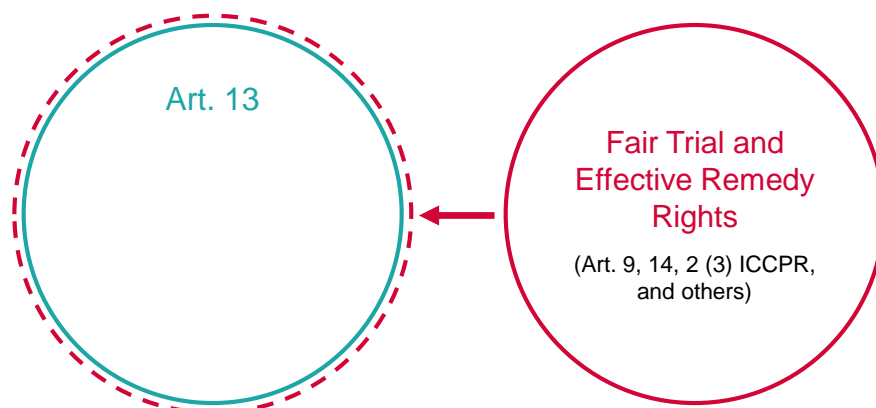
Two Prongs of Article 13



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Universität Basel, Juristische Fakultät 7

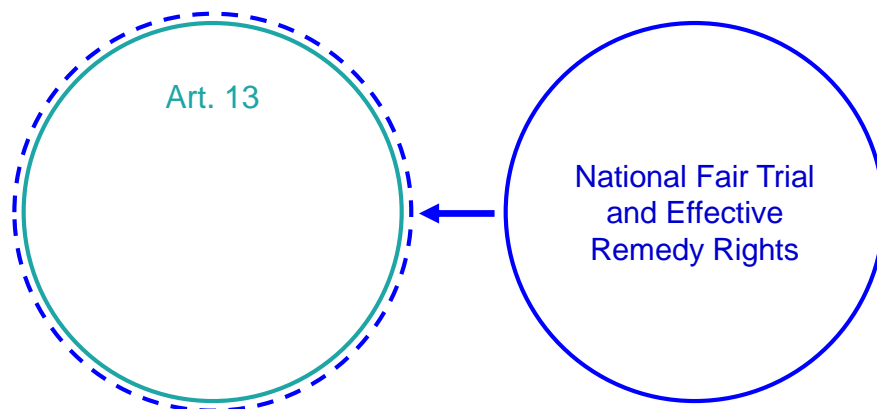
The Ambit of Article 13: Incorporation 1



The right to access to justice (Art. 13 CRPD), Markus Schefer, Annual Conference on the rights of persons with disabilities 2020 - Access to justice, 21. October 2020

Universität Basel, Juristische Fakultät 8

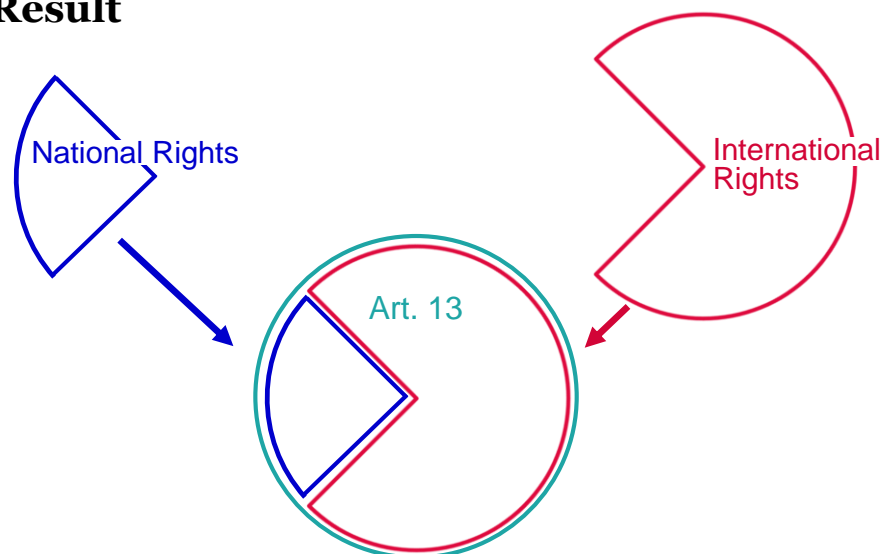
The Ambit of Article 13: Incorporation 2



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Universität Basel, Juristische Fakultät 9

The Ambit of Article 13: Result



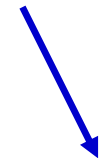
The right to access to justice (Art. 13 CRPD), Markus Schefer, Annual Conference on the rights of persons with disabilities 2020 - Access to justice, 21. October 2020

Universität Basel, Juristische Fakultät 10

Rights Protected by Article 13

National Rights

International Rights



"effective access to justice"

The right to access to justice (Art. 13 CRPD), Markus Schefer, Annual Conference on the rights of persons with disabilities 2020 - Access to justice, 21. October 2020

Universität Basel, Juristische Fakultät 11

"Procedural Accomodations"

+ Procedural
Accomodations

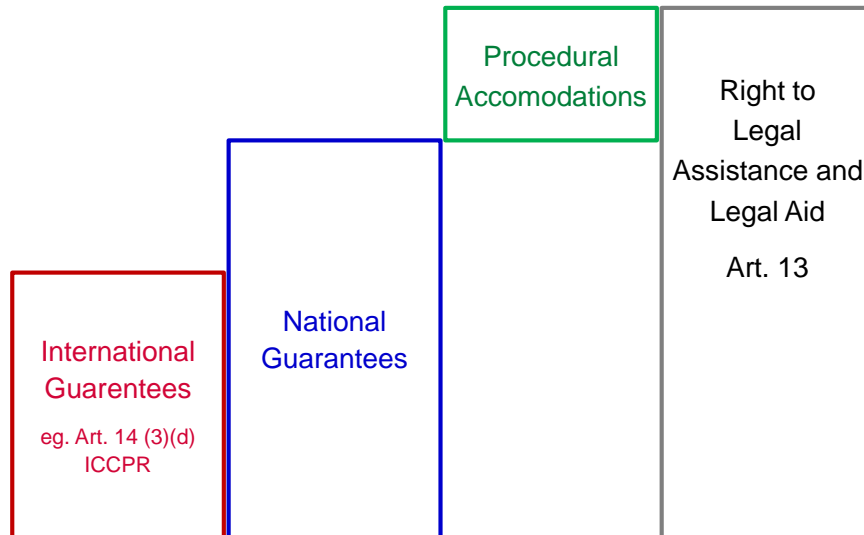
Rights
Provided by
Article 13

International
Rights
National Rights

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Right to Legal Assistance + Legal Aid



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Universität Basel, Juristische Fakultät 13



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Thank You

Inmaculada Placencia Porrero

Inmaculada Placencia Porrero

Inmaculada Placencia Porrero is Senior Expert at the Disability and Inclusion Unit within the Directorate-General for Employment, Social Affairs and Inclusion at the European Commission. The unit is responsible for the coordination of European policies for person with disabilities, the European Disability Strategy 2010-2020 and the implementation of the UN Convention on the rights of persons with disabilities at EU level.

Previously Inmaculada graduated with a degree in Physics and Computer Science and worked in research and technical development activities in industry. She joined the European Commission in 1991 and worked on several research programmes addressing accessibility and applications for older persons and people with disabilities. She was also Deputy Head of Unit for various disability-related units in the European Commission.

Her work in the “e-Inclusion” unit of the Directorate-General for Information Society and Media addressed policy-related activities in the area of accessibility, eAccessibiliy and eInclusion at European and international level, and was also related to Design for All and Assistive technologies. During her time in the Directorate-General for Justice she contributed to the development of disability-related antidiscrimination legislation and other legislative files related to accessibility. She was also responsible for the Task Force for the preparation of the European Accessibility Act and remains responsible since its adoption in 2015 and its publication in 2019.



The European Accessibility Act Directive 2019/882

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ACCESSIBILITY EC European Disability Strategy 2010- 2020

*"The Commission proposes to **use legislative and other instruments as standardisation**, to optimise the **accessibility** of the built environment, transport and ICT [...]. Based on smarter regulations principles, **it will explore the merits of adopting regulatory measures** to ensure accessibility of products and services, including measures to step up the use of **public procurement**[...]. Following further consultations with Member States and stakeholders, the Commission will consider whether to **propose a European Accessibility Act.**"*



Diverging national approaches to accessibility legislation

- Different approaches: technical, discrimination, procurement
- Different material scope of the various legislations, built environment, ICT
- Different level of detail of legislation
- Different level of jurisdiction: national, regional, local



What is covered in European Accessibility Act?

- Accessibility requirements for carefully selected products and services
- Same accessibility requirements to be used in other EU law (for example Public Procurement)



Products in the scope of the EAA

(a) consumer general purpose computer hardware systems and operating systems for those hardware systems;

(b) Self Service terminals:

- **(ia) payment terminals;**
- **(iia) the following self-service terminals dedicated to the provision of services covered by this Directive;**
 - (iia-i) Automated Teller Machines;
 - (iia-ii) ticketing machines
 - (iia-iii) check-in machines
 - (iia-iv) interactive self-service terminals providing information, excluding machines installed as integrated parts of vehicles, aircrafts, ships or rolling stock;

“(c) consumer terminal equipment with interactive computing capability, used for electronic communication services;”

(d) consumer terminal equipment with interactive computing capability, used for accessing audio-visual media services;

(e) e-readers;

5



Services in the scope of the EAA

(a) electronic communications services with the exception of transmission services used for the provision of machine-to-machine services”.

(b) services providing access to audiovisual media services;

(c) Certain elements of air, bus, rail and waterborne passenger transport services (websites, mobile device based services, electronic tickets and ticketing, transport service information (also real time), interactive self-service terminals...). For urban, suburban and regional transport services only interactive self-service terminals.

(d) consumer banking services;

(e) e-books and dedicated software

(f) e-commerce services;



Other elements related to the scope

- Answering emergency communications to 112**
- Built environment (optional)**
- Public Procurement for Products and services in the EEA**
- EU Acts containing accessibility obligations (presumption compliance)**



Key provisions for products (I)

- **Accessibility obligations Free movement of products and services** meeting the accessibility requirements
- Obligations for **manufacturers, authorized representatives, importers, distributors**(Decision 768/2008)
- **CE** marking (Regulation 765/ 2008)
- **Self-declaration of conformity** (lightest option)
- **Market surveillance (compliance, safeguards)**₈



Key provisions for services (II)

- **Accessibility obligations**
- **Free movement of products and services** meeting the accessibility requirements
- **Obligations for service providers**
- **Authority responsible for compliance of services (check, safeguards)**



Other issues

Material scope

- **Exemption micro enterprises for services**
- **Mitigating measures for micro enterprises for product:**
 - Reduction of administrative burden
 - guidelines

Safeguards:

- **Disproportioned burden (Annex, persons with functional limitations COM)**
- **Fundamental alteration**



Standards and technical specification

- presumption of conformity
- mandates
- harmonized standards
- technical specifications (implementing acts)
- binding technical specifications (delegated acts)
- harmonized standards and technical specifications for other Union acts.



Accessibility related standardization work at EU level

Mandate 376: Accessibility requirements for public procurement of products and services in the **ICT** domain

Mandate 554: Web accessibility Directive (WEB + Mobile Apps)
(H) EN 301 549

Mandate 420: Accessibility requirements for public procurement in the **Built Environment** (including **transport infrastructures**)
prEN 17210

Mandate 473 to:

- include Accessibility following Design For All in relevant standardization activities
- Develop standards addressing accessibility following Design for all in the manufacturing and service delivery processes.

EN 17161



Working group

- Commission working group**
- market surveillance authorities**
- authorities responsible for compliance of services**
- relevant stakeholder**
- representatives of persons with disabilities organizations**
- Tasks:**
 - **Exchange information and best practices**
 - **Cooperation on implementation to improve coherence and monitor safeguards**
 - **Advise to Commission (art 4 and 14)**



Enforcement and Penalties

- MS ensure means for compliance**
- Possibility for consumer to take action before court**
- public bodies or private associations with legitimate interest may engage before courts**

- penalties effective, proportionate and dissuasive**
- effective remedial actions**
- not applicable to procurement procedures**



Annexes

Annex I – accessibility requirements for products, services, answering emergency communications to 112, other Union Acts , functional performance criteria. (7 sections)

Annex II – examples (4 sections)

Annex III – accessibility requirements for built environment

Annex IV – Conformity assessment of products

Annex V- Information on services meeting accessibility requirements

Annex VI – Assessment of disproportionate burden



Annex I further details

- **Accessibility requirements:**

- Section I for all products: Information , User Interface and functionality design, sector specific
- Section II for all products except SST
- Section III for all services
- Section IV for sector specific requirements
- Section V for answering emergency communications to 112
- Section VI for features, elements or functions of products and services for other Union acts

- **Functional performance criteria:**

- Other functions of design and production of products or provision of services
- Alternative to technical requirements – compliance with functional requirement
- Result -> equivalent or increased accessibility
- (vision, limited vision, perception of color, hearing, limited hearing, vocal capability, manipulation or strength, limited reach, seizures, limited cognition, privacy)



Timeline for implementation

- **Transposition period -> Three years after entry into force**
- **Enter into application -> Six years after entry into force**
- **Transition periods:**
 - **Provide services with products in use - 5 extra years**
 - **SST – end of economic life – max 20 years after use**
 - **Ongoing contract services contract maximum 5 extra years**
- **Answering emergency communications to 112:**
 - **2 extra years**
- **Report -> 5 years**

17



Report

- 5 years
- evolution of accessibility of products and services
- built environment accessibility(voluntary, PP)
- Socio, economic and technological developments
- Innovation barriers
- Impact on persons with disabilities and economic operators
- Impact of safeguards in internal market
- Exemption of microenterprises
- New products and services
- Burden reduction



Accessibility obligations - EU ICT related legislation

- Accessibility obligations to economic operators
 - **European Accessibility Act**
 - **Electronic Communication Code**
 - **Audio Visual Media Services Directive**
- Accessibility obligations to public authorities
 - **Web Accessibility Directive**
- Accessibility obligations in Public Procurement
 - **Public Procurement Directives**
- Accessibility obligations when using EU Funds
 - **Structural Funds regulations**
 - **Trans-European Networks**
 - **Common Implementing Regulation External Action and contract procedures**

19



Further information

European Disability Strategy 2010-2020: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:EN:PDF>

European Accessibility Act Final text in OJ
http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=uriserv:OJ.L_.2019.151.01.0070.01.ENG

European Accessibility Act - European Commission Proposal
<https://ec.europa.eu/social/main.jsp?catId=1202>

EAA EUR-LEX texts
<https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=COM:2015:0615:FIN>

Web Accessibility Directive
<https://ec.europa.eu/digital-single-market/en/web-accessibility>

Electronic Communication Code and Audiovisual Media Framework
<https://ec.europa.eu/digital-single-market/en/right-environment-digital-networks-and-services>

Public Procurement Directives
https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation_en

EU Structural and investment Funds
https://ec.europa.eu/info/funding-tenders/funding-opportunities/funding-programmes/overview-funding-programmes/european-structural-and-investment-funds_en

Katarzyna Janicka-Pawlowska

Sabrina Wittmann-Puri

Sabrina Wittmann-Puri

Sabrina Wittmann-Puri has been working as a case-processing lawyer at the European Court of Human Rights since 2013. She focuses her research on the rights of persons with disabilities, the rights of migrants asylum seekers, as well as combating gender-based discrimination and domestic violence. She regularly holds workshops and presentations on these topics. Previously, she has worked for the “Association Human Rights Austria” as the head of the regional office in Graz and as legal counsel for migrants and asylum seekers. She holds an LL.M degree in Public International Law from the University of Amsterdam, as well as a *Magistra iuris* degree from the University of Graz.

*Sabrina Wittmann-Puri, Lawyer,
European Court of Human Rights (ECtHR)*

Recent case-law of the European Court of Human Rights on disability law

Overview – recurring issues before the ECtHR

- Psychiatric detention – lawfulness, conditions of detention, treatment (*Rooman v. Belgium* [GC], 2019)
- Persons with disabilities in detention/prison – conditions of detention, treatment (*Price v. UK*, 2001)
- Institutionalisation of persons with disabilities – living conditions (*Stanev v. Bulgaria* [GC], 2012)
- Reasonable accommodation – access to beach (*Botta v. Italy*, 1998), polling station (*Molka v. Poland* (dec.), 2006), cinema (*Glaisen v. Switzerland* (dec.), 2019)
- Fair trial rights – participation in court proceedings (*Blokhin v. Russia* [GC], 2016)
- Right to family life (*Cînta v. Romania*, 2019)

Recent judgments/decisions

- **Grand Chamber:**
 - *Rooman v. Belgium [GC]*, no. 18052/11, 31 January 2019
- **Chamber:**
 - *Glaisen v. Switzerland* (dec.), no. 40477/13, 25 June 2019
 - *Cinta v. Romania*, no. 3891/19, 18 February 2020
 - *Aggerholm v. Denmark*, no. 45439/18, 15 September 2020 (not yet final!)

Rooman v. Belgium [GC]

- German-speaking Belgian national in psychiatric detention in the French-speaking part of Belgium
- Complaints under Articles 3 and 5 of the European Convention on Human Rights (ECHR) about failure to provide necessary therapy in German
- Violation of Articles 3 and 5 due to unavailability of German-speaking therapists for 13 years; lack of treatment severed the link with the aim of his detention until August 2017
- No violation of Articles 3 or 5 from August 2017
- Judgment contains comprehensive outline of the Court's case-law under Article 3 about the medical treatment of ill and vulnerable detainees

Rooman v. Belgium [GC]

- General principles:
- ECtHR confirmed that the deprivation of liberty under Article 5 § 1 (e) ECHR has a dual function: social function of protection, and the therapeutic function – therefore, the latter has become a condition for the lawfulness of the detention
- Presence of appropriate, individualised treatment is an essential part of a decision on whether a detention facility is appropriate for a given person
- Treatment should aim at improving individual's condition and reduce dangerousness with a view to his/her release

Rooman v. Belgium [GC]

- Application to Mr Rooman's case:
- Convention does not guarantee a detainee treatment in his/her own language
- However: Social Protection Board, which had committed the applicant, had confirmed his right to speak, be understood and receive treatment in German – a national language in Belgium
- Period from 2004 until August 2017 : violation of Art 3+5
- Period as of August 2017 (after Chamber judgment): significant efforts made by the authorities to provide the applicant with access to treatment which appeared coherent and adapted to his situation: no violation of Articles 3 or 5

Glaisen v. Switzerland (dec.)

- Applicant (paraplegic wheelchair-user) complained about inability to access a cinema in Geneva. This refusal of access had not been recognized as discrimination on account of his disability by the Swiss courts
- Court took note of UNCRPD principle requiring « full and effective participation and inclusion in society of persons with disabilities »
- Nevertheless, the Court found that Article 8 did not apply to his case – right to respect for private life could not be construed as required to give access to a specific cinema. Case declared inadmissible
- Access to other cinemas in the vicinity was possible
- Problem of lack of emergency exit for wheelchair users

Cinta v. Romania

- Applicant (diagnosed with paranoid schizophrenia) requested contact rights to his daughter
- Romanian courts restricted his contact rights and placed them under conditions, basing their decisions partly on the fact that he had a mental illness
- Violation of Article 8 alone and in conjunction with Article 14 of the ECHR
- Courts had failed to carry out assessment why mental illness should be a reason to curtail contact rights; no evidence that he was not able to take care of his daughter
- Fact that applicant suffered from mental illness was not a reason to treat him differently from other parents seeking contact rights

Aggerholm v. Denmark

- Applicant (diagnosed with paranoid schizophrenia) complained about being strapped to a restraint bed in a psychiatric hospital for nearly 23 hours
- one of the longest periods of such immobilisation ever examined by the ECtHR
- Complaints under Articles 5 and 8:
 - no imminent danger requiring physical restraint,
 - measures should only have been used as a last resort,
 - restraint lasted longer than strictly necessary.

Aggerholm v. Denmark

- Applicant, in psychiatric detention because of a diagnosis of paranoid schizophrenia, complained about being strapped to a restraint bed in a psychiatric hospital for nearly 23 hours
- one of the longest periods of such immobilisation ever examined by the ECtHR
- Complaints under Articles 5 and 8:
 - no imminent danger requiring physical restraint,
 - measures should only have been used as a last resort,
 - restraint lasted longer than strictly necessary.
- 2014 report by the Council of Europe Committee for the Prevention of Torture (CPT):

Mechanical restraint

- German Federal Constitutional Court: Judge must approve mechanical restraint! Restraint allowed for a few hours, not more
- Other countries practice physical restraint measures, too, but none as excessively as Denmark (CPT report of 2020: two cases of restraint for 10 and 13 months, respectively)
- Alternatives: Seclusion; chemical restraint; police
- Revised CPT Standards on “Means of restraint in psychiatric establishments for adults”, 21 March 2017 (<https://rm.coe.int/16807001c3>): “4.1. The duration of the use of means of mechanical restraint and seclusion should be for the shortest possible time (usually minutes rather than hours) ...”

Aggerholm v. Denmark

- 109. The Court reiterates that the domestic courts had the benefit of direct contact with all the persons concerned, and that the assessment of whether the use of restraint in respect of the applicant was necessary was first and foremost a medical assessment (see *M.S. v Croatia*, cited above, § 98, and, *mutatis mutandis*, *Herczegfalvy v. Austria*, no. 10533/83, § 82, 24 September 1992).
- 110. Nevertheless, in the Court’s view, the domestic courts were silent on several issues, which were crucial for the assessment of whether the continuation of the restraint, and its duration for almost twenty-three hours, was “strictly necessary” to prevent immediate or imminent harm to others.

Aggerholm v. Denmark

- 114. In these specific circumstances, in particular having regard to the available information about the applicant's state during the evening and night of 8 February 2013, and the delay in releasing him *de facto* on 9 February 2013, and the domestic courts' failure to specifically address these issues, the Court cannot conclude that it has been sufficiently proven that the continuation and the duration of the restraint measure for almost twenty-three hours was strictly necessary and respected the applicant's human dignity, and did not expose him to pain and suffering in violation of Article 3 of the Convention (see *M.S. v. Croatia*, cited above, § 105).
- 115. It follows that there has been a violation of Article 3 of the Convention.

Noteworthy pending cases

- *Bierski v. Poland*, no. 46342/19, communicated to the Polish Government on 23/09/2020:
- Applicant was refused contact with his adult son
- Son has Down syndrome and was legally incapacitated by Polish courts after he turned 18
- Mother was appointed guardian and prevented applicant from seeing his son
- Applicant requested Polish courts to grant contact rights
- Polish Supreme Court: "Parents of an adult child who is totally incapacitated because of mental disability and for whom a guardian has been appointed are not entitled to request a court to regulate contacts with the child"
- Issues under Art 6 (access to court) and Art 8 (family life)

Noteworthy pending cases

- *De Pracomtal et Fondation Jérôme Lejeune v. France*, nos. 34701/17 et 35133/17, communicated on 31/08/20:
- Broadcasting of an advertisement on national television at the occasion of World Down Syndrome Day, on 21 March 2014, showing children and adults with Down Syndrome enjoying their lives, to give the message to future parents that children with Down Syndrome can live a happy life
- French Superior Audiovisual Counsel (CSA) received two complaints and requested TV stations to “watch out in the future concerning the ... dissemination of messages likely to be controversial”

De Pracomtal et Fondation Jérôme Lejeune v. France

- „...by addressing a future mother, [the purpose of the video could] appear ambiguous and not generate spontaneous and consensual support.“
- „...the message was susceptible to trouble the conscience of women who, in accordance with the law, had taken different life choices.“
- The CSA concluded that the video was inappropriate for broadcast on public television, confirmed by the French Conseil d'État
- Complaint by Mrs Inès De Pracomtal as well as the Fondation Jérôme Lejeune under Article 10, their right to freedom of expression

ECtHR Factsheets

- Cases concerning persons with disabilities:
https://www.echr.coe.int/Documents/FS_Disabled_ENG.pdf
- Cases concerning the detention of mentally ill persons:
https://www.echr.coe.int/Documents/FS_Detention_mental_health_ENG.pdf
- Cases concerning prisoners' health-related rights:
https://www.echr.coe.int/Documents/FS_Prisoners_health_ENG.pdf

Thank you for your interest in
the ECtHR!

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Julie Brohée

Julie Brohée

Julie Brohée is Référendaire at the Court of Justice of the European Union. After a Maîtrise in European and International Law at the Aix en Provence Faculty of Law, she obtained an LL.M. in EU Law at the Institut d'Etudes Européennes, Université Libre de Bruxelles. From 2005 to 2009 she worked for Judge Prof. Koen Lenaerts, actual President of the Court, as Legal assistant, before joining since 2009 Judge Alexander Arabadjiev, actual president of the 2nd Chamber, as Référendaire. She's specialized in anti discrimination and environmental law.

New CJEU rulings on disability

October 22, 2020

Julie Brohée,
Legal Secretary
Judge A.Arabadjiev, President of the Second Chamber
CJEU



1

Legal framework



Amsterdam Treaty

1st explicit mention
general non-
discrimination article 19
TFEU

Charter of Fundamental Rights

Art. 21 : discrimination on
disability shall be prohibited
Art. 26 : Integration of
persons with disabilities



EU's ratification
of the UNCRPD

European Disability Strategy 2010-2020

A Renewed
Commitment to a
Barrier-Free Europe

2

Employment Equality Directive 2000/78

A general framework to ensure equal treatment of individuals

Prohibits employment discrimination on the grounds of :

religion or belief

disability

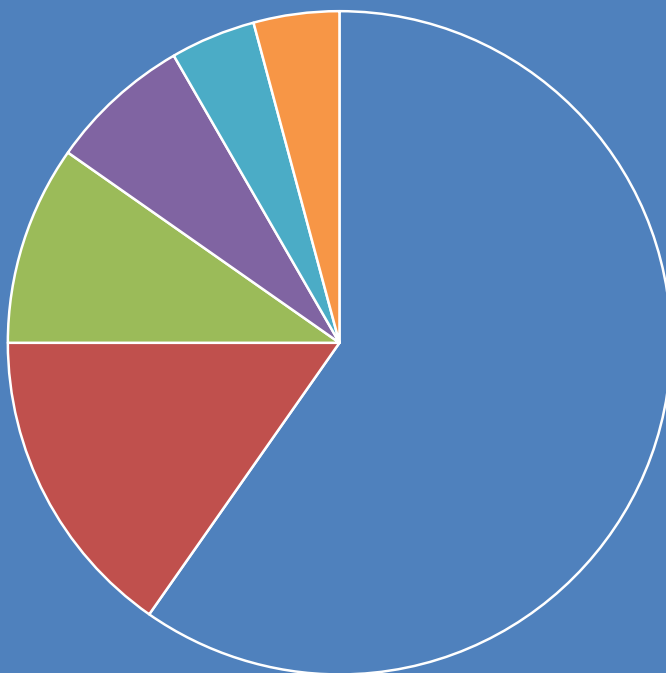


age

sexual orientation

3

Case law per criteria



AGE

Disability

sexual orientation

religion

4 grounds

2 grounds

4

Material scope

Recital 13

income within the meaning given to that term for the purpose of applying Article 141 of the EC Treaty

“pay”

Article 3.1

Within the limits of the areas of competence conferred on the Community,

this Directive shall apply to **all persons**,
as regards both the **public and private** sectors,
including public bodies,
in relation to:

5

Material scope

(a) **conditions for access** to employment, to self-employment or to occupation, including **selection** criteria and **recruitment** conditions (...) including promotion

(c) employment and **working conditions**, including **dismissals and pay**;

(d) membership of, and involvement in, an organisation of workers or employers

Article 3

(b) access to all types and to all levels of vocational guidance, vocational training, ...

3. This Directive **does not apply** to payments of any kind made by state schemes or similar, including state **social security** or social protection schemes. Education, healthcare, access to goods and services

6

Personal scope

“it suffices to note that Article 3(1)(c) of that directive expressly states that it applies, inter alia, to all persons in the public sector, including public bodies.

Moreover, it is not disputed that
the position of judge falls within the public sector.

Article 3(1)(c) of Directive 2000/78 must be interpreted as meaning that pay conditions for judges fall within the scope of that directive”
(Unland, 9 sept. 2015, C-20/13)



Case law on disability

11 July 2006, Chacón Navas, C-13/05

17 July 2008, Coleman, C-303/06

5 May 2011, Commission v Germany, C-206/10

6 December 2012, Odar, C-152/11

11 April 2013, HK Danmark, C-335/11
and C-337/11

4 July 2013, Commission v Italy, C-312/11

18 March 2014, Z., C-363/12

22 May 2014, Glatzel, C-356/12

18 December 2014, FOA, C-354/13

26 March 2015, Fenoll, C-316/13

23 April 2015, Van Hove, C-96/14

16 July 2015, Maïstrellis, C-222/14

26 May 2016, Invamed Group and Others, C-198/15

1 December 2016, Daouidi, C-395/15

9 March 2017, Milkova, C-406/15

18 January 2018, Ruiz Conejero, C-270/16

19 September 2018, Bedi, C-312/17

14 March 2019, Dreyer, C-372/18

11 September 2019, Nobel Plastiques Ibérica, C-397/18

« disability » - defining the outlines of the concept

“The concept of ‘disability’ must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life”

‘it must be probable that it will last for a long time’

‘disability’ is different from ‘sickness’

[Chacón Navas](#) (2006) C-13/05, par.43, 45, 44

“The words ‘disabled persons’ under heading 8713 of the CN are not the same as ‘handicap’ within the meaning of Art 21 of the Charter and of Directive 2000/78

[Invamed Group and Others](#) (2016), C-198/15, EU:C:2016:362, par. 30

- Individual or medical model
- Not in line with the CRPD

9

« disability »

- [HK Danmark](#) (2013) C-335/11 & C-337/11
- “both workers are not, since ‘the only incapacity that affects them is that they are not able to work full-time’”
- Ratification by the EU of the CRPD ➡ “The concept of ‘handicap’ must be understood as referring to :

a limitation which results in particular from [long-term] physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers



10

« disability »

- recognises that disability results from an interaction between an impairment and the environment
- relevance of social and environmental factors in limiting



- CRPD interaction between 'impairments' and 'various barriers'
- CJEU interaction between 'limitations' resulting from impairments and 'various barriers'.



- Mr Kaltoft and the difficulty to **apprehend a prejudice**

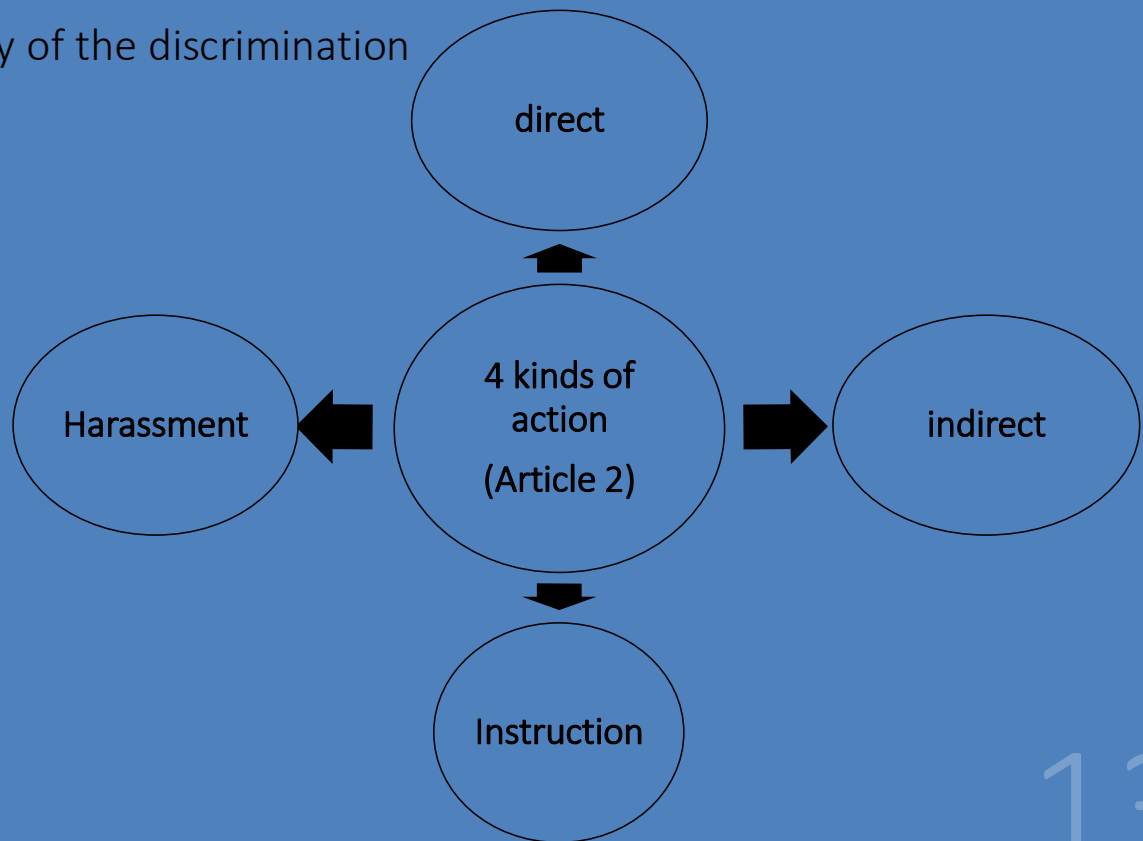
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« disability »

- a “hindrance” to the exercise of professional life : [Z.](#), C-363/12
- a long-term impairments : [Daouidi](#), C-395/15
- Different from a illness? [HK Danmark](#), C-335/11 and C-337/11
[FOA](#), C-354/13 (Kaltoft)

12

Typology of the discrimination



13

Typology – Direct Discrimination

Article 2(2)(a)



- A difference of treatment based on the disability of the person
- Measures that explicitly refer to or target disability
- Drawing a parallel between the treatment of the person bringing the claim and someone in a 'comparable situation'. Such comparator may be present, past or hypothetical.
- Strictly prohibited, with little possibility of escaping the prohibition

14

■ Typology – indirect Discrimination

Article 2(2)(b)

- ‘an apparently neutral provision, criterion or practice’ would put persons having a disability at a particular disadvantage compared with other persons.
- Justification possible : Objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary does not explicitly refer to or target disability but is more likely to disadvantage (or does in fact disadvantage) persons with a disability
 - + not to go beyond what is necessary to achieve the aim pursued
- second justification: reasonable accommodation or adjustment for a specific individual with a disability to eliminate the disadvantages

15

■ Typology – Harassment & Instruction to discriminate

- Harassment (Article 2(3))
- Instruction to discriminate (Article 2(4))
- By association : [Coleman](#), C-303/06

16

Multiple and intersectional discrimination

Parris and Z : no new category of discrimination resulting from the combination of more than one ground

Odar : no difference of treatment based on age but on disability

In order to examine whether the national rule goes beyond what is necessary to achieve the aims pursued, that provision must be placed in its context and **the adverse effects it is liable to cause for the persons concerned** must be considered (Odar, Par. 65).

17

Multiple and intersectional discrimination

In this respect, it is for the referring court to examine whether the national legislature, in pursuing the legitimate aims of, first, promoting the recruitment of persons with illnesses and, secondly, striking a reasonable balance between the opposing interests of employees and employers with respect to absences because of illness, omitted to take account of relevant factors relating in particular to workers with disabilities.

In this respect, the risks run by disabled persons, **who generally face greater difficulties than non-disabled persons in re-entering the labour market, and have specific needs in connection with the protection their condition requires**, should not be overlooked (Odar, par. 68 and 69).

18

Proportionality test

Importance of adopting a contextual approach

- in assessing whether disabled persons have been subject to less favourable treatment, and
- in identifying the extent and nature of this treatment for the purposes of proportionality analysis in the case of indirect discrimination claims (Odar and Bedi).

Such an approach should take into account the specific vulnerabilities of the affected persons with disabilities and the practical impact of the treatment in question, rather than just focusing on whether disabled persons have been treated in a formally equal manner (Odar)

19

Objective justification

HK Danmark set out the general approach to be adopted by national courts in applying the objective justification test in such cases involving challenges to sick leave regulations based on a claim of indirect disability discrimination.

Further guidance in Ruiz Conejero

“A careful path between the needs of people with disabilities and the legitimate constraints experienced by employers”

Need for the particular vulnerabilities of persons with disabilities to be taken into account in any objective justification analysis, while noting the absence of any specific provisions dealing with this issue in the legislation

20



Reasonable accommodation

Recital 20 Appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example, adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training and integration resources

Recital 21 disproportionate burden : financial and other costs entailed, the scale and financial resources of the organization or undertaking and the possibility of obtaining public funding or any other assistance

21



Reasonable accommodation

Art. 5: reasonable accommodation shall be provided. Employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.

22

Reasonable accommodation

Reasonable accommodation is any change to a job or a work environment that is needed to enable a person with a disability to apply, to perform and to advance in job functions, or undertake training.

Reasonable accommodation is aimed at any employee with a disability. The right to reasonable accommodation extends to all work-related activities covered by EU law, from the job application process through termination, and includes working conditions and fringe benefits. If you have a disability and believe you need adjustments to your job or workplace, you can request reasonable accommodation.



23

Reasonable accommodation

The main types of reasonable accommodation include **technical solutions, working arrangements, training measures** and **awareness raising measures**.

The **technical solutions** might include:

- installing elevators or ramps, computer screen magnifiers, real time interpretation
- putting office furniture at an appropriate height
- providing Braille terminals

Other cases of reasonable accommodation relate to

- **working arrangements**, like providing flexible working hours, teleworking, leave, relocation to a new office or redeployment to a different job
- **training**, like allowing it to be done orally rather than in writing
- **awareness raising measures** so that people with disabilities can perform their job.

24

Reasonable accommodation

Dismissal for 'objective reasons' of a disabled worker on the ground that he or she meets the selection criteria taken into account by the employer to determine the persons to be dismissed, namely having productivity below a given rate, a low level of multi-skilling in the undertaking's posts and a high rate of absenteeism, constitutes indirect discrimination on grounds of disability within the meaning of that provision, unless the employer has beforehand provided that worker with reasonable accommodation, within the meaning of Article 5 of that directive, in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, which it is for the national court to determine

(C-397/18, Nobel Plastiques Ibérica)

25

conclusion

- A recent and dynamic case law
- “more subtle and less obvious” difference of treatment
- A robust conception of equality
- Limits of the protection
- Balancing of the interests BUT regards to the directive's objectives & intended effect

26

 The end

Thank you for your attention!



Steven Allen

Steven Allen

Steven Allen is Co-Executive Director of the Validity Foundation, an international non-governmental organisation which deploys legal strategies to promote, protect and defend the human rights of persons with intellectual disabilities and persons with psychosocial disabilities worldwide. He has a background in law, community development and conflict transformation, and has worked extensively with persons with disabilities and their representative organisations across Europe, Africa and Asia, having led numerous high-impact human rights monitoring projects. Mr Allen leads Validity's advocacy and research programmes, and regularly represents the organisation before regional and international bodies including the United Nations treaty body system and at the Council of Europe.

Aart Hendriks

Aart Hendriks CV

Aart Hendriks is Professor of Health Law at Leiden University, Health Lawyer with the Royal Dutch Medical Association, substitute judge at the District Court of Rotterdam, Member of the Group of specialists on predictivity, genetic testing and insurance of the Council of Europe, advisor to the Dutch Minister of Health on patients' rights, Board Member of various national and international non-governmental organisations (NGO's) working in the field of health, disability and human rights law, and editor of several academic journals. He obtained his Ph.D.-degree from Amsterdam University on a dissertation concerning the right of persons with disabilities to equal access in the employment market.

Hendriks has written extensively on such issues as human rights, minority rights, patients' rights and non-discrimination law. He lectures at such institutes as the European Law Academy (Trier, Germany), the Raoul Wallenberg Institute for Human and Humanitarian Rights Law (Lund, Sweden) and Copenhagen University/the Danish Institute for Human Rights, and regularly serves as advisor to such organisations as the Commission of the EU, the Council of Europe, the International Labour Organisation and the European Disability Forum.

Damjan Tatic

Dr Damjan Tatic – Serbia

Damjan Tatic served as an expert member of the United Nations Committee on the Rights of Persons with Disabilities (CRPD) from 2011 until 2019. He served as Vice- chairperson of the United Nations Committee on the Rights of Persons with Disabilities (CRPD) in 2017 and 2018. Damjan Tatic is legal expert of National Union of Persons with Disabilities of Serbia and disability activist working with number of Serbian DPO's. Furthermore, he was consultant with UNDP, UNICEF, ILO, OESC and Council of Europe. Mr. Tatic has a master's degree in international public law from the University of Belgrade, and a Ph.D. on the protection of human rights of persons with disabilities at the Faculty of Political Sciences, Department for International Affairs at the University of Belgrade. He is a guest lecturer at the Legal Clinic at Faculty of Law of University of Belgrade. Mr. Tatic published several books and over 30 essays, lectured at seminars and conferences at Serbian Academy of Sciences and Arts, Universidad Carlos 3. in Madrid, European Rights Academy in Trier, University of Basel, Judiciary Academy of the Czech Republic in Prague, Judiciary Academy of Turkey in Ankara, in Austria, Albania, Belgium, Bulgaria, Bosnia and Herzegovina, Croatia, Finland, France, FRY Macedonia, Georgia, Malta, Latvia, Poland, Spain, Turkey and the US.

Procedural Accommodations for Persons with Disabilities- best practices under article 13 of Convention on the Rights of Persons with Disabilities

The article 13 (1) of the Convention on the Rights of Persons with Disabilities prescribes 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, 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”. It is important to note that Convention here refers to procedural accommodations, and not reasonable accommodations, thus making it mandatory for state parties to provide such accommodations regardless of its’ cost.

The following examples of best practices of provision of procedural under article 13 of Convention on the Rights of Persons with Disabilities accommodations are derived from the initial reports submitted to the Committee on the Rights of Persons with Disabilities by number of States parties to the Convention from Europe.

Austria

Since an amendment to the General Administrative Proceedings Act 1991 (Allgemeines Verwaltungsverfahrensgesetz – AVG) in 1999, the authorities are obliged to inform blind persons or those with severely impaired vision who are not represented by a legal or authorised representative of the content of files and documents or parts thereof by reading them to them or, depending on the technical equipment available, informing them in other suitable ways (Section 17a AVG). “Other suitable ways” particularly refers to the printing out of documents in Braille. The Federal Chancellery (Bundeskanzleramt – BKA) points out that the costs of reading out the files or informing the persons of their contents in “other suitable ways” — as well as the fees for a sign language interpreter according to Section 39a AVG — are borne by the legal entity in whose name the authorities have acted in this matter (Section 76 para. 5 AVG).

With regard to the selection of the location for the proceedings, according to Section 40 para. 1 second sentence of the AVG, as long as the oral proceedings are not accompanied by a visual inspection, care should be taken to choose a location which is accessible without danger and as far as possible without outside help for participants with physical disabilities. These provisions are to ensure that the authorities also take the aspect of barrier-free access into account when choosing the location of proceedings for participants with a disability.

In 2004 the E-Government Act was passed, accompanied by an amendment to the AVG. These measures extended the possibilities to use modern communications technology in administrative proceedings, making dealings with the authorities easier, particularly for people with sensory or mobility-related disabilities.

According to procedural law for civil courts and the law on non-contentious proceedings (cf. Section 73a of the Code of Civil Procedure (Zivilprozessordnung – ZPO) and Section 4 para. 3 Non-Contentious Proceedings Act), a sign language interpreter must be engaged for civil law or non-contentious proceedings in which a person with a severe hearing or speech impairment is participating. The costs for the participation of the interpreter in proceedings and in consultations with a lawyer are borne by the federal government. Due to this measure, no disadvantages result from the disability and access to justice is ensured.

In criminal law proceedings, a sign language interpreter has to be engaged for defendants who are deaf or mute, as long as the defendant can express him/herself in sign language (Section

56 para. 2 of the Code of Criminal Procedure — Strafprozessordnung — StPO). Otherwise attempts must be made to communicate with the defendant in writing or in another suitable way in which the defendant can make him/herself understood. This should ensure that these persons are sufficiently informed about their procedural rights and can follow the proceedings. Interpreters also have to be engaged for the examination of witnesses, so that the witness can be questioned about his or her direct perceptions. In addition, mentally ill or mentally disabled persons can call in a person of their trust (Section 160 para. 3 StPO).

In both civil and criminal proceedings, if necessary the court — at the cost of the federal government — has to ensure that parties with severely impaired vision who are not represented by a lawyer are informed of the essential contents of documents which have been delivered, and of the content of the files used by the court (Section 79a para. 1 Court Organisation Act – GOG).

A disabled applicant who has taken a pension insurance fund to court over the decision to reject the request for an invalidity pension can also be represented in proceedings at a Labour and Social Court by a person who is not a lawyer. If it is necessary for the representative to be a lawyer, the latter can be appointed by the court within the framework of legal aid. Qualified and free representation can also be provided by statutory interest groups and voluntary occupational associations. No court costs are charged for social law proceedings. The costs for expert witnesses and interpreters appointed during the proceedings are borne by the pension insurance institutions. Legal aid has to be fully or partially granted in labour and social court proceedings insofar as the applicant is unable to pay their share of the costs of the proceedings without getting into financial difficulty.

Disability organisations have criticised the fact that barrier-free access to justice is not always ensured for blind people, those with severely impaired vision, and for deaf-blind persons.

Belgium

Various measures and legal provisions ensure the effective access of vulnerable persons, including persons with disabilities, to justice:

Persons with disabilities enjoy non-discriminatory access to free first-line legal assistance in legal advice centres (practical information, advice or initial legal opinions). Furthermore, persons with disabilities who receive income-replacement allowance are included in the category of persons entitled to receive second-line legal assistance (i.e. the services of a lawyer) entirely free of charge. Lastly, persons with disabilities may, under the same conditions as for second-line legal assistance, seek legal aid, which exempts them from all legal costs;

During detention proceedings, the assistance of a lawyer is mandatory, in accordance with the Act of 1 July 1964 on social protection of the mentally handicapped and repeat offenders (art. 28 et seq.) and the Act of 21 April 2007 on the detention of persons with mental disorders (art. 118 et seq.). Pursuant to these texts, expert advice and observation reports may be requested to assess the mental state of the individual concerned. The results of these evaluations are added to the file consulted by the judge when reaching his or her decision;

The regulations on sworn interpreters and translators in court proceedings provide for the use of sign language and Braille translations. Other rules provide for coverage, for example, of the travel expenses of a person accompanying an individual with a disability;

Special arrangements are made for minors, pursuant to chapter VII bis of the Code of Criminal Procedure (on interviewing minors who are victims or witnesses of certain crimes)

and the ministerial circular of 16 July on the audiovisual recording of interviews of child victims or witnesses of crimes;

Different initiatives have been taken by the federated entities, such as the General Social Welfare Support Unit (for Flanders) and the Victim Services Unit (for the Walloon Region and French-speaking Community), to provide assistance to victims;

In the Walloon Region, the Regulations of 11 October 2010 conferring force of law on the memorandum on legal assistance state specifically in chapter 3, section 5.3, that “recipients of income-replacement allowance for persons with disabilities” are entitled to free legal assistance. Furthermore, individual decisions taken by the Walloon Agency for the Integration of Persons with Disabilities on requests for assistance from persons with disabilities are subject to appeal. In addition to traditional remedies (the Labour Court), appeals against decisions on early intervention, care and housing, foster placement, support with daily activities and assistance may be heard by an appeals commission (administrative tribunal established in 1997).

With regard to **accessibility**, the Federal Public Service for Justice does not currently have an accurate inventory detailing the accessibility of its buildings. The Buildings Authority is the body responsible for “housing” the public services. Any complaints relating to the accessibility of buildings are systematically addressed to this body. Legal obligations concerning accessibility are in place for new buildings and also apply to the public services. In-house studies have shown that several prisons and legal advice centres are fully accessible to persons with reduced mobility. Several accessibility audits have been completed and others are scheduled during 2011.

Croatia

The Law on Free Legal Assistance (2008) facilitates to persons of poor material condition the access to courts and other bodies that decide on the rights and obligations of Croatian citizens and foreigners, in a way that expenses of legal assistance are fully or partially covered by the RC. This right may be used, under prescribed conditions, by persons with disabilities on an equal basis with other citizens.

During 2010 and 2011, with the aim to ensure appropriate trainings of employees in justice and prison system with regard to the rights of persons with disabilities, a training of judiciary police officers on the topic: persons with disabilities – users of the justice system was conducted.

Czech Republic

The finding of the Constitutional Court of 13 April 2011, Ref. No. Pl. US 43/10, announced under No. 130/2011 Coll., cancelled first sentence of paragraph 3 of article 33 of the Rules of Administrative Procedure¹ with effect from 20 May 2011, which excluded all persons from procedural capacity who lacked full legal capacity. Such amendment was isolated in the legal system and could not be justified by any specifics of the administrative judiciary. The Constitutional Court found the provision in contradiction, inter alia, to articles 12 and 13 of the present Convention. Henceforth, even the proceedings in administrative judiciary shall be subject to the principle which is commonly respected in the procedural law that a party has their procedural capacity to such an extent that they are capable to acquire rights and assume responsibility by their own acts. The procedural capacity in matters of administrative judiciary shall thus be preserved even for a person who is partially limited in their capacity regarding certain acts; however, their material abilities allow their full participation in the proceedings

¹ Act No. 150/2002 Coll., Rules of Administrative Procedure, as amended.

before administrative courts. Accordingly, the Ministry of Justice has also adapted the amendment of the Rules of Administrative Procedure which contains such legal provisions.

Regarding non-legislative measures enabling persons with disabilities to access justice, the Ministry of Justice carried out an accessibility analysis of court buildings and of rooms in such buildings for persons with limited mobility and orientation in 2010. All technical issues should be solved subsequently with the aim to make court buildings, or at least part of them, accessible.

The issues concerning persons with disabilities were also on the agenda of programmes and educational initiatives intended for judges and public prosecutors, justice and legal candidates and other higher expert administrative machinery of courts and public prosecution service. The issues formed an accompanying programme of educational initiatives implemented in criminal judiciary, seminars on the youth and juvenile crime, seminars on the Labour Code and within the educational initiatives on associated matters such as racial discrimination, persons trafficking, domestic violence, extremism, gender policy, internet crime, and the like.

The educational initiatives did not only refer to the topics from a purely legal standpoint, but interdisciplinary approach was emphasized as well as the necessity to address such issues even in terms of psychology, sociology and pedagogy to the most comprehensive extent possible. Teachers and lecturers of the trainings consisted of public prosecutors and judges as well as physician, sociologists, psychologists, court-appointed experts and other specialists active in the relevant field.

Denmark

The Administration of Justice Act includes provisions to ensure that persons with disabilities have effective access to justice on an equal basis with others. Thus, provisions are in place to the effect that persons with a hearing impairment have access to interpretation during trials and that persons with speech disabilities can be examined, etc., via written questions and answers or with the use of an interpreter.

A number of rules have been established to ensure that defendants and witnesses are offered assistance in connection with the hearing of criminal cases. These rules also apply to persons with disabilities. It should be mentioned that police or the prosecution must inform the court if a concrete evaluation indicates that a witness requires special consideration. Likewise, victims of certain crimes have access to an appointed victim advocate.

In practice a person whose disability involves a special need for accompaniment has the possibility of being accompanied by a support person or similar in court. Court attendants or other court staff may also, where needed, provide assistance to ensure persons with disabilities physical access to courts.

Germany

German law guarantees access to justice for persons with disabilities. Appropriate provisions are contained for instance in the Courts Constitution Act (*Gerichtsverfassungsgesetz – GVG*) and the Code of Criminal Procedure (*Strafprozessordnung – StPO*).

Thus, for instance, in accordance with section 191a of the Courts Constitution Act blind or visually-impaired persons may demand that court documents are made available to them in a form accessible to them to the extent that this is necessary in order to safeguard their rights. In accordance with section 186 of the Courts Constitution Act, the necessary aids must also be furnished where appropriate to facilitate the communication of a hearing-impaired or speech-impaired person. The content of these provisions applies not only in court proceedings, but also in the investigation and execution proceedings, which the public prosecution office is to

oversee in procedural terms. Section 187 of the Courts Constitution Act provides that the court calls in an interpreter or translator for an accused or convicted person or for persons who have the right to join a public prosecution as a private accessory prosecutor who are hearing impaired or speech impaired where this is necessary to enforce their rights in criminal proceedings.

If an accused person is unable to defend themselves in criminal proceedings for instance on grounds of a disability, they are to be appointed defence counsel (section 140 subs. 2 of the Code of Criminal Procedure). Section 140 subs. 2 sentence 2 of the Code of Criminal Procedure additionally orders that the application of an accused person with a hearing or speech disability for the appointment of counsel is to be complied with.

In accordance with section 259 subs. 2 of the Code of Criminal Procedure, hearing-impaired or speech-impaired person accused persons must be told of the final pleadings at least of the applications of the public prosecution office and of the defence counsel via an interpreter.

In accordance with section 68b of the Code of Criminal Procedure, a lawyer is to be appointed for witnesses for the duration of their questioning if specific circumstances apply making it evident that they are unable to exercise their rights themselves on being questioned. Additionally, victims of a criminal offence both with and without disabilities who are to be questioned as witnesses may take along to their questioning a person enjoying their trust (section 406f subs. 2 of the Code of Criminal Procedure).

Hungary

The National Police Headquarters issued its measure 4/2004.(II.19.) on enforcement of the rights of persons with disabilities in police procedures for assuring equal opportunities for persons with disabilities and the formation of practice of the police staff when measures are taken. The document contains measures regarding the full observance of rules on the measures taken against persons with disabilities, on providing assistance, to the necessary extent, for exercising the rights of persons with disabilities and on the employment of a sign language interpreter, if necessary.

Upon the request or with the consent of the client, taking into consideration the circumstance of the client concerned (or the features of the case) the Legal Assistance Service shall appoint a legal assistant as a patron lawyer or, in exceptional cases, a patron lawyer for the efficient access to justice for persons with disabilities. The service makes available the form to be completed for the support on its homepage, together with its contact data and the list of its client service facilities. Upon the client's request the service will give assistance in completing the form. The victims of crimes are given further assistance, who, in addition to favorable assessment, are supported when their rights are enforced.

By virtue of Act CXXXV of 2005 on crime victim support and state compensation Victim Assistance Services give assistance to the victims of crimes. The victims of willful crimes against individuals are given compensation. The single sum compensation or the annuity is destined to express the solidarity of the society. The compensation can be given to the direct physical victims of crimes whose bodily integrity or health was seriously damaged as a result of the crime and to the relatives and dependents of such victims. The social indigence of the victim is a condition. According to the act the financial indignity is not to be examined if the victim receives some disability allowance or the personal allowance of the blind.

If, in the proceedings conducted by the Legal Assistance Service or the Victim Assistance Service, a deaf person or a person with speech impairment takes part, a sign language interpreter shall be employed. The costs of the sign language interpreter shall be borne by the Service.

According to the instruction 50/2008. (OT.29.) on the victim assistance duties of the police issued by the National Police Headquarters for the appropriate performance of the victim assistance duties of the police the victim assistance clerk shall pay special attention to the affairs of victims with disabilities in the course of the cooperation and when works are done in practice.

The sign language act stipulates that in the course of court and police proceedings the acting authority shall provide a sign language interpreter if requested by the person with hearing impairment or by a deaf and blind person. The costs of such interpretation shall be borne by the acting authority in each case.

Luxembourg

Persons with disabilities, like any other citizen, are entitled to consult legal information, advice or mediation services. To facilitate their access to these services, the Ministry of the Family has an agreement to support the activities of the legal advice service of Info-Handicap. The service's most important area of activity is informing, advising and supporting persons with disabilities, or their friends or family, if they have any legal questions or if they feel that they are being discriminated against on account of their disability. Legal advice clinics are available on the premises of Info-Handicap. The lawyer's advice is free of charge to users and the lawyer's fees are covered at the standard rate by Info-Handicap. The service provides ad hoc assistance but does not cover the cost of individual cases or legal action. In 2012, four legal advice clinics were held with the assistance of a lawyer from Info-Handicap's network for persons with disabilities or people from their circle of friends and relatives. Three women and one man benefited from legal advice. The two employees of the legal advice service scheduled 49 appointments with users (of whom 25 were women and 24 men); in addition, 416 telephone exchanges and 234 e-mail exchanges on general questions (benefits for persons with disabilities, addresses, etc.) and issues related to the rights of persons with disabilities took place.

Norway

In principle, everyone has equal access to justice. Under Article 98, second paragraph of the Constitution, no human being must be subject to unfair or disproportionate differential treatment, including dealings with the legal system. Under Article 95, first paragraph of the Constitution, everyone is entitled to have their case tried by an independent and impartial court within reasonable time, and legal proceedings must be fair.

However, many persons with disabilities are dependent on facilitation in order to effectively exercise their rights. In criminal proceedings, witnesses with "intellectual disabilities or similar impairments" may be questioned by means of judicial examination in certain cases involving violence or sexual abuse; see the Criminal Procedure Act, sections 239 and 298. Judicial examination enables the witness to make a statement in advance, and a video recording of the interview is played in court.

Children's Houses [*Statens Barnehus*] provide a service to children and young people who may have been exposed to or may have witnessed violence or sexual abuse that was reported to the police. This service is now also offered to adults with intellectual or other disabilities. All of the Children's Houses have their own staff, normally a professional supervisor and other staff members with expertise in dealing with adults with disabilities. Sound procedures for attending to the special needs of this group have also been developed.

In June 2015, the Storting adopted a bill with several amendments to the Criminal Procedure Act. When the amendments enter into force, probably in 2015, persons with intellectual disabilities or other functional disabilities with similar needs for accommodation must be

questioned under adapted interview conditions if they are being questioned as a victim or witness in a case involving sexual offences, genital mutilation, abuse in intimate relationships, murder or bodily harm. These interviews must be conducted at a Children's House unless it is clearly in the best interests of the witness that they be conducted elsewhere. Adapted interviews must also be used if the police are in doubt about the functional level of the witness. Furthermore, the police can conduct adapted interviews of particularly vulnerable persons in other criminal cases when consideration must be given either to clarifying the case or to the witness. These amendments will give persons with intellectual or similar disabilities better access to justice. According to the amendments, the interviews of vulnerable adults will be conducted as sequential interviews, which is a method whereby a series of interviews is conducted. The purpose is to prevent the witness losing concentration and becoming tired, and to give the witness more time to establish a rapport with the interviewer and to feel safe in the interview situation. Tests using this method show that these interviews show more consideration for the witness and produce better evidence. They facilitate conviction of perpetrators of abuses against particularly vulnerable adults.

Part of the basic training given at the Norwegian Police University College consists of teaching police cadets how to deal with people in different life situations and with different functional abilities in a courteous and respectful manner. Police investigators who interview children, persons with intellectual disabilities and other particularly vulnerable adults have normally taken further training to learn more about young witnesses and about how to interview them. Since autumn 2014, police investigators have been offered a course that qualifies them to conduct interviews of pre-school children and of persons with intellectual disabilities, using sequential interviews. There is currently no absolute requirement for police investigators who interview persons with intellectual disabilities or similar disabilities to have taken this further training, but in the regulations the Ministry will advocate that investigators who conduct these interviews should, as far as possible, have done so.

Spain

Article 5 of the Free Legal Aid Act No. 1/1996 extends that right to persons with disabilities (or having a disabled person in their care) when they have to participate in legal proceedings in their own names and interests. Recognition is granted by the Free Legal Aid Board, which takes into account the personal circumstances of the applicant, the number of children or relatives dependent on him/her, state of health, level of financial obligations, costs arising from the filing of the suit and other similar costs and level of income (which, while exceeding the general income limits laid down in the Act, may not exceed four times the minimum inter-occupational wage). For budgetary reasons affecting both the State and the Autonomous Communities with competence in this area, it is impossible to make further progress to the extent of granting this benefit to all persons with disabilities without regard to income level, although aid of this kind is provided in deserving cases. In conclusion, it may be mentioned that the second additional provision to the Free Legal Aid Act grants the right to free legal aid, without any requirement of proof of insufficiency of resources to bring suit, to associations of public utility established to promote and defend the rights of persons with disabilities.

Act No. 1/1996 of 10 January on free legal assistance, as amended by Act No. 42/2015 of 5 October, recognizes the right to free legal assistance, regardless of their ability to cover legal costs, for persons with intellectual disabilities or a mental illness who are victims of abuse or ill-treatment. The right to free legal assistance includes specialist legal assistance from the moment that a complaint is filed.

The bar associations are taking a number of steps to ensure this right. The right to free legal assistance for persons with disabilities is guaranteed thanks to the establishment of duty rosters. The lawyers on the duty roster are professionals who have received appropriate training. They are required to demonstrate that they have exercised the profession for over three years and have a diploma awarded on completion of a course at the School of Juridical Practice or an equivalent course approved by the bar associations. Recent amendments to the law have addressed the training of these professionals and the quality of the assistance provided in order to guarantee the constitutional right to a defence.

In addition, the professional associations organize workshops and vocational refresher courses to enable lawyers to specialize in this area. In this regard, attention should be drawn to the workshops on persons with disabilities in court proceedings that have been organized by the “Human Rights Classroom” project of the Foundation of the General Council of Spanish Lawyers since 2014. These workshops have two main objectives:

1. To ensure that professionals are aware of the key aspects of the Convention as a directly applicable legal instrument and the core standard-setting instrument in the field and that, as professionals, they serve their clients with disabilities in accordance with the principles of equality and non-discrimination;
2. To ensure that professionals know what is meant by the term intellectual disability and that they have the practical tools required to guarantee that persons with disabilities can effectively exercise the right of access to justice.

Act No. 4/2015 of 27 April 2015 on the status of victims of crime provides that, following the commencement of legal proceedings in which the victim is a person with a disability in need of special protection, the necessary steps will be taken to prevent or limit the possibility of an investigation or trial turning into a new source of stress for the victim:

(a) Audiovisual recordings are made of statements delivered in the course of the investigation and these may be played back during the proceedings in cases and under the conditions determined by the Code of Criminal Procedure;

(b) Such statements may be taken down by experts.

In addition, the prosecutor must ask the judge or court to appoint a defence lawyer to represent the victim in the investigation and criminal proceedings in the following cases:

(a) When it determines that the legal representatives of a victim who is underage or has limited legal capacity have a conflict of interest in respect of the victim, irrespective of whether that conflict arises from the matter under investigation, that prevents them from being entrusted with the proper management of the victim’s interests in the investigation or criminal proceedings;

(b) When such a conflict of interest relates to one of the parents and the other parent is not in a position to adequately represent or assist the underage victim or victim with limited legal capacity;

(c) When the underage victim, or victim whose capacity had been legally changed, is unaccompanied or separated from those persons who exercise parental authority or guardianship positions.

On 23 October 2017, the cooperation agreement established between the Attorney General’s Office and the Spanish Committee of Representatives of Persons with Disabilities was renewed with the aim of promoting the protection of the equal rights of persons with disabilities. The agreement provides for the establishment of a “stable channel” for

communication and the exchange of information between the Attorney General's Office and the Committee in relation to cases that might involve a "flagrant violation" of the fundamental rights of persons with disabilities. It also provides for the establishment of a monitoring committee to ensure compliance with the agreement and the organization of training and awareness-raising activities on the rights of persons with disabilities.

Organic Act No. 13/2015 of 5 October amending the Criminal Procedure Act with a view to reinforcing procedural safeguards and regulating technological investigative methods strengthens the rights of persons charged with or arrested for a criminal offence.

With respect to persons with disabilities, the Act explicitly provides for the right to be informed of the acts with which they are charged and any relevant change in the focus of the investigation or the charges. The information provided must be sufficiently detailed to ensure the effective exercise of the right of defence and must be presented in understandable language and in an accessible form. To that end, the information must be adapted to the degree of disability of the recipient or any other personal circumstance that may affect a person's capacity to understand its meaning. The same guarantees apply if a person is placed in detention.

Persons who are deaf or hard of hearing or who have language difficulties are guaranteed the right to be assisted by an interpreter free of charge. Audiovisual recordings of oral and sign language interpretation must be made of both the original statement and the interpretation. Where the content of a document is translated orally or via sign language, a copy of the translated document and/or the audiovisual recording of the translation is to be attached to the original.

Court translators or interpreters must be appointed from the rosters kept by the competent authority. In exceptional cases where this is not possible, another person with knowledge of the relevant language who is deemed capable of performing the task may be appointed as a temporary court interpreter or translator. In all cases, the appointed interpreter or translator must respect the confidentiality of the service provided.

Where the court, the judge or the office of the public prosecutor, whether *proprio motu* or at the request of one of the parties, considers that the translation or interpretation is not sufficiently accurate, the body or official concerned may order the necessary checks to be carried out and, where appropriate, order the appointment of a new translator or interpreter. Persons who are deaf or hard of hearing who consider that the interpretation provided is not sufficiently accurate may request the appointment of a new interpreter.

Organic Act No. 1/2015 of 30 March amends the Criminal Code to bring it into line with the Convention. The terms used to refer to "persons with disabilities" or "persons with disabilities in need of special protection" have been updated and the terms "handicap" and "incapable" have been removed. Consequently, the new article 25 of the Criminal Code states that for the purposes of the Code "disability" means the situation where a person has permanent physical, mental, intellectual or sensory impairments which in interaction with various barriers may limit or hinder his or her full and effective participation in society on an equal basis with others. Also for the purposes of the Code, "a person with disabilities in need of special protection" means a person with disabilities requiring assistance or support in the exercise of his or her legal capacity, irrespective of whether his or her capacity to act has been legally limited, and in making decisions about himself or herself and his or her rights or interests owing to permanent intellectual or mental impairments.

Where the victim of an offence is a person with a disability in need of special protection, that fact constitutes an aggravating circumstance in respect of the penalties applied for certain

offences, such as murder, unlawful detention, domestic violence, prostitution and offences against privacy.

To the same end, article 268 is being amended in respect of the grounds for absolution in cases of property offences committed by relatives, in order to exclude not only cases where the offence involves violence or intimidation but also abuse of the vulnerability of the victim as a person with a disability.

United Kingdom of Great Britain and Northern Ireland

From April 2011 Her Majesty's Courts and Tribunals Service brought together Her Majesty's Courts Service (HMCS) and the Tribunals Service (TS) into one agency responsible for the administration of the criminal, civil and family courts and tribunals in England and Wales and non-devolved tribunals in Northern Ireland and Scotland. HMCS and TS20 staff receive training on equality and diversity including disability awareness. The Scottish Court Service provides similar training. The Judicial College's (formerly the Judicial Studies Board) Equal Treatment Advisory Committee continues to make the Equal Treatment Bench Book (ETBB) available to support all judicial office holders in the UK to ensure fair treatment is practiced throughout the judiciary. The ETBB contains guidance on issues of fair treatment and equality, including disability. Disability issues are also integrated into judicial training.

A major programme of works to the court estate to improve facilities and access for disabled people has been conducted by HMCS, costing more than £46 million. In England and Wales in certain circumstances disabled witnesses are supported under the Youth Justice and Criminal Evidence Act 1999, for example, by being able to use video recorded evidence, communication aids or a registered intermediary to help them give the best evidence possible in court.

There is further information on measures to assist vulnerable court users, including where appropriate disabled people, in the Code of Practice for Victims of Crime, Vulnerable and Intimidated Witness guidance and Special Measures for Witnesses. The 2011 Northern Ireland Justice Act will improve the 'special measures' provisions in the 1999 Criminal Evidence (Northern Ireland) Order, which help disabled people give their best possible evidence in criminal proceedings. The measures include providing for the presence of a supporter, whose role is to reduce the witness' anxiety and stress when giving evidence, and permitting the prosecutor to ask the witness some 'warm up' questions to help them relax before being cross-examined. Revised guidance for practitioners, including police officers, legal representatives and social workers, when interviewing vulnerable witnesses will be published in 2011, and will be accompanied by training.

In Scotland The Vulnerable Witnesses (Scotland) Act 2004 allows applications to be made on behalf of vulnerable witnesses to use a range of special measures to help them give their best evidence. Vulnerable in this context may include disabled people. A range of guidance²³ has been produced to help inform disabled people of these measures. A review of support for witnesses in the justice system has recently been undertaken and action will be taken to address some of the barriers.

Individual communication No. 30/2015

The Committee on the Rights of Persons with Disabilities reviewed individual communication No. 30/2015 Makarov vs. Lithuania at its' 18 Session (14 Aug 2017 - 01 Sep 2017). Since the Committee adopted the view that *inter alia* article 13 of Convention on the Rights of Persons with Disabilities has been violated, one cannot consider this case as an example of good practice. However this case remains highly relevant and merits close examination as an important part of Committee's jurisprudence, illustrating its' understanding

of procedural accommodations for persons with disabilities under article 13 of Convention on the Rights of Persons with Disabilities.

As regards the author's claims under articles 12 (3) and 13 (1), the issue before the Committee was to assess whether the decisions of the State party in the case of the author's wife have violated her rights to equal recognition before the law and access to justice. The Committee noted that Ms. Makarova was the direct victim of the car accident at issue in the court hearings. The Committee further noted as an undisputed fact that the author's wife could not participate in the court hearings because of her disability and that she was not represented, despite her request for legal representation. If present or properly represented, Ms. Makarova could have posed questions to witnesses, she could have challenged the findings of expert examination reports regarding her health and she could have testified to provide a first-hand account of the accident. Furthermore, from the submissions made by the author, it was also obvious to the Committee that Ms. Makarova requested representation at the court hearings that directly affected her rights because, as a result of her disability, she could not take part herself. The Committee noted that, according to the documentation submitted to the Committee, her request was officially presented to the first district court through letters of 25 January 2006 and 15 April 2006, in which the author asked for protection of his wife's lawful interests as a victim. The Committee recalls that under article 13 (1), "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, 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". The Committee considers that while States parties have a certain margin of appreciation to determine the procedural arrangements to enable persons with disabilities to exercise their legal capacity, the relevant rights of the person concerned must be respected.² That did not happen in Ms. Makarova's case while, as the direct victim of the accident at issue, she was clearly a "direct participant" of the relevant legal proceedings.³ It is also clear to the Committee that Ms. Makarova wanted her position to be heard during the court hearings, but that she was not provided with any form of accommodation to enable her to do so: she was not able to attend the hearings because of her disability; she informed the State party in that regard, and asked the State party to provide her with legal representation in the first instance and for the appeal, but she was not provided with any support. Therefore the Committee was of the view that Lithuania has failed to fulfil its obligations under article 13 (1) of the Convention.

Dr Damjan Tatic

² See communication No. 7/2012, *Marlon James Noble v. Australia*, Views adopted on 2 September 2016, para. 8.6.

³ See communication No. 11/2013, *Gemma Beasley v. Australia*, Views adopted on 1 April 2016, para. 8.9.

Josep Maria Sole Chavero

Josep Maria Sole Chavero

Lawyer. Director of supportgirona.cat. Active lawyer advocating for UNCRPD standards. Co-founder of iSocial.cat (R+D+I in the Social Field), President of Guttman.com Social Council, Vice-President of the FundacioDrissa.com (supported employment in mental health) and CampusArnau.org (applied ethics in the social sector). Consultant for the Andorran Government on implementing the UNCRPD. Member of the board of EASPD.eu, co-Chair of the Standing Committee for Inclusive Living, and senior expert of the EASPD European Expert Network on Supported Decision-Making.

Josep Maria Sole Chavero

Our Perspective

- Private NGO. Support service created with the old paradigm framework. No legislative change since the UNCRPD entered into force in Spain.
- Experience from developing UNCRPD-compliant mechanisms in Catalonia, based on the assistance mechanism, and developing new practical knowledge acquired from projects (I-DECIDE)
- Imminent perspective of legislative change in Catalonia / Spain

User profile still under guardianship or curatorship:

- Elderly people with cognitive impairment, often with a past history or experiences of abuse (financial, emotional, psychological, physical), or neglected by family members; persons with ID or learning disabilities with communication difficulties and people with psychosocial disabilities who don't recognise their own disability or don't want help (stigma, prejudices, rejection) but also because the supports, until now did not take into account the will and preferences of the individuals and were perceived in society as a an imposition and control.
- The procedure is usually started by the Public Prosecutor's Office as mental health or social services perceive conflicts with the environment or social context of the person, as well as an alleged neglect or self-neglect on covering basic needs.
- In addition, there are often no alternatives of sufficiently intense social support that, among other issues, have as their mission prioritise social intervention and offer support in conflicts (legal, administrative, social).

Ethical dilemmas, risk management, the need for an inclusive environment

- Freedom / Abandonment
- Better interpretation of the person's will / Associated risks
- Defense against abuse and undue influence, lack of quick and effective mechanisms and quick response services.
- Amalia's Example

ORIGENS

Support-Girona was an organization born within the old paradigm framework prior to the UNCRPD. Support was conceptualised to take advantage of the legal framework and the public funding scheme to develop the guardianship service as a very intense social service in order to accompany persons involved in a process of psychiatric deinstitutionalization that took place in Girona at the beginning of the century. However, it was also born with the purpose of serving all persons who may need the service without taking into consideration their diagnosis or disability.

Today in Girona, long-term institutionalised psychiatric care is not an option. For a population of 850,000 (nearly a million) inhabitants, there are only 45 places in 2 social residential care services, and the persons living there choose it by themselves. The development of the network of community mental health services, prioritising mental health services in the counties instead of the general hospital as well as availability and accessibility of personalised social services in the community allows us to say that no one will be forced to institutionalize because of psychosocial disability. Of course, this services are complementary to day care centres and work and employment organisations as well as systems of home personalised supports.

SUPPORT SOCIAL SERVICE

From the very beginning, Support has thrived as an independent and personalised social service as it is not linked to any form of residential facility or other social services; intense because if necessary the service can allocate experts and professionals to support the person managing conflicts that may encounter (related to health services, coverage of basic needs, searching for a place to live, mediation in family relationships and with the environment, legal procedures, etc..); global because there is not a single aspect involving the person that is not considered when offering them support; flexible because it can become almost invisible in people's lives or appear very strongly if a conflict emerges; and adaptable because it can work in and with the person's environment (the street, their home, their family, friends, other professionals) and not the other way around.

This service was originally seen by social and mental health professional, from different services and areas, as an opportunity to solve complex situations persons with disabilities usually experience such as the existence of abuse in all its forms, negligence care by their

family or friends and social conflicts that arise in the community. This is shown by the fact that the organisation, its professionals and the persons we support have significantly grown over time.

Supported persons and where they live

As of today, we support 997 individuals (1817 historically), nearly half (46%) of them experience a psychosocial disability, 28% of them have an intellectual disability and 16% are persons with cognitive impairment, brain damage or other situations, often related to ageing.

46% live at their own home (458 persons), 46% (463 persons) in one of the many and varied residential services, most of them in housing services adapted for elderly persons or for persons with moderate to severe intellectual disabilities. The 8% remaining (76 people) are in a situation of infra-housing or homelessness or are serving time in prison.

SUPPORT SOCIAL SERVICE - PERSONALISATION

Support's vision and practice is strongly focused on advocating and promoting independent living in the community but the system of long-term social care services with public funding in Catalonia and Spain is excessively oriented towards financing residential services with a target and segmented population. To explain an example, the same person, imagine a person with a disability who needs intense support during most of the day. If that person chooses to stay at home, the intensity of public support he will receive will be equivalent to 400€, with the possibility of making it compatible with some day-care service, but if the same person chooses to move to a long-term residential service with 24/7 support the administration is willing to assume a cost of between 2.000 and 4.500€ in some profiles of intellectual disability. The system must change and allow for more personalized support options to ensure the right to independent living and social inclusion. The lack of accessible and affordable social housing or social policies oriented to achieve this goal is another barrier we must overcome. This adds up to the barriers in accessing the justice system, still pending in our country, and we are constantly reminded by the UNCRPD Committee.

EVOLUCIÓ CASOS + ASISTENCIA

If we look at the evolution of our user-base, we can see that from our activity in court and with the judicial system, although we do not consider ourselves a strategic litigation organisation, overtime we have managed to greatly limit and decrease the total number of guardianship cases in our region by replacing them by other forms of support with less power and faculties

such as partial guardianship or curatorship, but especially in recent years using the assistance mechanism, which is only available through the Catalan Civil Code.

Today we support 96 persons who voluntarily choose to be supported by our organisation under the assistance mechanism. These individuals represent the 10% of the total number of persons we support, and in 2019 the trend was inverted in court and in social practice, where assistance was the predominant mechanism.

This fact is relevant because the Spanish State and Catalonia do not have legislation fully compliant or adapted to UNCRPD and its Article 12. The last reform in Catalonia dates from 2009 and introduced and regulated this support mechanism, although conditioned by the State's competence in the issue at hand.

LEGAL REFORMS IN PROGRESS

There are 2 simultaneous legislative processes in Spain and Catalonia to reform the Civil Code and complementary legislation. The Spanish Government, after the recent UNCRPD Committee review and reporting phase, received very intense concerns and strong recommendations and the DPOs and civil society organizations have helped to promote the reform, now in the House of Representatives following due process.

In the case of Spain, the reform is based on abolishing incapacitation and recognising full legal capacity, facilitating the recognition of informal supports and a timely formalization of the same support to proceed in specific legal acts. The Spanish reform proposal establishes that partial guardianship or curatorship should be the most appropriate figure for situations in which support may be needed for a plurality of acts or over time, although it will be subject to periodical reviews.

In Catalonia, taking advantage of the fact that an imminent Spanish reform abolishing old-fashioned protection schemes will cut some slack to the Catalan legislator, the reform is conceptualised around designing a model that promotes mechanisms based on the will of the person asking for it. The Catalan model relies on flexible instruments such as support agreements or other informal types of support and the establishment of the assistance mechanism as the figure top opt for when situations where support is needed on a more sustained basis over time.

The key in both approaches will be how the judicial procedures to determine the supports will be regulated and how the will and preferences of the person play the central role in the

procedure in order to ensure that the measure and the supports are not potentially infringing rights.

However, social operators must recognise that we have as little knowledge on how to offer support aligned with UNCRPD principles as juridical operators.

If the legal frameworks across the EU would be aligned with UNCRPD and substituted decision-making mechanisms and representation of persons with disabilities would not be allowed, I'm convinced that we would not know how to manage a lot of real world conflicts and situations where it is necessary to intervene. We must learn how to do it differently, we must learn how to manage the implicit risks of some decisions, where the paternalist paradigm of best interest, easy to integrate with the values of our societies, will not be a real possibility and a valid approach. Instead, the wide universe of values and preferences as a new set of values will condition our daily practice.



Annual Conference on the Rights of Persons with Disabilities 2020 Access to Justice
 Supported decision-making system – innovative approaches
 Josep Maria Solé i Chavero – Lawyer & CEO
 23/10/2020

Where we are



Inclusió social i suport en la presa de decisions
 Social inclusion and supported decision making



Origins

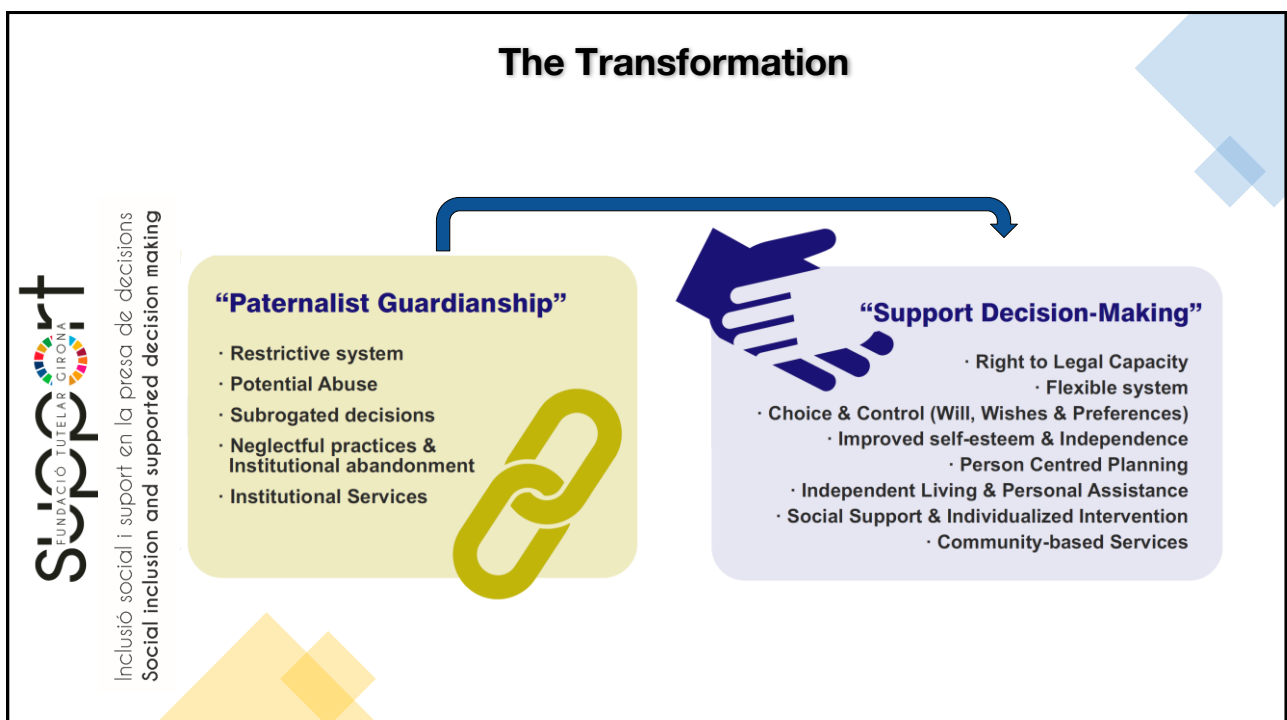
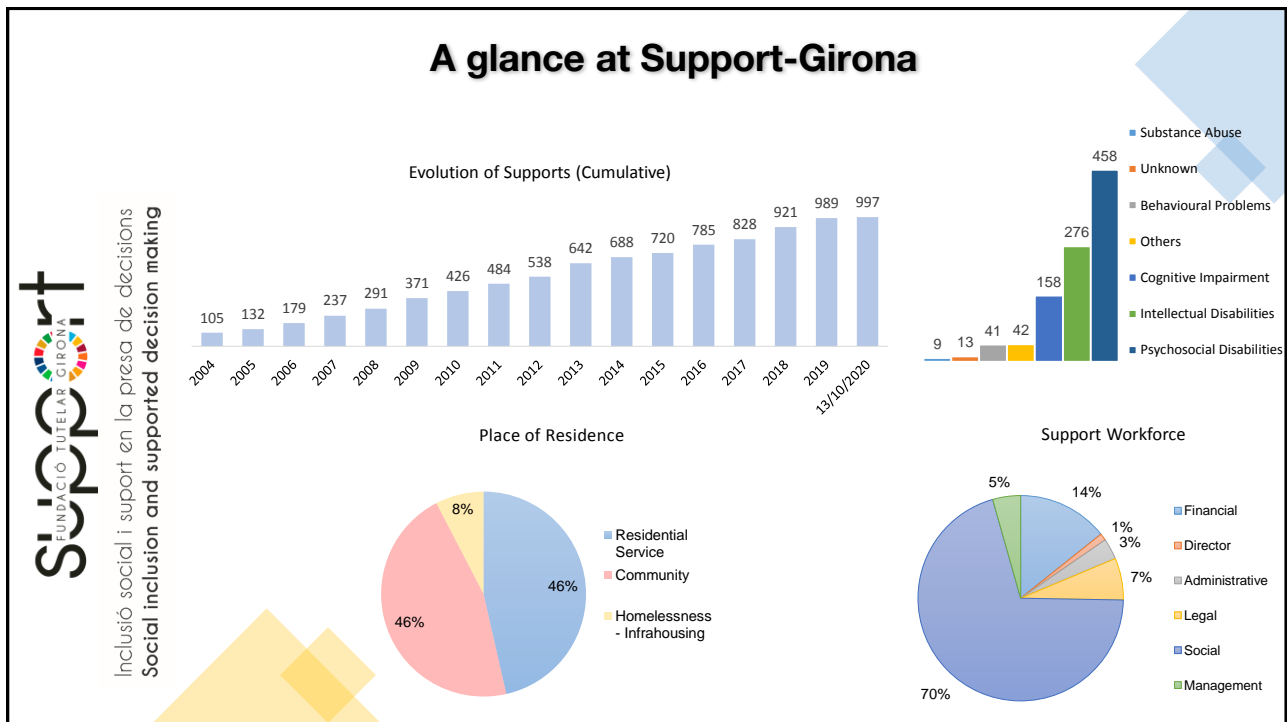


- NGO-NPO
- Born on 11th April 2003
- Promoted by the Public Health Service Provider in Girona as part of the Deinstitutionalisation strategy
- Conceptualised as an **intense social service**
- Developed as a service included in the **Catalan Portfolio of Social Services** and using the **Catalan Civil Code**.
- Provides SUPPORT to **all types of disabilities** as a non-exclusive factor (Intellectual disabilities, psychosocial disabilities, elderly people experiencing dementia,...)

Our Activities

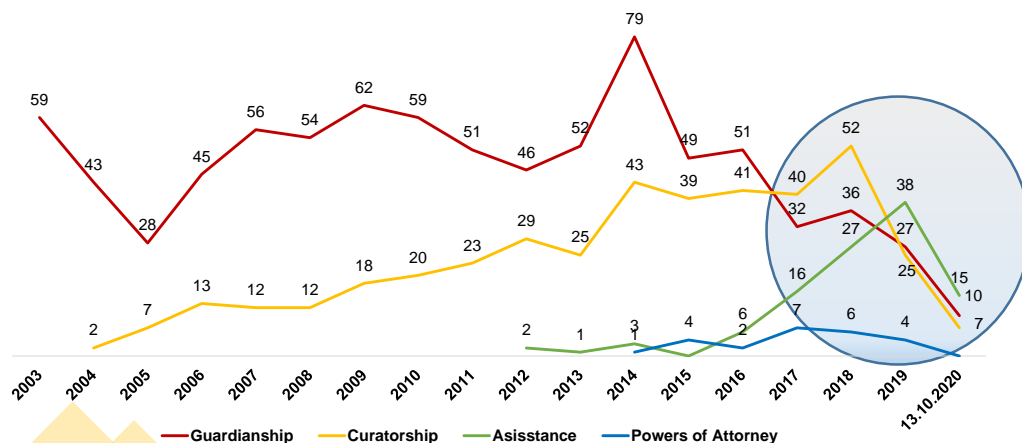


- **Intense Social and Legal support for adult individuals** with psychosocial disabilities, cognitive impairment and people with intellectual disabilities. SUPPORT provides adequate and effective safeguards to prevent abuses, according with a Human Rights approach, with maximum respect for the will and preferences of the individuals supported.
- **Defence, promotion and development of Human Rights.** SUPPORT professionals assess the context and the situation of every individual on a per-case basis, provide guidance to their family and relatives, promote the improvement of the quality of life of each supported individual and encourage their effective and full participation to be included in the community.
- **Raise General Awareness**, sensitise society and cooperate and collaborate with authorities or organisations
- **Take legal actions** in front of the competent courts of any jurisdiction to defend the Human Rights of the individuals supported by the Foundation.
- **Assume the role of Support** whether it is designated by law or by the individual itself, as well as exercise the rights and powers established by the legal system complying with the duties and safeguards established.
- **Develop projects** or other related activities in order to accomplish SUPPORT's goals.



A glance at the typology of Supports provided

Type of New Supports (Trend - Non Cumulative)



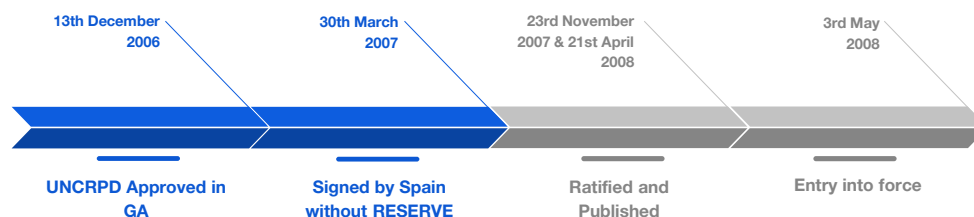
Catalan Legal System

- Legal instruments defined in the **Catalan Civil Code (2010)** + Spanish Civil Procedure Law + Spanish Voluntary Jurisdiction Law. Catalan Civil Code incorporates the **Assistance Mechanism and Powers of Attorney**, voluntary figures which **respect Legal Capacity in line with UNCRPD**
- Establishes that **only NGO's can exercise the role as a guardian, curator, assistant or trustee** in case of absence or unfitness of the family or a relative to assume the role
- Subject to **public control** by quality indicators and **court supervision**
- Prioritizes a Social Approach and Social Intervention**
- SUPPORT** is the **largest NGO providing support services in Catalonia** from a Network of 77 entities for a total population of 7.496.276 inhabitants and from around 9.500 individuals using this service.

Assistance – Catalan Civil Code (Art. 226 and §)

- This legal mechanism does not exist in other areas of Spain as it is **exclusive of the Catalanian Civil Code**. It is conceptualised to comply with UNCRPD but it is not fully compliant. Its coexistence with Guardianship has prevented to develop its full potential.
- Adults with a **non-incapacitating diminution of his physical or psychological faculties**, may request the judicial authority to appoint an **assistant**, by the procedure of voluntary jurisdiction.
- **The judge must respect the will of the person** appointing a specific individual / NGO as a supporter
- The **resolution explicit the specific area/s** in which the assistant must act (personal, financial, medical)
- **Judicial Control** of the Assistant's role
- In personal affairs the assistant must take care of the individual but **respecting its will and preferences**
- If the assistant doesn't intervene in certain acts, the assistant **can enter a petition to void prejudicial acts**.
- If the person demands it, the assistant can assume the role of **ordinary administration**.

Spanish and Catalan Legal Framework & UNCRPD



2009
First Final Provision
Law 15/2009

Talks about reforming the Spanish Civil Code

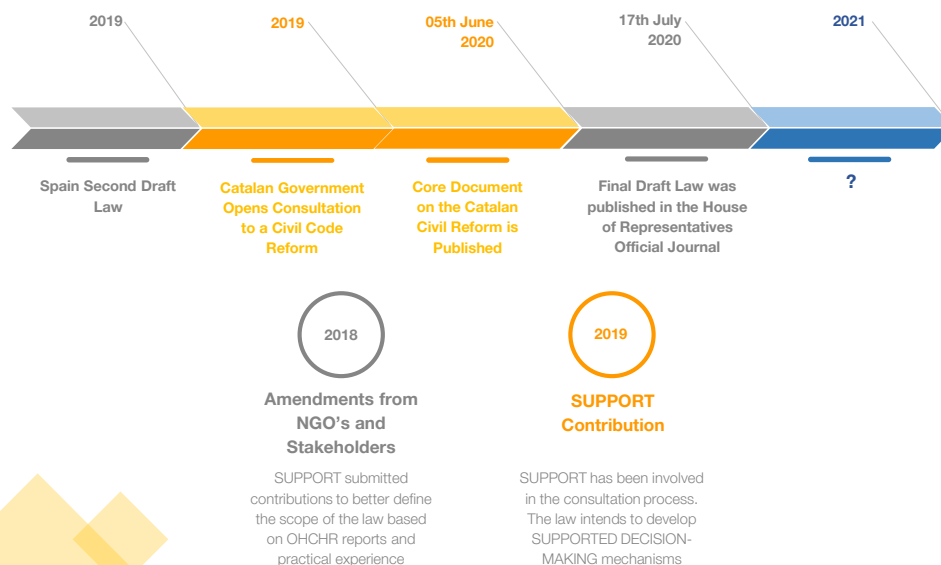
2009
Spanish Supreme Court Resolution
282/2009

Incapacitation and Guardianship is compatible with UNCRPD

2010
Catalan Civil Code
25/2010

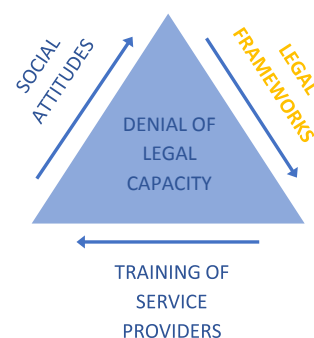
Distinguishes from the Spanish Civil Code in **NEW VOLUNTARY MECHANISMS (ASSISTANCE)**

Spanish and Catalan Legal Framework & UNCRPD



Core Document on the Catalan Civil Reform

- Assumes the disappearance of the former incapacitation of the persons and instead Legal Capacity is universal to every Catalan citizen, as well as the Right to proper and adequate supports.
- From current Guardianship / Curatorship to formal and informal supports. The formal ones are the "assistance" or "powers of attorney".
- From a substitution, supervision and control role to inform, advice and help the person communicate its will and preferences or a specific decision.
- From an imposition to voluntary support. Avoid an excessive "juridification" or "legalisation" of an individuals' life.
- Contemplates safeguards (Conditions, Supervision, Revision and establishes Responsibilities)



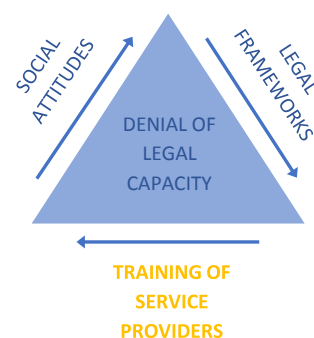
Spanish Final Draft Law (Art. 250 and §)

- Relies on "Curatorship", Judicial Defence", the "de facto guardian"
- Abolishes "Guardianship" but replaces this legal mechanism with "Curatorship or partial guardianship".
- "Curatorship will apply to those who need continued support. Its extension will be determined in the corresponding judicial resolution in harmony with the situation and circumstances of the person with a disability and their support needs."
- Open limited room for informal supports. Only names "assistance" as mechanism when a situation of prodigality exists.



Training of Service Providers

- Proximity** Person Centred Planning. Personalised support coordinated with other services in the community
- Prevention** Anticipate needs and foresee future actions to support the individual
- Proactive** Offer a range of alternatives to restrictive and paternalist practices
- Persuasive** Avoid coercive intervention, Choice and control is a Right of the individual
- Persistent** Offer continuous support over time even if is not accepted in the first approach



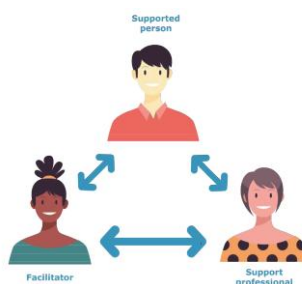
I-DECIDE Project Methodology



Co-funded by the
Erasmus+ Programme
of the European Union

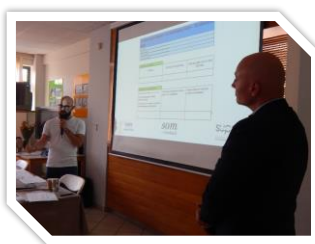


- I DECIDE – Supported Decision Making using Digital Literacy & Numeracy skills : 2017-1-ES01-KA204-038185
- Develops manuals in three concrete aspects: healthcare, personal finances and consumer rights
- The methodology is based on the **support agreement as an instrument** and defines the role of the “*supporter*” and the “*facilitator*”
- Developed specific **training modules on supported decision-making** oriented towards daily practice

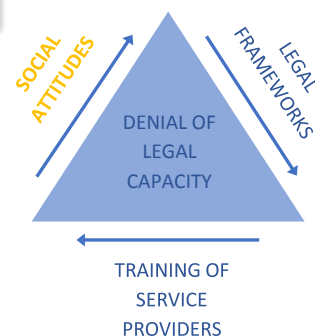


Social Attitudes

- Awareness that persons with disabilities have Rights.
- Empowering of individuals.
- Respect the decision of the person.

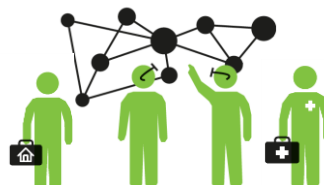


- Positive risk-taking vs Protection inertias
- Abandon the best interest paradigm.



Challenges

- Formally recognizing legal capacity & rights doesn't mean being able to de-facto being able to exercise them (in banking, shopping, the administration, etc.)
- Overcoming communication barriers
- Preventing and resolving conflicts between supporter and supported person
- How to implement safeguards? Lack of safeguards = Potential abuse and exploitation of the individual.
- How to shift or upscale services from person-centred-planning (PCP) to supported decision-making with co-production methodologies?
- Do we need to update, reskill current professionals or do we need to create new professional figures in legal or health settings (court, hospitals) or in social services?
- Over-reliance on the Biomedical model when assessing disability.



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Background Documentation

III. Background documentation

1. United Nations documents

1.	UN Convention on the rights of Persons with Disabilities and Optional Protocol
2.	United Nations Committee on the Rights of Persons with Disabilities, “General comment no. 1 on Article 12 of the Convention - Equal Recognition before the Law”, adopted by the Committee at its tenth session (31 March – 11 Avril 2014), document no.: CRPD/C/GC/1
3.	United Nations Committee on the Rights of Persons with Disabilities, “General comment no. 2 on Article 9 of the Convention – Accessibility”, adopted by the Committee at its eleventh session (31 March–11 April 2014), document no: CRPD/C/GC/2
4.	Initial report of the European Union to the Committee on the Rights of Persons with Disabilities, 3 December 2014
5.	Committee on the Rights of Persons with Disabilities considers initial report of the European Union, 28 August 2015
6.	Special rapporteur on the rights of persons with disabilities reports on legal capacity (2018); report on participation (2016)
7.	Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 15 March 2015, document no. A/HRC/28/68
8.	OHCHR studies on employment (2012), political participation (2011) and on access to justice (2018)

2. European Union documents

a) General

9.	Treaty on the European Union
10.	Treaty on the Functioning of the European Union
11.	Charter of Fundamental Rights of the EU

b) Criminal and Administrative context

12.	<u>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</u>
13.	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
14.	Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order
15.	Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA
16.	Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
17.	Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA
18.	Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty
19.	Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings
20.	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
21.	Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims

f. Accessibility

22.	Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (Text with EEA relevance)
23.	Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC
24.	Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)
25.	Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)

26.	Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council
27.	Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws
28.	Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles

g. Other relevant EU documents

29.	European Union Agency for Fundamental Rights, Handbook on European law relating to access to justice, 2016
30.	Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings 2013/C 378/02
31.	European Union Agency for Fundamental Rights, Legal capacity of persons with intellectual disabilities and persons with mental health problems, 2013
32.	European Union Agency for Fundamental Rights, Legal capacity of persons with intellectual disabilities and persons with mental health problems: report, July 2013

3. Council of Europe

33.	European Convention of Human Rights
34.	Council of Europe Disability Strategy 2017-2023
35.	Council of Europe, A study on the Equal Recognition before the law, March 2017
36.	Council of Europe, A study on Freedom from exploitation, violence and abuse of persons with disabilities
37.	European Social Charter, Collected Texts, 7 th Edition, 1 January 2015

38.	Recommendation Rec (99) 4 of the Committee of Ministers to member states on principles concerning the legal protection of incapable adults
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4. Case law

a) CRPD Committee

39.	<i>JH v. Australia</i>, no. 35/2016, 31 August 2018
40.	<i>Ivinovic v. Croatia</i> , no.13006/13, 18 September 2014
41.	<i>Budjuso and Others v. Hungary</i> , 9 September 2013
42.	<i>Alajos Kiss v. Hungary</i> , no. 38832/06, 20 May 2010

b) Court of Justice of the European Union

43.	<i>A</i> , C-679/16, 25 July 2018
44.	<i>Petya Milkova v Izpalnitelen direktor na Agensiata za privatizatsia i sledprivatizatsionen kontrol</i> , C-406/15, 9 March 2017
45.	<i>État belge v Oxycure Belgium SA</i> , C-573/15, 9 March 2017
46.	<i>Mohamed Daouidi v Bootes Plus SL and Others</i> , C-395/15, 1 December 2016
47.	<i>Invamed Group Ltd and Others v Commissioners for Her Majesty's Revenue & Customs</i> , C-198/15, 26 May 2016
48.	Gérard Fenoll v Centre d'aide par le travail "La Jouvène" and Association de parents et d'amis de personnes handicapées mentales (APEI) d'Avignon, 26 March 2015
49.	<i>Fag og Arbejde (FOA) v Kommunernes Landsforening (KL)</i> , C-354/13, 18 December 2014
50.	<i>Wolfgang Glatzel v Freistaat Bayern</i> , C-356/12, 22 May 2014
51.	<i>Z. v A Government department and The Board of management of a community school</i> , C-363/12, 18 March 2014
52.	<i>Commission v. Italy</i> , C-312/11, 4 July 2013
53.	<i>HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab DAB</i> (C-335/11) and <i>Lone Skouboe Werge v Dansk Arbejdsgiverforening</i> (C-337/11), 11 April 2013
54.	<i>Johann Odar v Baxter Deutschland GmbH</i> , C-152/11, 6 December 2012
55.	<i>Reinhard Prigge and Others v Deutsche Lufthansa AG</i>, C-447/09, 13 September 2011

56.	<i>S. Coleman v Attridge Law and Steve Law</i>, C-303/06, 17 July 2008
57.	<i>Sonia Chacón Navas v. Eurest Colectividades SA</i>, C-13/05, 11 July 2006

c) European Court of Human Rights

58.	Factsheet, Persons with disabilities and the European Convention on Human Rights
59.	<i>Cînta v. Romania</i> , no. 3891/19, 18 February 2020
60.	<i>L.R. v. North Macedonia</i> , no. 38067/15, 23 January 2020
61.	<i>Nikolyan v. Armenia</i> , no. 74438/14, 3 October 2019
62.	<i>Savran v. Denmark</i> , no. 57467/15, 1 October 2019 (Referral to the Grand Chamber)
63.	<i>Glaisen v. Switzerland</i> (dec.), no. 40477/13, 25 June 2019
64.	<i>Bayram v. Turkey</i> (dec.) no. 49428/12, 2 April 2019 (French only)
65.	<i>Rooman v. Belgium</i> [GC], no. 18052/11, 31 January 2019
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