



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

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

The project seeks to promote access to justice and fairer criminal proceedings for defendants with intellectual and psychosocial disabilities in 8 EU countries (Romania, Bulgaria, Czechia, Slovenia, Slovakia, Spain, Portugal and Lithuania), and it is implemented by the following consortium of 9 experienced NGOs:

- Validity Foundation – Project coordinator, Hungary
- Centrul de Resurse Juridice, Romania
- Fenacerci – Federação Nacional de Cooperativas de Solidariedade Social, Portugal
- Fórum pro lidská práva, Czechia
- The International Commission of Jurists – European Institutions
- KERA Foundation, Bulgaria
- PIC – Pravni center za varstvo človekovih pravic in okolja, Slovenia
- Confederación Plena Inclusión España, Spain
- Mental Health Perspectives, Lithuania



Co-funded by the  
European Union

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

## Acknowledgments

First, we would like to thank all the persons who participated in this research through the interviews. Their contribution is of great value without which we would not be able to carry out this work.

We would especially like to thank the Federations of Plena Inclusión and the technicians and technicians of the programme of Attention to prisoners and ex-prisoners who have collaborated in the interviews to persons with intellectual disabilities, as well as professionals of justice. Their work, dedication and collaboration are an indispensable tool for the work carried out by our associative movement.

## Authors and Research Team

Inés de Araoz Sánchez – Dópico

Natalia Pérez Fernández

## Contacts in Spain

Confederation Plena Inclusión Spain

Avenida General Perón 32, first floor.

28020-Madrid

E-mail: [info@plenainclusion.org](mailto:info@plenainclusion.org)

## Project contacts

Validity Foundation – Mental Disability Advocacy Centre

Impact Hub, Milestone Institute

Budapest, Wesselényi utca 17.

1077 Hungary

E-mail: [validity@validity.ngo](mailto:validity@validity.ngo)

## Publication date

April, 2023

## Grant Information

101056701 - JUST-2021-JACC



# TABLE OF CONTENTS

	<b>Executive summary</b>	02
<b>01</b>	<b>Introduction</b>	08
<b>02</b>	<b>Goals and methodology</b>	13
<b>03</b>	<b>Defendants with disabilities access to justice</b>	16
	<b>Political and legal framework</b>	17
	01 Transposition of the international legal framework	20
	02 Overview of the national legal framework regarding access to justice	24
	03 Training and awareness for criminal justice professionals	36
	04 Statistics and data on access to justice	37
	05 Main findings	38
	<b>Experiences about the access to justice of defendants with disabilities</b>	40
	01 Defendants' with disabilities experiences	43
	02 Criminal justice professionals' experiences	52
	03 NGOs, human rights institutions, and support service professionals' experiences	61
	04 Brief analysis of patterns	67
<b>04</b>	<b>Conclusions and recommendations</b>	69
	<b>Conclusions</b>	70
	<b>Recommendations</b>	74
<b>05</b>	<b>References</b>	75
	<b>Annexes</b>	77
	Annex 1 - Profile of the interviewees	78

# EXECUTIVE SUMMARY

---

# EXECUTIVE SUMMARY

“While access to justice is fundamental for the enjoyment and fulfilment of all human rights, many barriers prevent persons with disabilities from accessing justice on an equal basis with others. Such barriers include restrictions on the exercise of legal capacity; lack of physical access to justice facilities, such as courts and police stations; lack of accessible transportation to and from these facilities; obstacles in accessing legal assistance and representation; lack of information in accessible formats; paternalistic or negative attitudes questioning the abilities of persons with disabilities to participate during all phases of the administration of justice; and lack of training for professionals working in the field of justice. In the justice system, persons with disabilities are often considered to be unworthy of, unable to benefit from or even likely to be harmed by due process protection provided to all other citizens. Even fundamental rights, such as the right to remain silent and the presumption of innocence, may be denied either directly in law or policy or indirectly in custom and practice. The risks are extreme – e.g. false confessions, erroneous verdicts and unlawful deprivation of liberty.”[1]

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



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



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

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

1 2020, International Principles and Guidelines on Access to Justice for Persons with Disabilities, p. 6, available at:

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

# EXECUTIVE SUMMARY

## Main findings regarding barriers, challenges and best practices

- When there is a suspicion of a disability in the person under investigation or accused, Spanish criminal legislation does not provide for instruments that allow the person to assess the support that the person requires for full participation in the criminal proceedings. It also makes no provision for procedural changes to avoid defencelessness and ensure equality in the exercise of the right to effective judicial protection and defence.
- There is no regulatory development of the recognise procedural adjustments in the civil sphere. The figure of the facilitator must be developed for it to be implemented and for all persons who need it to have access to it without causing economic hardship for the person with a disability.
- If the necessary adaptations are not made, persons with disabilities face a process that is very difficult for them to understand. They have told us that they do not understand the process and are unaware of their rights as defendants. This is largely due to the fact that all of the agents involved in the procedure speak in highly technical terms.
- The legal actors' lack of knowledge and awareness about the rights of persons with disabilities, particularly the necessary procedural adjustments. Frequently, legal officers are aware that procedural adjustments exist but are unsure how to access or implement them.
- The failure to detect intellectual disability is one of the most significant barriers that persons with disabilities face. Only one of the persons interviewed was identified as having an intellectual disability. Another individual only had a diagnosed mental illness. The remaining interviewees have been recognise in prison, which means they have gone through the entire criminal procedure without any procedural modifications.
- A forensic doctor's examination is requested when a person is discovered to have an intellectual disability. This test, however, is designed to assess the person's imputability and makes no mention of the person's support needs.

# EXECUTIVE SUMMARY

- There is no case management system in place to report that a person has an intellectual disability and requires specific procedural modifications. As a result, many persons have adjustments implemented in one criminal proceeding but not in another.
- Although there are adapted tools (such as easy-to-read documents) to inform persons of their rights or prison rules, they are rarely used. However, resources for persons who require additional communication support, such as alternative and augmentative communication systems, are not available.
- The characteristics of persons with disabilities are frequently misinterpreted as uncooperative behaviour in police investigations or court proceedings. This is largely due to legal operators' lack of understanding of disability and its characteristics. For example, the need for more time to answer questions, or a lack of understanding of the questions, resulting in the person failing to answer what is being asked.
- It is very difficult for the facilitator to begin acting from the first contact with the criminal justice system, but at the trial, causing the person to have his or her first contact with the criminal justice system without any adjustment.


## Main recommendations

- Criminal laws should be changed to recognise the rights of persons with disabilities and the need for procedural modifications. Persons with disabilities should be consulted and included in discussions about how to make the justice system more accessible to them (for instance, by participating in training actions for criminal justice professionals).
- Ensure and develop the figure of the facilitator so that persons who require one can rely on it throughout their legal proceedings and from the first contact with the criminal figure.

# EXECUTIVE SUMMARY

- Create a procedure for professionals who assist persons with disabilities in legal proceedings.
- Creation of a statute for the accused, just as there is a statute for the victim in the Spanish legal system, which guarantees the rights of persons with disabilities who are accused or investigated.
- There should be more coordination among the agents of justice at the state, regional, and local levels.
- Create practical mechanisms to detect intellectual disability early in the procedure, ensuring that all necessary measures are taken to ensure that the person with a disability can go through the criminal procedure on an equal footing with the rest of the persons.
- Training legal practitioners on the rights of persons with disabilities and the Convention on the Rights of Persons with Disabilities.
- More information on existing support resources for persons with disabilities, as well as how to access and use them, should be available.
- That persons with intellectual disabilities are given accessible information about their rights, what will happen in the procedure, the rules of the places of detention, and that they can rely on the support of organisations, starting with their first contact with the penal system.

---



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

UNITED NATIONS, 2008

---

# 01

INTRODUCTION

---

# INTRODUCTION

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

According to the *United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020)* **procedural accommodations** include: “All necessary and appropriate modifications and adjustments in the context of access to justice, where needed in a particular case, to ensure the participation of persons with disabilities on an equal basis with others. Unlike reasonable accommodations<sup>[2]</sup>, procedural accommodations are not limited by the concept of “disproportionate or undue burden”. (p. 9)

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

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

---

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

# INTRODUCTION

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

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

---

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

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

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

# INTRODUCTION

strengthening of certain aspects of the **presumption of innocence** and on the **right to be present at the trial** in criminal proceedings[6]; **legal aid** for suspects and accused persons in criminal proceedings[7]; and **procedural safeguards for vulnerable persons suspected or accused in criminal proceedings**[8].

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

---

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

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

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

並木通り 5 丁目  
Tel: 03-5537-2200  
www.boucheron.com

---

DETECTION OF  
INTELLECTUAL  
DISABILITY IS  
INSUFFICIENT. THE  
MAJORITY OF  
PERSONS GO  
THROUGH THE  
ENTIRE CRIMINAL  
PROCEDURE  
WITHOUT ANY  
PROCEDURAL  
MODIFICATIONS.

---

# 02

GOALS AND  
METHODOLOGY

---

# GOALS AND METHODOLOGY

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

## The specific goals of this project phase were:



### **Map the national legal and political framework**

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



### **Examine the experience of different stakeholders**

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



### **To collect recommendations**

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

# GOALS AND METHODOLOGY

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

Additionally, for the field work, **semi-structured interviews** (N=22) were carried out with key stakeholders: Defendants with intellectual and /or psychosocial disabilities (N=7); Criminal justice professionals (N=11); Support services professionals (N=2); Non-Governmental Organisations (N=2), and Human Rights Institutions (N=0). The interviews were conducted from November 2022 to March 2023. It was given priority to interviewees who have had experience/contact with the criminal justice system in the last three years. A non-probability purposeful sampling technique was used to identify and recruit the participants of this project. The identification of the interviewees was possible with the help of the national partners of the project. The data was analysed using content analysis. In the next section we summarise the main key finds of the desk research and interviews.



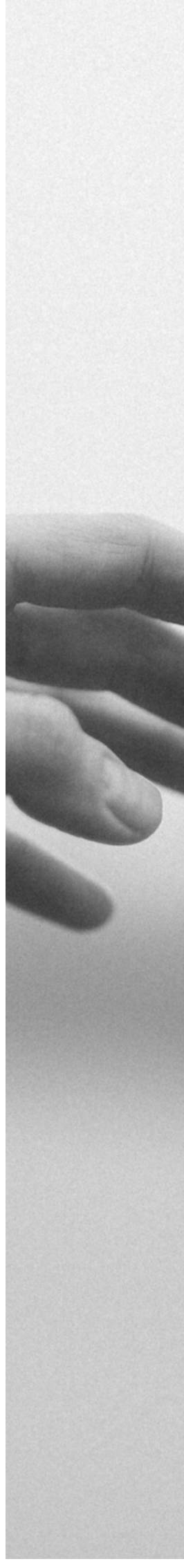
03

DEFENDANTS WITH  
DISABILITIES ACCESS  
TO JUSTICE

---

# POLITICAL AND LEGAL FRAMEWORK

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



# DEFENDANTS WITH DISABILITIES ACCESS TO JUSTICE

“

JUSTICE SYSTEMS  
REFLECT THE VALUES  
OF THE SOCIETIES IN  
WHICH THEY ARE  
EMBEDDED.

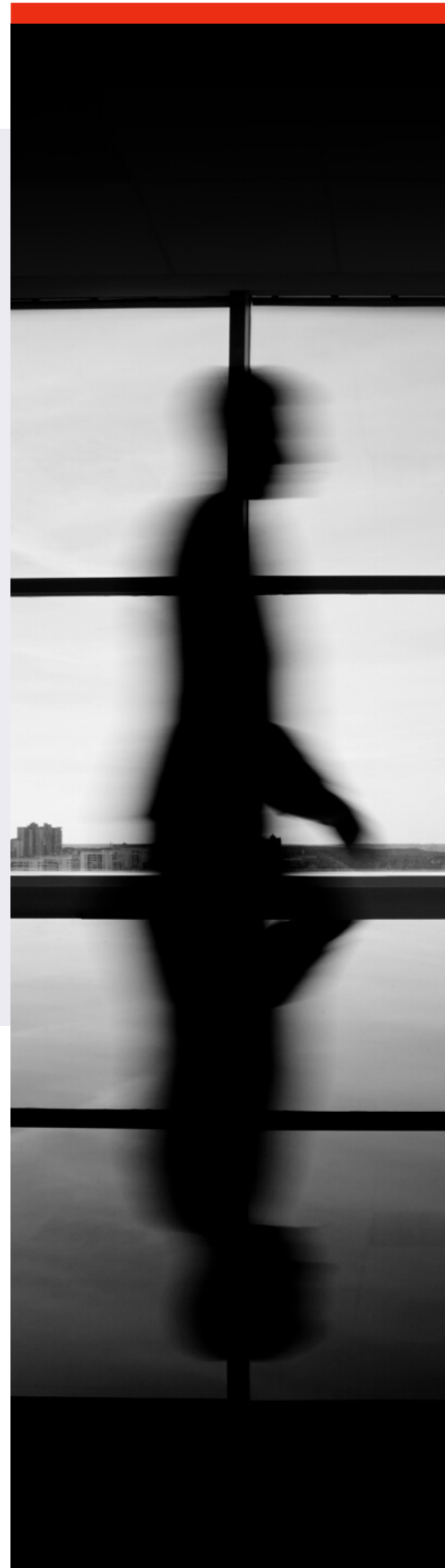
## ACCESS TO JUSTICE

The primary objective of the desk research was to provide insight into the legal and political framework governing access to justice for defendants with disabilities.

# POLITICAL AND LEGAL FRAMEWORK

The results of this analysis are presented in four sub-sections:

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



## 01 Transposition of the international legal framework

In 2007, Spain ratified the United Nations Convention on the Rights of Persons with Disabilities without any reservations. The Convention became part of Spain's legal system when it entered into force on May 3, 2008. Spain also ratified the Convention's optional protocol in 2008.

However, in 2019, the UN Committee on the Rights of Persons with Disabilities<sup>[1]</sup> expressed concern about the lack of accessibility of law enforcement agencies and the judiciary in Spain. The Committee also noted the absence of general procedural adjustments that take gender and age into account in judicial proceedings related to various types of disabilities, including sensory, intellectual, and physical disabilities. Furthermore, there were concerns regarding the barriers that prevent persons subject to substitution decision-making regimes from participating in court proceedings on an equal footing with others. The Committee emphasise that the testimony of persons with psychosocial or intellectual disabilities lacked credibility. It also noted a general lack of awareness among lawyers, judicial officers, judges, prosecutors, and law enforcement officials about the Convention's provisions. The Committee recommended the implementation of regular training programs and awareness-raising campaigns to ensure that persons with disabilities have access to justice.



9 CRPD/C/ESP/CO/2-3 Concluding observations on the combined 2nd and 3rd periodic reports of Spain: Committee on the Rights of Persons with Disabilities <https://digitallibrary.un.org/record/3848691>

# POLITICAL AND LEGAL FRAMEWORK

## 01 Transposition of the international legal framework

Spain ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1989 after signing it in Strasbourg on November 26, 1987. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment planned to visit Spain in 2020. In its final report, the Committee highlighted the existence of specific modules within prisons for persons with disabilities in two prisons: Extremera and Segovia. However, it expressed concern about the lack of disability detection during admission to prison or even during judicial proceedings, which results in persons with disabilities being exposed to ordinary modules in which they are unable to cope. [10]

Spain is also a signatory to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Covenant on Civil and Political Rights, and the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

The following EU Directives related to the rights of defendants/accused, were also analysed:

- **Right to *interpretation and translation*** (Directive 2010/64/EU) and **right to *information*** in criminal proceedings (Directive 2012/13/EU)

These Directives are transposed into Spanish law through Organic Law 5/2015, of 27 April.[11]

The law partially amends the Criminal Procedure Act and strengthens the guarantees of criminal proceedings, particularly through the right to translation and interpretation and the right of the accused to be informed. The law also incorporates provisions for persons with disabilities, such as the right to be provided with means of oral communication support and the right to receive information in a language that is understandable and accessible to the accused, considering their disability or any other personal circumstance that may affect their ability to understand the information provided.

---

10 Report to the Spanish government on the visit to Spain by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) from 14 to 28 September 2020. <https://rm.coe.int/1680a47a78>

11 Organic Law 5/2015 of 27 April 2015 amending the Criminal Procedure Act and Organic Law 6/1985 of 1 July 1985 on the Judiciary to transpose Directive 2010/64/EU of 20 October 2010 on the right to interpretation and translation in criminal proceedings and Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings. <https://www.boe.es/buscar/act.php?id=BOE-A-2015-4605>

# POLITICAL AND LEGAL FRAMEWORK

## 01 Transposition of the international legal framework

Furthermore, the law states that every detained or imprisoned person must be informed in writing, in simple and accessible language, and in a language, they understand immediately of the charges against them and the reasons for their deprivation of liberty. The law also ensures that such persons are informed of their entitled rights.

- *Right of **access to a lawyer in criminal proceedings** (Directive 2013/48/EU) and **Legal aid** (Directive 2016/1919)*

These EU Directives are partially implemented into the Spanish legal system through Law 3/2018 of 11 June.[12] The law addresses the right to legal counsel in criminal proceedings and the right to have a third party informed at the time of deprivation of liberty. Law 3/2018 introduces modifications to various regulations, including Law 1/1996, dated 10 January, on free legal aid. The amendments add a new paragraph that requires taking into consideration the specific needs of individuals in a situation of vulnerability, including those with disabilities. However, this is the only thing that is incorporated in the norm, which does not refer to vulnerability again throughout the norm, nor does it develop this precept.

- *Strengthening of certain aspects of the **presumption of innocence** and on the **right to be present at the trial** in criminal proceedings (Directive (EU) 2016/343)*

The Directive was published in the Spanish Official Gazette (Boletín Oficial del Estado) on 11 March 2016. The transposition deadline for the Directive was 1 April 2018, but the transposition has not yet taken place. Although certain rights recognise in the Directive, such as the presumption of innocence, are guaranteed by the Spanish Constitution, Spain has a duty to transpose the Directive to further reinforce these guarantees.

- ***Procedural safeguards for vulnerable persons suspected or accused** (Commission Recommendation of 27 November 2013)*

Although there is currently no law in the Spanish legal system that specifically incorporates the Commission's Recommendation of November 27, 2013, on procedural guarantees for vulnerable persons suspected or accused in criminal proceedings, a reform was carried out in the civil code in 2021.

---

12 Law 3/2018 of 11 June 2018 amending Law 23/2014 of 20 November 2014 on the mutual recognition of criminal decisions in the European Union to regulate the European Investigation Order.  
<https://www.boe.es/eli/es/l/2018/06/11/3>

# POLITICAL AND LEGAL FRAMEWORK

## 01 Transposition of the international legal framework

The reform introduces adaptations and adjustments in the procedures that persons with disabilities participate in, regardless of whether they do so as a party or in a different role. These adaptations and adjustments will be carried out in all phases and procedural actions where necessary, including acts of communication.

Furthermore, the reform expressly states that individuals with disabilities will be allowed, if they wish, to make use of a professional expert who will act as a facilitator and carry out adaptation and adjustment tasks.



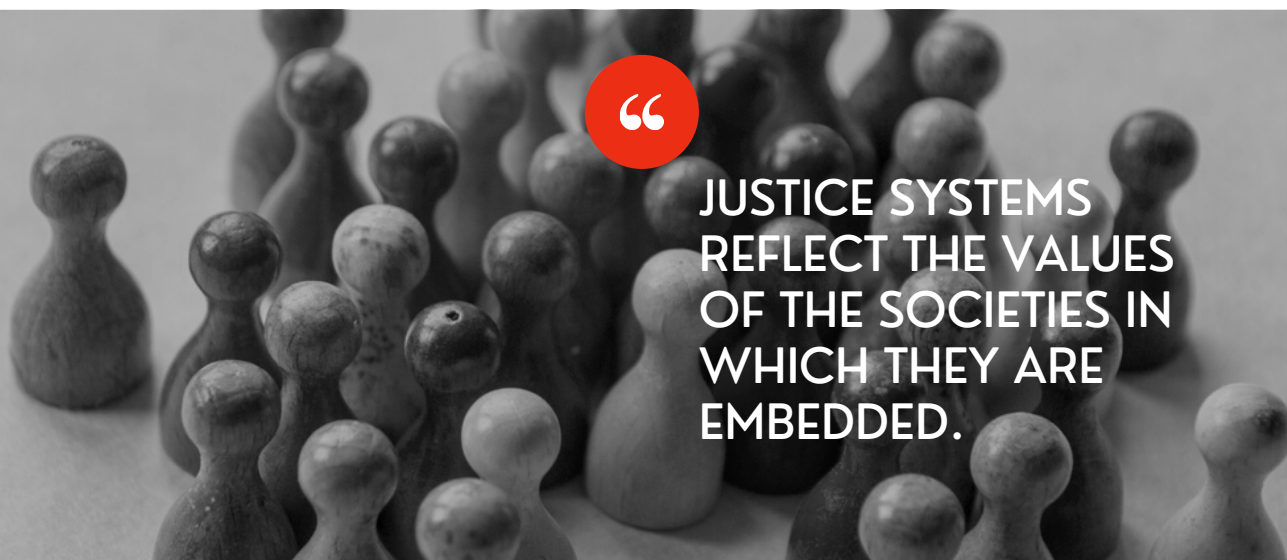
## 02 Overview of the national legal framework regarding access to justice

### The Spanish Constitution

Article 96.1 of the Spanish Constitution recognises that international treaties validly concluded, once officially published in Spain, form part of the internal legal order. Furthermore, Article 10.2 grants constitutional status to treaties on rights, endowing them with a special value. The jurisprudence of the Constitutional Court establishes that the interpretation of the law cannot ignore that of the Committees.

Article 14 of the Constitution recognises that Spaniards are equal before the law, without any discrimination based on birth, race, sex, religion, opinion, or any other personal or social condition or circumstance. However, this right cannot be considered in isolation and must be understood in relation to other rights, including the right to effective judicial protection or cognitive accessibility in critical situations such as detention or declaration.

Article 24 of the Constitution regulates the right of access to justice and establishes that all individuals have the right to obtain the effective protection of judges and courts in the exercise of their rights and legitimate interests, without ever being left defenceless. It also recognises other rights, such as the right to be informed of the accusations made against them, the right to a public trial with all guarantees, and the presumption of innocence.



JUSTICE SYSTEMS  
REFLECT THE VALUES  
OF THE SOCIETIES IN  
WHICH THEY ARE  
EMBEDDED.

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

The text clearly highlights the importance of ensuring equal means of defence. If individuals arrested or charged do not understand the acts of communication or the information they receive, they may become defenceless.

Furthermore, Article 49 of the Constitution expressly requires public authorities to take special care to ensure that persons with disabilities have access to the Constitution's rights, including those mentioned above.[13]

### **The General Law on the Rights of Persons with Disabilities and their Social Inclusion.**

This law incorporates provisions of the Convention into Spanish law, including accessibility, respect for dignity, individual autonomy, the freedom to make one's own decisions, and effective judicial protection.

Article 6 of Royal Legislative Decree 1/2023, dated 29 November, approves the Consolidated Text of the General Law on the Rights of Persons with Disabilities and their Social Inclusion. This article recognises respect for personal autonomy and the duty to ensure the provision of support for decision-making. It also requires that personal circumstances be considered in the provision of accessible information and in decision-making processes.

Article 7 of the law, which focuses on the right to equality, obliges administrations to protect the right to effective legal protection under equal conditions in a particularly intensive manner.

Finally, Articles 22 and 23 address accessibility and outline measures such as the provision of complementary support measures, including personal support, auxiliary communication services (such as alternative and augmentative communication systems), and the planning of human and material resources to promote accessibility and non-discrimination.

### **Criminal Procedure Act**

The Criminal Procedure Act outlines a series of rights for persons under investigation and in custody to guarantee equality in the process. Article 118 establishes the right to defence, including the right to be informed of the charges, to participate in the proceedings, to request free legal assistance, and right to remain silent.

---

13 De Araoz, I., "Acceso a la justicia: ajustes de procedimiento para personas con discapacidad intelectual y del desarrollo" Plena Inclusión España. Madrid, diciembre de 2018. [https://www.plenainclusion.org/wp-content/uploads/2021/03/acceso\\_a\\_la\\_justicia\\_web.pdf](https://www.plenainclusion.org/wp-content/uploads/2021/03/acceso_a_la_justicia_web.pdf)

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

This article provides for procedural adjustments when it establishes that the information given to any person to whom a punishable offence is attributed must be provided in understandable and accessible language, and that to this end the information shall be adapted to the age of the addressee, his or her degree of maturity, disability and any other personal circumstance that may result in a modification of the capacity to understand the scope of the information provided.

However, more needs to be done to address the needs of those with intellectual disabilities.

The law does not contain any provision related to notifications for those who may not understand them due to a disability. Additionally, Spanish criminal legislation does not provide instruments to assess support needed for full participation in criminal proceedings or procedural adaptations to guarantee equality.

in the area of civil law, the Law 8/2021, which came into force in September 2021, aims to adapt the Spanish legal system to the International Convention on the Rights of Persons with Disabilities, especially in relation to Article 12. This law modifies civil and procedural legislation to support persons with disabilities in the exercise of their legal capacity. Although this law does not modify the Law of Criminal Procedure in relation to judicial proceedings, it modifies the Civil Procedure Act, which applies on a supplementary basis to all Spanish legal systems unless there is legislation to the contrary. Consequently, this amendment should be applied in the criminal field.

The law establishes that all persons have the right to stand trial and incorporates a new article, 7 Bis, on adjustments for persons with disabilities. This article requires the necessary adaptations and adjustments to be made in proceedings involving persons with disabilities to guarantee their participation under equal conditions. Such accommodations and adjustments can be requested by any party at all stages and proceedings where necessary.

The law also requires communications to be made in clear, simple, and accessible language that considers the personal characteristics and needs of persons with disabilities, using means such as easy reading.

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

Additionally, it recognises the right of persons with disabilities to be accompanied by a person of their choice from the first contact with authorities and officials and to have the support of an expert professional who, as a facilitator, will carry out the necessary adaptation and adjustment tasks so that the person with a disability can understand and be understood.

Overall, this law represents a significant step forward in the procedural field by expressly recognising the adjustments needed to ensure the access to justice of persons with disabilities.

### General Disability and Mental Health legislation

In terms of intellectual disability and persons with mental health problems, the Spanish penal code recognises that those who are unable to understand the unlawfulness of the act or act in accordance with that understanding due to any "mental anomaly or alteration" (such as intellectual disability, personality disorders, or mental disorders), as well as those whose awareness of reality has been seriously altered by alterations in perception since birth or childhood, will not be criminally liable.[14]

This incapacity to understand the unlawfulness of the act or to act in accordance with this understanding must not always be total. In this sense, the penal code establishes that the person may be held partially responsible according to his or her ability to understand. Consequently, the security measures foreseen in the penal code will be applied in these cases.[15]

Security measures, like penalties, respond to the principle of legality and will thus be applied by the judge or court, following the reports it deems appropriate, provided that two circumstances are met: that the person has committed an act foreseen as a crime and that a prognosis of future behaviour can be deduced from the act and the personal circumstances of the subject, revealing the probability of committing new crimes.

Furthermore, the Penal Code specifies that security measures can be either custodial or non-custodial. Placement in a psychiatric institution, rehabilitation center, or special educational institution are all custodial measures.

---

14 Esbec, E. y Gómez-Jarabo, G. *Psicología forense y tratamiento jurídico legal de la discapacidad*. Edisufer. Madrid. 2000.

15 When we speak of security measures, we refer to the criminal sanction that is applied when a person is declared criminally dangerous after committing a crime. They are regulated in Title IV of the Penal Code.

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

In terms of security measures, the criminal code outlines two principles. For starters, security measures cannot be more severe or last longer than the penalty for the offense. Second, when the potential penalty for the offence committed is non-custodial, the judge or court may only order one or some of the non-custodial security measures.

Particular attention should also be paid to the location where the security measures will be carried out. The place of enforcement, according to penitentiary law, is special establishments, more specifically penitentiary psychiatric establishments or units.

In the case of persons with intellectual disabilities, the possibility of holding the person criminally or partially responsible responds to the courts' consideration of the affectation of the accused's cognitive and/or volitional capacities based on reports and assessments made, in most cases, by psychiatric professionals.

This approach of the Penal Code needs to be revised as it is discriminatory in that it relates persons with mental or intellectual abnormalities as dangerous persons who cannot contain their criminal impulses. This view of the Penal Code seriously contributes to the stigmatised view of persons with disabilities in society. The appeal to the idea of dangerousness as a basis for security measures should be abandoned and the focus should be put on support and care needs in line with the objective of re-socialisation.[16]

### **National Disability strategy 2022-2030**

This strategy recognises as strategic challenges the need to advance in ensuring access to justice for persons with disabilities, with universal accessibility conditions, resources and support products for access to information and resources to support communication and understanding, and adaptation of procedures and training of legal operators involved in the justice system. In addition, by improving support services and universal accessibility conditions, the penitentiary system can be better adapted to the needs of persons with disabilities.

It also establishes as lines of action in relation to access to justice:

---

16 De Araoz Sánchez Dópico, I., A cada Lado. Informe sobre la situación de personas con discapacidad intelectual reclusas y ex reclusas en España.

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

- the normative development of the concept of "reasonable adjustments" with objective criteria for its unified application, in coherence with what is established by the Committee on the Rights of Persons with Disabilities in the General Observation on the Rights of Persons with Disabilities (CRPD) in General Comment No. 2 (2014). By formally recognising that the denial of reasonable accommodation constitutes a form of discrimination and ensuring effective mechanisms for legal redress and remedy.
- The development and implementation of Law 8/2021, reforming civil and procedural legislation to support persons with disabilities in the exercise of their legal capacity, with special attention to the implementation of the facilitators of the procedural adjustments necessary for the application of the new regulations.
- Support for the design and generalised use of protocols and tools that enable the detection of support needs derived from the presence of a disability, as well as greater participation of social disability entities in support adapted to persons's needs.
- Incorporation in the procedural regulatory framework (in the different jurisdictional orders: civil, criminal, contentious-administrative or social) of the necessary provisions on the adjustments, adaptations, and appropriate support for access to justice for persons with disabilities (whatever their role: plaintiff or defendant, victim, defendant, witness, etc.).

### Procedural accommodations

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

---

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

Next, we will briefly describe situation regarding the provision of procedural accommodations In Spain:

As mentioned above, Article 7 bis incorporated by Law 8/2021 into the Civil Procedure Act and the Voluntary Jurisdiction Act expressly recognises accommodations for persons with disabilities. Although the law dates from 2021, there has been no regulatory development in relation to this. As we mentioned before, even it is not expressly regulated in the criminal field, it applies in a supplementary manner to it. In this article we can find:

### Right to information

The second paragraph of the article recognises that persons with disabilities have the right to understand and be understood in any action to be taken.

### Independent intermediaries and/or facilitators (Right to participation)

Paragraph c of the second subparagraph of this article recognises that:

*"(c) An expert professional shall be allowed to participate as a facilitator to provide the necessary adaptations and accommodations to enable the person with a disability to understand and be understood".*

However, although this role is recognised by law, it has not been further regulated. This means that it is not determined who can perform this function, what qualifications or studies are required, nor how it is financed.

At present, there are persons who act as facilitators in judicial proceedings, but they belong to NGOs that work in this field and provide the service. Plena Inclusión, with the aim of answering these questions and advocating, has produced three documents in relation to the figure of the facilitator.[17]

### Allowing persons with disabilities to be accompanied by family, friends, or others to provide emotional and moral support.

This article also recognises in paragraph two (d) that persons with disabilities have the right to be accompanied by a person of their choice from the first contact with authorities and officials in order to understand and be understood in proceedings.

---

17 For more information, you can access them through the following links:

1. [Facilitating Access to Justice](#)

2. [Proposal for the professional development of the figure of the procedural facilitator](#)

3. [Protocol of action for the procedural facilitator](#)

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

### Requests for and offers of accommodations.

For its part, the first paragraph of Article 7a establishes that adaptations for persons with disabilities shall be made, either at the request of any of the parties or the Public Prosecutor's Office, or ex officio by the Court itself, and in all phases and procedural actions in which it is necessary, including acts of communication.

This means that any person directly or indirectly involved in the proceedings can request these adaptations at any stage of the proceedings.

Facilitators are the persons who must establish what support needs the person has and facilitate them. However, this figure is not developed yet.

At present, the facilitators belong to different NGOs that provide the service subsidised by the Public Administration. There are no statistics or case studies yet, nor data about the cost.

### Right to interpretation and communication support

In this regard, paragraph "a" of the article recognises that all communications with persons with disabilities, whether oral or written, must be made in clear, simple, and accessible language, taking into account their personal characteristics and needs, and utilising means such as easy reading. Communication must also be made to the person who assists the person with a disability in exercising his or her legal capacity, if necessary.

In contrast, it recognises in paragraph "b" that the person with a disability must be provided with the assistance or support needed to be understood, including interpretation in legally recognise sign languages and means to support oral communication for deaf, hard of hearing, and deafblind persons.

### Adopting procedures for hearings

Article 7a recognises adaptations to hearing and interrogation procedures related to communication, understanding and interaction with the environment.

As a result, hearings and interrogations should take place in settings that are appropriate for the person with a disability's support needs.

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

However, there has been no regulatory development regarding how these adaptations should be carried out, nor has there been any action protocol developed.

According to our experience with facilitators, it is the facilitators' responsibility to determine what support needs the person with a disability has and what adjustments should be made in hearings and interrogations so that the person with a disability can understand.

Certain accommodations, such as pre-constituted evidence, are recognised for victims with disabilities, but there is no specific regulation for defendants.

### Right to be present at trial

The Organic Law of the Judiciary establishes that statements, interrogations, testimonies, confrontations, acknowledgements, reports, ratification of expert reports, and hearings will take place in the presence of the Judge or Court, as well as in the presence of or with the parties.

When the parties are geographically distant, they may, however, be carried out via videoconference or other similar system, ensuring in all cases the possibility of contradiction and the safeguarding of the right of defence, if so, agreed by the judge or court.

This means that, in general, hearings and appearances before a judge must take place in person. Only in exceptional circumstances, and with certainty that the procedure meets all the guarantees, can it be carried out telematically.

However, there is no regulation that determines when all the guarantees are met, and this is dependent on the specific case or the judge's decision.

### **Rights Monitoring**

In Spain, the Spanish Centre of Representatives of Persons with Disabilities (CERMI) is the independent monitoring mechanism for the Disability Convention.

In its annual report for the year 2022[18], it highlights in relation to access to justice for persons with disabilities:

---

18 CERMI. Human Rights and Disability. Spain 2022 Report. UN Convention Collection. Available at the following link: <https://back.cermi.es/catalog/document/file/72mwb-derechos-humanos-y-discapacidad.-informe-espana-2022---accesible.pdf>

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

*"Full access to justice for persons with disabilities, whether as direct or indirect participants, must be on an equal basis with others, which implies that procedural and age-appropriate accommodations must be made in all judicial proceedings, including at the investigative and other preliminary stages. Universal accessibility of the process, including communication and facilities are basic elements for the guarantee and effectiveness of this right".*

In addition, there is the figure of the Ombudsman, who is in charge of defending the rights enshrined in Title One of the Constitution, rights that stem from the dignity of every individual, regardless of their circumstances or situation.

Furthermore, as a result of the signing of the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the Ombudsman serves as the National Preventive Mechanism for the Prevention of Torture.

This work focuses on monitoring places of deprivation of liberty to ensure that the rights of those held there are respected, whether as individuals or as members of groups in a position of special vulnerability, such as persons with disabilities.

The Ombudsman's Office has produced the following reports on this subject:

### 1. Las personas con Discapacidad intelectual en prisión.

According to the findings of this study, there is a significant lack of knowledge in society about the existence and problems of persons with intellectual disabilities in prison. Despite advances in awareness-raising and training, this lack of knowledge can reach judges, prosecutors, lawyers, prison officers, and police officers in some cases.

Persons with intellectual disabilities are sentenced or subjected to security measures in regular prisons. More specialised care for persons with intellectual disabilities in prison, on the other hand, is dependent on the work of civil society organisations, which is, in practice, linked to obtaining adequate public subsidies. As a result, in times of economic crisis, this assistance is severely jeopardised. The specialised civil society works on detection, guidance, and counselling for officials, as well as inmate support and material development, but it is insufficient because it does not reach the entire prison population with intellectual disabilities.

# POLITICAL AND LEGAL FRAMEWORK


## 02 Overview of the national legal framework regarding access to justice

The right of inmates with intellectual disabilities to information tailored to their specific needs is only respected in prisons with specialise units (posters, pictograms, texts in easy language, ways of transmitting information by officials).

### 2. Las personas con Discapacidad en el informe anual del Defensor del pueblo del año 2021.

This study expresses, in relation to persons with psychosocial disabilities in prison, that there is an increase in the number of cases of persons suffering from “mental illnesses” or “disorders”, which greatly impede their process of adaptation to a hostile environment such as prison, as well as their personal and social evolution.

The main challenge in providing adequate care in prison is often a lack of a clear and precise diagnosis of their illness, which leads to them being regarded as offenders. It also emphasises the importance of the prison administration seeking alternatives to the use of punitive powers over these persons, attempting to find less burdensome measures that provide a genuine response to their situation.



---

**“AN EXPERT PROFESSIONAL  
SHALL BE ALLOWED TO  
PARTICIPATE AS A  
FACILITATOR TO PROVIDE THE  
NECESSARY ADAPTATIONS  
AND ACCOMMODATIONS TO  
ENABLE THE PERSON WITH A  
DISABILITY TO UNDERSTAND  
AND BE UNDERSTOOD”**

## 03 Training and awareness for criminal justice professionals

NGOs working on the issue typically provide training on access to justice for persons with disabilities.

However, training is also provided by the Ministry of Justice's Centre for Legal Studies, which has a dedicated section on its website where justice professionals can learn about best practices in this field and access specific resources to meet the needs of these users. [19]

For example, they offer a 6-month online training course on Disability attention in the administration of justice, which has an unlimited number of spots and is aimed at all careers and bodies trained at the center for legal studies.

Many training courses are also provided by the Justice and Disability Forum, which is affiliated with the Spanish Judiciary and holds two annual courses as part of the state training plan for members of the judiciary and various institutions that comprise the Justice and Disability Forum.[20]

There is also a Human Rights lecture (Aula de Derechos Humanos) by the General Council for Spanish Advocacy (Spanish Consejo General de la Abogacía Española), which aims to extend the human rights approach in legal aid. These trainings are focused specifically on persons with disabilities in legal proceedings.[21]

However, from Plena Inclusión we participate as trainers in internal trainings of the Public Prosecutor's Office, the Judiciary, State Security Forces and Corps, among others.

---

19 <https://www.cej-mjusticia.es/es/formacion-continua/formacion-transversal>

20 <https://www.poderjudicial.es/cgpj/es/Temas/Foro-Justicia-y-Discapacidad/Actividades/>

21 <https://www.abogacia.es/conocenos/fundacion/areas-trabajo/formacion-y-sensibilizacion-en-derechos-humanos/01-aula-de-derechos-humanos/>

## 04 Statistics and data on access to justice

In Spain there are no official data or statistics on people with disabilities who are involved in legal proceedings.

In relation to people with disabilities in prisons, there is data on the website of the Judiciary that allows us to observe the prison population in Spain, broken down by autonomous communities, sex and nationality, but in no case does it include disability.

In the General Report for the year 2021 of the General Secretariat of Penitentiary Institutions<sup>[22]</sup> we can find as official data that in the fourth quarter of the year 2021 in all penitentiary centres there were 3,963 inmates and 290 inmates with some type of disability, but the data is not broken down by type of disability.

---

22 [https://www.interior.gob.es/opencms/pdf/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones-descargables/publicaciones-periodicas/informe-general-de-instituciones-penitenciarias/Informe\\_General\\_IIPP\\_2021\\_12615039X.pdf](https://www.interior.gob.es/opencms/pdf/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones-descargables/publicaciones-periodicas/informe-general-de-instituciones-penitenciarias/Informe_General_IIPP_2021_12615039X.pdf)

# POLITICAL AND LEGAL FRAMEWORK

## 05 Main findings

Spain is a signatory to several international treaties, including the Convention on the Rights of Persons with Disabilities. Regarding European Union directives, while it has incorporated some of them into its domestic legal system, and some have been partially incorporated, there are still directives to be transposed into domestic law in order to have rights protection at the level of the rest of the Union's countries, such as the presumption of innocence and the right to be present at trial.

In terms of domestic legislation in Spain, while the reform introduced by Law 8/2021 is a significant step forward in terms of the rights of persons with disabilities and the Convention, there is still a long way to go in terms of access to justice for persons with disabilities who are defendants in criminal proceedings. It is necessary to advance the legislative development of the issues incorporated into the law 8/2021, such as the right to accessible information, to be accompanied by a trusted person, in relation to the rights of accused persons with intellectual disabilities. It should also be developed the figure of the facilitator, who can perform this and with what work standards, as well as who should bear the cost of this professional.

Although civil law supplements criminal law, it is critical to have these rights expressly recognise in the Criminal Procedure Act, as well as expressly recognise for accused persons. If these rights are not expressly recognise in the law for accused persons, this can lead to cases where defendants with intellectual disabilities are denied procedural adjustments.

In terms of the defence of incapacity in criminal proceedings, Spain has legislation that discriminates against persons with disabilities, allowing them to be considered not criminally responsible and, as a result, imposing security measures. In this regard, we must also adapt the legislation in accordance with the Convention.

As previously stated, article 7 bis of the Criminal Procedure Act and the Voluntary Jurisdiction Act, as incorporated by Act 8/2021, represents a significant step forward by recognising the duty to implement these adjustments in judicial proceedings.

This article recognises the right of persons with disabilities to information, the right to be accompanied by a trusted person from the first contact with authorities, and the right to interpretation and communication aids. These procedural modifications may be requested by any party to the proceedings, not just the defence.

---

# POLITICAL AND LEGAL FRAMEWORK

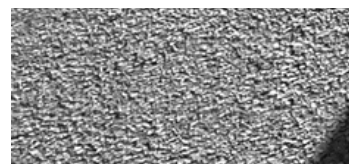
Finally, it is critical to emphasise the importance of data and statistics that enable us to analyse the situation of access to justice for persons with disabilities in Spain. These statistics must also be broken down by disability type. The first tool for developing measures and protocols that respond to the needs of the persons is information.



DEFENDANTS WITH DISABILITIES  
ACCESS TO JUSTICE



EXPERIENCES  
ABOUT THE ACCESS  
TO JUSTICE OF  
DEFENDANTS WITH  
DISABILITIES



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

# DEFENDANTS WITH DISABILITIES ACCESS TO JUSTICE

- 01** Defendants' with disabilities experiences
  - 02** Criminal justice professionals' experiences
  - 03** NGOs, human rights institutions, and support service professionals' experiences
  - 04** Brief analysis of patterns
- 
- A partial view of the same black and white photograph showing shadows of people on a paved surface, located at the bottom of the page.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

In order to examine, in Spain, the experience of different stakeholders about the access to justice of defendants with intellectual and/ or psychosocial disabilities - identifying barriers, challenges and areas of improvement they envision in it -, 22 semi-structures interviews were conducted (for detailed information see Annex 1) with

- persons with intellectual and/or psychosocial disabilities (N=7, including 1 women),
- lawyers (N=2),
- judges (N=4),
- prosecutors (N=2),
- police (N=2),
- support service professionals (N=3),
- NGO (N=2).

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



# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 01 Defendants' with disabilities experiences



7 interviews were conducted with persons with intellectual and developmental disabilities (6 men and 1 woman). All the persons interviewed are part of Plena Inclusion's support program for prisoners and ex-prisoners and all the interviews have been carried out in person.

---

**"MY LAWYER ADVISED ME THAT  
IT WAS THE BEST THING TO DO  
AND SAY. IT WOULD HAVE BEEN  
PREFERABLE IF SOMEONE HAD  
ASSISTED ME IN  
UNDERSTANDING WHAT I DIDN'T  
UNDERSTAND"**

---

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

## Experiences, challenges and areas of improvement identified

### Legal aid and provision of procedural accommodations

#### » Right to information and communication

In terms of the right to information, the majority of those polled stated that their first contact with the system occurred during their arrest, with the police.

They all reported that they had been read their rights and remembered two of them: the right to remain silent and the right to consult with a lawyer.

One of the interviewees, a person with an intellectual disability and mental health problems, recalls being told that he had the right to see a doctor.

Concerning the reading of the rights, all of them state that they were told "very quickly" and without explanation. When asked if they had understood them, only a few of them (3) said they had, partly because they had previous contact with the justice system. The majority of the police officers were unaware that the person had an intellectual disability (5), but two respondents reported that the police officers were aware of his disability (which is more visible physically) and that they explained things more slowly.

The remainder of the respondents stated that no specific action was taken.

When asked who was the first person who helped them understand what was going on, the respondents said it was their lawyer who explained the situation to them.

“

THERE WERE WORDS  
I'D NEVER HEARD  
BEFORE. THEY  
WOULDN'T LET ME  
SAY ANYTHING

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 01 Defendants' with disabilities experiences

### » **Person of trust and / or intermediary or facilitator**

Concerning the person of trust, the interviewees state that they were permitted to call a person of trust, as well as their family. However, with the exception of one of the interviewees, the family had only telephone contact and no face-to-face contact. During the trial, only one of the interviewees mentioned that her family was not permitted to attend the proceedings.

In terms of the figure of the facilitator, only two persons have had one in their trial because the majority of them (6) have intellectual disabilities that were discovered in the penitentiary center. However, in neither of the two cases did the facilitator act at the police station, but rather at the trial.

### » **Legal aid and right to access to a lawyer**

In terms of lawyers, they all stated that the lawyer was the person who helped them understand the process.

Although only two of the seven respondents thought their relationship with the lawyer was good, they said the lawyer always prepared what they needed to say and told them when they needed to say it.

Two persons did not say how they met him, three persons said he was a public defender, so they didn't have to pay for his services, one person said he was a fee-paying lawyer recommended by a friend, and one person said he first had a public defender, but because he didn't help him, he switched to a fee-paying lawyer, paying for his services.

They all stated that their relationship with the lawyer was excellent, that they communicated with them directly, and that he was the one who explained everything that was going on, allowing them to participate in the process. Everyone has said that the lawyer was explaining why they were there and what would happen next. Despite the fact that only two persons had facilitators who adapted legal operators' communications, the rest said their communication with the lawyer was good.

However, only one of the interviewees stated that, in addition to the lawyer, he received assistance from the respect module's psychologists and social worker.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 01 Defendants' with disabilities experiences

### » Requests for and offers of accommodations

In terms of the need for procedural adjustments in the proceedings, only the two persons who had a facilitator had them.

Plena inclusion provided the adjustments in both cases by making the lawyer aware of the need for a facilitator in the trial. Plena Inclusion provides this service through subsidies granted by public administrations, so there is no cost to the person with a disability.

In this case, the facilitator prepares a report on the person's support needs and presents it to the procedure's parties.

Only one respondent told us that she felt comfortable expressing that she had a disability. Another respondent stated that he did not want his disability to be known for fear of something bad happening.

As a result, 6 of 7 respondents did not have any procedural adjustments in their processes because they did not express that they were persons with disabilities, and the authorities never suspected that this might be the case.

All interviewees stated that they were never informed of their right to request procedural changes by the police, the public prosecutor's office, or the judges.

### » Right to interpretation and communication support

#### *Contact with police*

Only one interviewee mentioned that their first encounter with the police was in a violent setting.

The remaining interviewees stated that they had been treated normally and not differently because they had a disability.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 01 Defendants' with disabilities experiences

Although it is important to note that only one of the persons had a recognised disability at the time of the arrest, and another of the persons who commented that he received more friendly treatment from the police because he had known him since he was a child did not have a recognised intellectual disability at the time but did have a mental illness.

The first time they see a lawyer is when they are brought before a court, not at the police station. This means they had no support, legal advice, or the presence of a facilitator before being brought before a judge. In this regard, one of the interviewees stated that she was required to testify without the presence of his lawyer.

### *In prison*

Six of the seven persons interviewed have been incarcerated at some point in their lives. One of these six individuals was admitted to prison in a respectful module<sup>[23]</sup> for persons with disabilities before being transferred to the Psychiatric Prison Hospital due to a mental illness. This same person stated that inside the penitentiary centre, his own module companions explained how the penitentiary centre worked to him.

The remainder of those polled did not respond to whether this information was explained to them.

It is important to note that 5 of the 7 persons polled had their disability detected once while in prison. In these cases, prison officials suspect that the person has an intellectual disability and refer them to Plena Inclusión. Plena Inclusión conducts an assessment and, if the person has a disability that is not recognised, provides assistance in obtaining official recognition.

### *Contact with prosecutors and with judges*

Concerning contact with judges and prosecutors, all respondents stated that they were questioned and that they did not understand the questions.

When one respondent did not understand a question, he requested that it be asked again in a different way so that he could understand it. As a result, persons asked him questions more slowly and in simpler language, so he could understand and respond.

---

23 The respect modules are an internal separation unit of a penitentiary centre where the inclusion of the inmate is voluntary and implies the acceptance of the rules of the module in relation to the personal area, the care of the environment, the area of interpersonal relations and the area of activities. It is built on a structure of inmate participation.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 01 Defendants' with disabilities experiences

Two of the respondents were supported by the facilitator, so they were the ones who explained the question to the person with a disability in a way that they could understand it. The facilitator teaches the legal operators how to make communication with the person with a disability more accessible, but they are not always successful.

In those cases, the legal operator asks the question or expresses his/her intention to the person with a disability, and the facilitator asks the same question in a more accessible manner.

Prosecutors and judges, according to all respondents, spoke "*very quickly and in very complicated language*." This made responding to them extremely difficult.

One of the persons expressed that, although it was not known that he had an intellectual disability, it was known that he had a "mental illness", so the judge did not give any credibility to his answers. He was convicted and sent to a prison psychiatric facility.

### » **Adopting procedures for hearings and right to be present at trial**

All respondents had personally attended the trial. Two respondents stated that the courtroom they were in during the trial was very large, and that the judge sat on a higher step, giving them a sense of superiority.

One respondent stated that his mother was not permitted to enter, making him feel very insecure. One respondent stated that he had no idea who the persons speaking to him were during the trial.

The two persons who were assisted by the facilitator, on the other hand, stated that they were sitting next to her and their lawyer, which made it easier for them to understand the trial.

### » **Remote hearing**

Only one respondent stated that he had once attended court online.

In relation to this, he stated that he was permitted to speak with his lawyer, but that the lawyer was not present in person with him, but rather in court.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 01 Defendants' with disabilities experiences

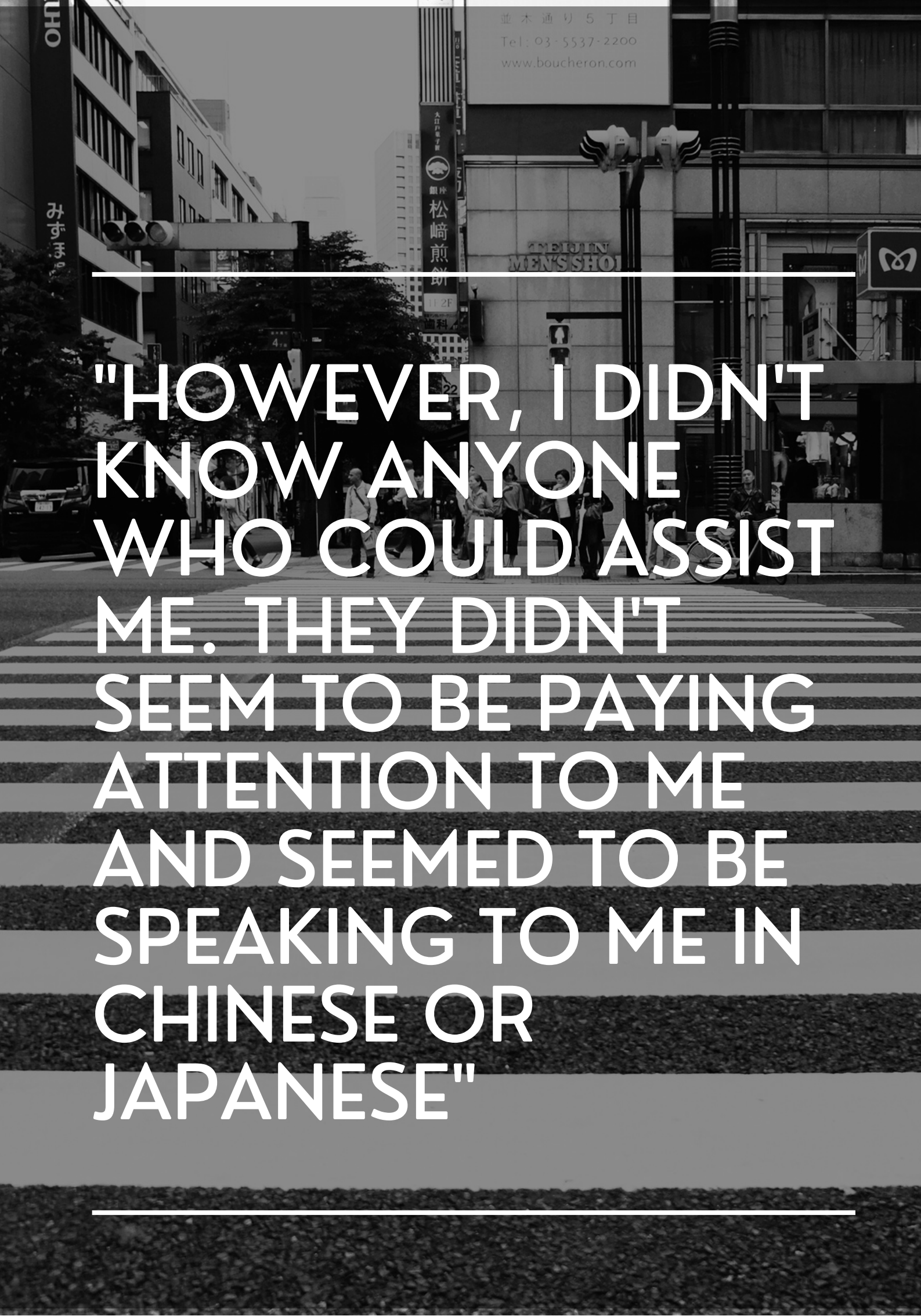
He recalls seeing someone sitting on the screen but not knowing who it was, and being told at that point that he would speak with his lawyer. He stated that he does not want to go through another telematic trial because you cannot see faces and do not know who is speaking, which makes him feel more insecure.

### **Voices heard and positive and/ or negative experiences**

In terms of their participation in the procedure, only one of the seven persons interviewed said they felt heard and understood by the professionals.

The majority of those polled had a negative experience in this regard.

*One of the respondents said: "I did not receive any assistance, and no one informed me that Plena Inclusión could assist me later on. My lawyer advised me that it was the best thing to do and say. It would have been preferable if someone had assisted me in understanding what I didn't understand, as happened later with Plena Inclusión. However, I didn't know anyone who could assist me. They didn't seem to be paying attention to me and seemed to be speaking to me in Chinese or Japanese. There were words I'd never heard before. They wouldn't let me say anything".*



---

"HOWEVER, I DIDN'T  
KNOW ANYONE  
WHO COULD ASSIST  
ME. THEY DIDN'T  
SEEM TO BE PAYING  
ATTENTION TO ME  
AND SEEMED TO BE  
SPEAKING TO ME IN  
CHINESE OR  
JAPANESE"

---

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 01 Defendants' with disabilities experiences

### **Main recommendations**

In terms of lessons learned and recommendations from persons with disabilities, they can be summarised as follows:

1. To be informed that there are non-governmental organisations that can support them.
2. The importance of legal operators not speaking so quickly.
3. The importance of not using technical language with difficult words or jargon.
4. To have a person who can explain what is happening and what is going to happen.
5. The importance of having information at the moment of entering the penitentiary centre that allows you to know how it works and the rules.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences



Interviews with criminal justice professionals included four judges, two prosecutors, one member of the National Police, one member of the Civil Guard, and two lawyers.

The interviews were conducted both remotely and in person.

---

**"IN MANY CASES, WHETHER PROCEDURAL ADJUSTMENTS ARE MADE DEPENDS ON THE SENSITIVITY AND TRAINING OF LEGAL PRACTITIONERS"**

---

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### Experiences, challenges and areas of improvement identified

#### Main challenges identified

In terms of the main challenges identified by professionals, the first and unanimously among interviewees is the difficulty in detecting the intellectual disability.

Another issue they identify is a lack of training for professionals involved in the justice system about intellectual disability.

When a person is identified as having a disability, however, procedural adjustments are not always made because most professionals do not know how to implement them or the resources that are available in this regard.

In the same way, they face the challenge that there is no criminal legislation that expressly recognises the need for procedural adjustments, even though the civil regime is used in addition.

The difficulty for persons with disabilities in understanding the criminal procedure or its consequences has also been identified as a challenge; it is extremely difficult to understand everything that happens in a police or judicial context



“



NO ONE GUARANTEES  
THAT PROCEDURAL  
ADJUSTMENTS WILL BE  
ADOPTED

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### **Process of identification of disability**

As mentioned in the previous section, all of the professionals interviewed stated that the majority of persons with disabilities go through the entire procedure without their disability being recognised. This is due to a lack of professional training, as well as a lack of detection or assessment tools to detect this.

As a result, the disability is not identified, and no procedural modifications are made. In those cases where the disability is identified, interviewees agree that it is usually the defendant's own family who alerts them to the fact that they have an intellectual disability.

When it is determined that the person may have a disability, a forensic doctor's assessment is requested. However, because this assessment is focused on determining whether the person is criminally responsible, it does not address whether the person requires procedural adaptations at any point.

#### **» Contestation of the assessment**

In relation to the forensic doctor's report, the accused person has the right to state that he or she disagrees with the contents of the report and to present evidence in support of his or her claim. A report prepared by a forensic doctor at the expense of the individual, which is not usually done due to the high economic cost.

#### **» Consequences of assessments**

As previously stated, the purpose of these reports is to determine whether the person understands the act he/she is performing and whether he/she can act in accordance with his/her understanding. This is used to determine a person's criminal responsibility and, if the person is not found to be criminally responsible, to establish security measures.

Security measures are administered in penitentiary psychiatric or psychiatric hospitals in Spain. Despite the fact that the regulations mention "special education centers," these do not exist in practice.

However, the professionals interviewed all agreed that its content does not address whether persons with disabilities require any procedural adjustments.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### Information about accommodations

Concerning the information on disability obtained during the procedure, all of the persons we interviewed stated that if the police discover that the person has an intellectual disability, this is noted in the police report. As a result, anyone with access to the file may be aware that the accused has an intellectual disability.

In this case, police detection of the person's intellectual disability is critical because it allows the disability to be taken into account throughout the entire procedure.

However, there is no electronic system in Spain that allows this information to be shared with other agents outside the process, and no information on the procedure's support measures is available.

If the person's disability has influenced the sentence in subsequent proceedings, it is recorded and appears in the criminal record.

The Civil Guard, for example, has an integrated operating system into which all proceedings are entered. This system allows you to mark whether or not a person has a disability and note in the comments section if he or she requires procedural adjustments; however, this system is only accessible to the Civil Guard.

The professionals interviewed did not agree on whether a case management system is useful in the case of persons with disabilities. Although the majority of them agreed that being aware of a person's need for procedural adjustments would be very useful, the professionals were concerned that this type of system could lead to discrimination.

They also believe it is extremely difficult to implement, first due to the difficulty of management in Spanish territory due to the autonomous regions (some autonomous regions have delegated powers in matters of justice), and secondly due to the complications that may arise in relation to data protection.

#### » Use of force or coercion

In terms of the use of force based on disability, all respondents stated that they were unaware of any such cases in their experience.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

However, one of the respondents (a judge) stated that there may be instances of restraint due to violent situations or out-of-control impulses as a result of the person's disability and stressful situation. He did, however, mention that in these cases, the police usually contact the health services, who are in charge of providing the person with the necessary specialised care.

### » **Provision of procedural accommodations**

Although everyone recognises the importance of making procedural changes, when asked what changes they make in the course of their work, they all mention trying to explain things more clearly.

Only three persons (a lawyer, a civil guard, and a judge) stated that when they encounter cases involving persons with intellectual disabilities, they use the facilitator figure.

One of the judges stated that he implemented measures such as not having the accused wear handcuffs during the hearings and allowing him to sit next to his lawyer.

One of the prosecutors stated that when he knew the person had a disability, he did not use the figure of speedy trials to guarantee all of the person's rights.

Two of those interviewed (a lawyer and a judge) stated that they request forensic medical evidence as a procedural adjustment, but not to determine the person's support needs, but rather to determine whether the person can be declared criminally responsible.

Two of the interviewees also mentioned that when they have a person with a disability, they consult the person's relatives about the person's needs in addition to trying to explain everything in an accessible way.

Four of the interviewees (a judge, a lawyer, a police officer, and a civil guard) responded that they want the trial documents made easier to read.

### » **Right to information**

In terms of the right to information, respondents were asked when the accused is informed of his or her rights and whether this is done in the same way for persons with disabilities.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

Persons told us that this could happen in two different scenarios. On the one hand, if the person is arrested by the police, he or she is informed orally of his or her rights at the time of arrest. They are then taken to the police station, where they are informed of their rights in writing and asked to sign a document stating that they have been informed. In this case, it is up to the police to inform the person with disability of his or her rights. When we asked if this was done similarly for persons with disabilities, everyone said that the most important thing is to see if the disability is detected. There will be no accommodation if it is not detected. If it is discovered, the police should attempt to express their rights verbally and in an accessible manner. However, this is dependent on the officer's willingness and sensitivity. If it is discovered that persons have a disability at the time of handing over their rights in writing at the police station, both the national police, the civil guard, and the municipal police have information on the rights in easy-to-read form. Both the national police and the civil guard have told us that if they notice a disability, they contact organisations that provide a facilitator service so that the person has one from the start.

On the other hand, the person may be summoned to court to make a statement without being arrested. In this case, the accused is informed of his rights by the judge or an employee of the administration of justice. However, unlike the state security forces, these professionals do not have material that is easy to read.

It is the responsibility of the person informing about the rights in both cases to ensure that the person with a disability understands them.

In terms of other forms of communication support, such as the use of technology as a means of support or alternative and augmentative means of communication, all of those polled said they were unaware of any tools for informing defendants about their rights that provide this type of assistance.

### » **Right to interpretation and communication support – questioning**

In terms of questioning, practitioners have told us that they try to express themselves as simply as possible. In cases where there is a facilitator, the prosecutor, judge, or lawyer asks the question, and it is the facilitator who adapts the question so that it can be answered by the person with a disability. However, if there is no facilitator, no other adaptations are made to the questioning for accessibility.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

Regarding interrogations by videoconference, all the interviewees responded that it is not possible to guarantee the effective participation of the person with a disability or that all their rights are guaranteed. Therefore, they consider that under no circumstances should they be carried out telematically when there is a person with an intellectual disability.

### » Requests for and offers of accommodations

According to the regulations, procedural adjustments may be requested by the parties or ex officio by the judge. The Public Prosecutor's Office may also request it. However, according to the findings of the professional interviews, only one of the judges states that they request or have requested the figure of the facilitator in cases involving persons with disabilities. In most cases, the defence lawyer requests procedural changes.

### Insanity defence

If it is determined that the person with disability may have serious psychopathology, a forensic doctor's assessment examination is requested to determine if the person understood the facts and could act on that understanding.

In this case, the person can be partially or completely exonerated, implying that the person is not criminally responsible. In both cases, a security measure, whether custodial or non-custodial, is imposed as a result. However, the process is carried out in the same manner as if no exoneration had been granted, with the person with a disability subject to all stages of the criminal proceedings.

However, this defence of insanity can be transformed into procedural unaccountability. In these cases, the person not only does not understand the act, but also the process, making participation impossible.

In these cases, the concept of "free dismissal" is established. As a result, the individual is released. In cases of free dismissal, there is no security measure. This is due to a legal vacuum because the Spanish Constitution states that a security measure cannot be established without a sentence, but there can be no sentence because the procedure is not followed.

Nonetheless, the case is transferred to the civil sphere for protective measures to be implemented.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### **Attitudes and training / awareness**

Respondents unanimously agreed that all parties involved in the procedure bear responsibility for making the judicial system more accessible to persons with intellectual disabilities. Both from the institutions themselves and from those who work within them, such as judges, prosecutors, lawyers, police officers, and so on.

It is also the responsibility of legislators to make the necessary changes to the laws to ensure access to justice for persons with disabilities.

It is critical to emphasise the responsibility of the government, which must provide the necessary resources through its ministries, both autonomous and local.

On the other hand, all respondents agreed that there is a significant need for increased CRPD and disability awareness and training in the criminal justice system. As we have seen, in the absence of disability detection and the necessary resources, many of the procedure's adaptations rely on the sensitivity and training of the legal agents. Lack of knowledge and information about the rights of persons with disabilities can lead to serious violations of those rights, which is why they must be in accordance with the CRPD.

There is little agreement among the interviewees about how persons with disabilities are perceived by legal operators. Only one of the professionals we interviewed stated that she believes that persons with disabilities are viewed as a problem in the intervention, incapable of making decisions, and that they are infantilised to a large extent, thus violating their rights.

The rest of those interviewed agree that, since the 2021 legal reform, attitudes toward persons with disabilities have shifted. The perception that they are unable to make decisions is being dispelled, rendering them invisible in the procedure.

However, one of the interviewees pointed out that viewing persons with disabilities as equal to the rest of the population carries the risk of not giving them better consideration, such as not adapting procedures for their full participation.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### Main recommendations

1. That a legislative reform be carried out to incorporate all measures aimed at ensuring the rights of persons with disabilities into criminal legislation. This legislative reform should strengthen the role of the facilitator so that it can be implemented uniformly across the territory.
2. A statute of guarantees for the accused, similar to the statute for victims in Spain, should be drafted to recognise all the rights of persons with disabilities accused of committing a crime and how to act in such cases. This would ensure that persons with disabilities could participate in proceedings on an equal footing as everyone else, with all rights and guarantees, including procedural adaptations.
3. That an action protocol be developed in collaboration with persons with disabilities, non-governmental organisations, and legal agents to protect the rights of persons with disabilities.
4. The facilitator's figure should be guaranteed in all procedures.
5. It is critical to develop practical and agile mechanisms for detecting disability from the moment a person comes into contact with the criminal justice system.
6. That there is better coordination among justice agents.
7. Training for all legal operators, emphasising the importance of this. It is critical that persons with disabilities who have been through the criminal justice system serve as trainers in order to share their experiences and have a greater impact on those who are trained.
8. There should be more national cohesion and promotion of existing resources to assist persons with disabilities.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

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



In this section, interviews were conducted with professionals in this field, including two from two non-governmental organisations, a psychologist, a social worker, and a forensic psychologist.

The interviews were conducted both remotely and in person.

---

**“PEOPLE WITH INTELLECTUAL DISABILITIES FIND IT VERY DIFFICULT TO ACCESS JUSTICE BECAUSE THEY ARE NOT BELIEVED. THEY ARE NOT CONSIDERED AS PROTAGONISTS OF THE PROCESS”**

---

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

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

## Experiences, challenges and areas of improvement identified

### Equality Perception's

We asked the interviewees if they thought persons with disabilities were treated the same as other citizens, and they all agreed that they did not.

This is often due to a lack of awareness that the person has a disability, but it is also due to misinformation about how these persons should be supported, and thus no procedural adjustments are made.

One respondent, however, stated that in the prison environment, persons who have been identified as having a disability are treated more leniently, and the rules are tailored to them.

We were told that the NGOs believe that the problem of access to justice should be solved within the justice system. All respondents agreed that this is a problem that should be addressed by the administration of justice, which is in charge of ensuring person's rights.

However, they emphasise that if NGOs do not promote this task, it will not be completed.



“

LACK OF UNDERSTANDING OF THE PROCEDURE IS OFTEN CONFUSED WITH LACK OF COOPERATION WITH THE JUSTICE SYSTEM.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

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

## » Complaints

We asked if they had heard of any complaints or reports about access to justice for persons with disabilities in their experience, and all of the interviewees said yes.

The majority of complaints about access to justice are related to persons with disabilities' lack of understanding of the information, the judicial procedure, or the penitentiary itself. We've also heard of cases where certain accommodations were denied, such as denying professionals the ability to act as facilitators during a procedure.

On the other hand, in terms of reports, they have mentioned the Ombudsman's Office reports on this issue, which were mentioned earlier in this report.

The report "*A cada lado*" by Plena Inclusión, which deals with the situation of persons with disabilities in prisons, was also mentioned. This study emphasises the invisibility of persons with disabilities in prison. It also states that it is necessary to have tools for detecting support needs that are simple to use for legal operators with minimal training and that allow for the implementation of protocols for action in collaboration with organisations working in this field, such as Plena Inclusion, to ensure equal opportunities. In this regard, the study reveals that only 31.5 percent of the 743 procedures studied took disability into account at some point. In those cases where it has been considered, the highest percentage of cases are concentrated in persons with disability certificates who have severe disabilities (more than 65 percent and more than 75 percent). It also emphasises that early intervention at the start of the procedure is critical in determining and establishing the necessary procedural adjustments to ensure the person's real participation as well as the exercise of their right of defence.

It is also necessary to raise awareness of the right to request procedural changes in both the police and the courts. As an inherent part of the right to defence, adjustments in both police and judicial proceedings.

It is also important to note that in 90.2 percent of the cases examined in the report, the person was sentenced to a custodial sentence.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

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

## Procedural accommodations

### » Accessible Information

When asked if they thought information was provided in a way that was accessible to persons with disabilities, everyone interviewed said no, that no adaptations were made to help persons with disabilities understand the information.

In terms of the prison environment, although there are documents with information adapted for easy reading, such as "Prison step by step," which explains all the necessary information to be able to adapt to the prison environment, this document is not given to persons with disabilities who enter prison.

It is therefore the responsibility of non-governmental organisations (NGOs) to provide them with these adapted documents and to explain the information they require.

### » Support services

Concerning support services, we inquired whether there were services for persons with disabilities to access legal assistance, information, or psychological support, and were told that there are only those provided by NGOs working on the issue, and that in Spain, only Plena Inclusión and its associated entities work with persons with disabilities in legal proceedings and in prison.

There are no other organisations known to provide these services. However, NGOs lack the resources to be present in all cases involving persons with disabilities, resulting in many persons with disabilities going through court proceedings alone.

## Identification of disability

Regarding the identification of intellectual disability, all interviewees agree that it is a problem that must be addressed because persons with disabilities are subjected to criminal proceedings without their disability being recognised.

We also asked if they had any experience with cases where disability was misinterpreted as a lack of cooperation, and they said yes.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

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

It is frequently stated that a person does not understand because they do not want to, or that they do not cooperate because they are unwilling, when in fact the reason is a lack of understanding.

They also mention that these cases also occur a lot, especially with persons with intellectual disabilities who also have a drug consumption problem, which generates behaviours that are usually considered as lack of cooperation.

## » **Awareness and attitudes**

When asked how professionals in the criminal justice system perceive persons with disabilities, all respondents said there is a lot of prejudice in this regard.

However, one respondent stated that in his experience, this response varies greatly.

There are those who believe that persons with disabilities have no need for assistance in the justice system, those who believe that persons with disabilities have no idea what to do, and those who are very sensitive to the issue and are aware that persons with disabilities require procedural adjustments.

This is due to a general lack of knowledge and information about the rights of persons with disabilities, which creates a huge problem of situations where their rights are violated. As a result, training is critical in this area.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

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

## Best practices

We asked them if they knew of any good practices in relation to this problem, and they responded that as a good practice, we should mention Plena Inclusion's program of attention to prisoners and ex-prisoners, in which accompaniment is provided not only in prisons but also after their release and support is given in legal proceedings.

However, as previously stated, Plena Inclusion and its associated entities are the only organisations that provide this type of support for persons with intellectual disabilities.

## Main recommendations

1. The facilitator's figure. It is critical that this figure be developed and that it is guaranteed that a facilitator can intervene in all procedures involving a person with disability. In addition, the facilitator should be present throughout the entire procedure.
2. Training, it is critical to be able to train legal practitioners on the rights of persons with disabilities.
3. To have tools and systems that enable us to detect disability in persons who are involved in legal proceedings.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 04. Brief analysis of patterns

- When there is a suspicion of a disability in the person under investigation or accused, Spanish criminal legislation does not provide for instruments that allow the person to assess the support that the person requires for full participation in the criminal proceedings. It also makes no provision for procedural changes to avoid defencelessness and ensure equality in the exercise of the right to effective judicial protection and defence.
- There is no regulatory development of the recognise procedural adjustments in the civil sphere. The figure of the facilitator must be developed for it to be implemented and for all persons who need it to have access to it without causing economic hardship for the person with a disability.
- If the necessary adaptations are not made, persons with disabilities face a process that is very difficult for them to understand. They have told us that they do not understand the process and are unaware of their rights as defendants. This is largely due to the fact that all of the agents involved in the procedure speak in highly technical terms.
- The legal actors' lack of knowledge and awareness about the rights of persons with disabilities, particularly the necessary procedural adjustments. Frequently, legal officers are aware that procedural adjustments exist but are unsure how to access or implement them.
- The failure to detect intellectual disability is one of the most significant barriers that persons with disabilities face. Only one of the persons interviewed was identified as having an intellectual disability. Another individual only had a diagnosed mental illness. The remaining interviewees have been recognise in prison, which means they have gone through the entire criminal procedure without any procedural modifications.
- A forensic doctor's examination is requested when a person is discovered to have an intellectual disability. This test, however, is designed to assess the person's imputability and makes no mention of the person's support needs.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## Brief analysis of patterns

- There is no case management system in place to report that a person has an intellectual disability and requires specific procedural modifications. As a result, many persons have adjustments implemented in one criminal proceeding but not in another.
- Although there are adapted tools (such as easy-to-read documents) to inform persons of their rights or prison rules, they are rarely used. However, resources for persons who require additional communication support, such as alternative and augmentative communication systems, are not available.
- The characteristics of persons with disabilities are frequently misinterpreted as uncooperative behaviour in police investigations or court proceedings. This is largely due to legal operators' lack of understanding of disability and its characteristics. For example, the need for more time to answer questions, or a lack of understanding of the questions, resulting in the person failing to answer what is being asked.
- It is very difficult for the facilitator to begin acting from the first contact with the criminal justice system, but at the trial, causing the person to have his or her first contact with the criminal justice system without any adjustment.

# 04

## CONCLUSIONS AND RECOMMENDATIONS

---

# CONCLUSIONS AND RECOMMENDATIONS

## 01 Conclusions

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

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

Since the legal reform of 8/2021, it has been recognised in Spain that all persons, including those with disabilities, have legal capacity.

Certain regulations, however, continue to be in conflict with this principle.

As stated in the report, there are legal determinations that allow persons with disabilities to be considered not criminally responsible, resulting in the establishment of security measures.

Spain must still amend these regulations in order to align its domestic legislation with the Convention on the Rights of Persons with Disabilities.



“



IT IS IMPORTANT TO HIGHLIGHT THE SEVERE LACK OF DISABILITY SCREENING.

# CONCLUSIONS AND RECOMMENDATIONS

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

In relation to this principle, even though Spanish legislation states that all legal operators must be trained on the rights of persons with disabilities from a CRPD perspective, we can observe a lack of knowledge of these rights, which leads to a lack of awareness of the need to make procedural adjustments, or, in the case of awareness, not knowing how to make them.

It is also important to highlight the severe lack of disability screening, which means that persons with disabilities must go through legal proceedings without any procedural accommodations.

On the other hand, there is no criminal legislation that recognises procedural adjustments, though a supplementary application of civil regime article 7 bis should be made.

Furthermore, there has been no regulatory development of this legislation. The figure of the facilitator must be developed in order for it to be implemented and for all persons who need it to have access to it without causing economic hardship for the person with a disability.

Although recognised by Article 7a of the civil system, the figure of the facilitator is not recognised in the criminal system. Furthermore, there is no regulatory development that specifies who can be facilitators, what professional training they should have, or how they should perform their duties.

Procedural adjustments are typically requested by the defence, though the rules state that they can be requested by any party, including ex officio.

Finally, it is important to note that we were able to confirm, as a result of the interviews, that there are no communication tools available for those who require, for example, alternative or augmentative means of communication.

## CONCLUSIONS AND RECOMMENDATIONS

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

Regarding the right to information, despite the fact that the law expressly states that persons must be informed of their rights in an accessible manner, including by acknowledging the obligation to use tools such as easy reading, we have found that persons with disabilities are not informed in an accessible manner about their rights, the procedure they face as accused persons, or the rules of the penitentiary establishments.

Although we are aware that there are tools designed to make this information easier to read, they are rarely used. In this regard, tools such as easy-to-read rights in police courts are not always used prior to the trial.

On the trial side, there are initiatives that allow sentences and communications to be adapted for easy reading, but this is not possible in all territories or courts in Spain. Furthermore, the adaptation service is provided by non-governmental organisations (NGOs), which are unable to respond to all requests.

In prisons, there are also easy-to-read documents that explain how things work and the rules, but these are also rarely used.

On the other hand, there are no resources available to help persons who require other forms of communication.

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

Despite the fact that Spanish law recognises everyone's right to participate in legal proceedings and provide evidence to prove their innocence, the results show that the majority of persons with disabilities believe they have been unable to participate in the proceedings. This is a direct violation of their right to defence.

In terms of the presumption of innocence, while it does not occur in the majority of cases, there are times when behaviour caused by disability is viewed as suspicious or as a lack of cooperation on the part of the person.

# CONCLUSIONS AND RECOMMENDATIONS

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

In terms of access to a lawyer, the legislation recognises that all persons, including persons with disabilities, have the right to have one, and if they can't afford one, they have the right to free legal advice. Although all persons with disabilities have the right to a public defender or a private lawyer of their choice, public defenders are not always disability-sensitive, so NGOs work hard to promote procedural adjustments through the lawyer in cases where they are aware of them.

However, in the absence of organisational support, a lack of awareness and knowledge of the rights of persons with disabilities can result in serious violations of their rights. As a result, in practice, this right is not fully guaranteed.

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

Professional training is provided by public administrations such as the judiciary and the Public Prosecutor's Office, as well as professional associations such as bar associations. However, the majority of the training is provided by non-governmental organisations (NGOs) working in the field.

Even so, because these trainings are usually optional, their scope is limited, and they are usually attended by persons who are sensitive to the subject.

More and more extensive training on the rights of persons with disabilities is required. It is also critical that the trainings include persons with disabilities who can share their own experiences in order to have a greater impact.

# CONCLUSIONS AND RECOMMENDATIONS

## 02. Recommendations

- Criminal laws should be changed to recognise the rights of persons with disabilities and the need for procedural modifications. Persons with disabilities should be consulted and included in discussions about how to make the justice system more accessible to them (for instance, by participating in training actions for criminal justice professionals).
- Ensure and develop the figure of the facilitator so that persons who require one can rely on it throughout their legal proceedings and from the first contact with the criminal figure.
- Create a procedure for professionals who assist persons with disabilities in legal proceedings.
- Creation of a statute for the accused, just as there is a statute for the victim in the Spanish legal system, which guarantees the rights of persons with disabilities who are accused or investigated.
- There should be more coordination among the agents of justice at the state, regional, and local levels.
- Create practical mechanisms to detect intellectual disability early in the procedure, ensuring that all necessary measures are taken to ensure that the person with a disability can go through the criminal procedure on an equal footing with the rest of the persons.
- Training legal practitioners on the rights of persons with disabilities and the Convention on the Rights of Persons with Disabilities.
- More information on existing support resources for persons with disabilities, as well as how to access and use them, should be available.
- That persons with intellectual disabilities are given accessible information about their rights, what will happen in the procedure, the rules of the places of detention, and that they can rely on the support of organisations, starting with their first contact with the penal system.

# 05

## REFERENCES

---

## REFERENCES

United Nations. (2006, December 13). Convention on the Rights of Persons with Disabilities.

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

United Nations. (2020). International principles and guidelines on access to justice for persons with disabilities.

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

United Nations. (2008). Backgrounder: Disability Treaty Closes a Gap in Protecting Human Rights. Available at:

<https://www.un.org/development/desa/disabilities/backgrounder-disability-treaty-closes-a-gap-in-protecting-human-rights.html>



# ANNEXES

---

# ANNEXES

## Annex 1 - Profile of the interviewees

ID	Interviewee*	Sex	Age	Duration of the interview	Years when had contact with the justice system	Type of interview (remote, on-site, other)	Other relevant information
ES/DI/M/01	Person with intellectual disabilities	Male	34	60 minutes	2013-2023	On-site	Served prison sentence
ES/DI/M/02	Person with intellectual disabilities	Male	24	90 minutes	Since 2013	On-site	Is serving a sentence in prison
ES/DI/M/03	Person with intellectual disabilities	Male	23	45 minutes	2014-2023	On-site	Served prison sentence
ES/DI/M/04	Person with intellectual disabilities	Male	47	60 minutes	He does not remember since when	On-site	Served prison sentence

# ANNEXES

## Annex 1 - Profile of the interviewees

ID	Interviewee*	Sex	Age	Duration of the interview	Years when had contact with the justice system	Type of interview (remote, on-site, other)	Other relevant information
ES/DI/F/05	Person with intellectual disabilities	Female	29	50 minutes	Since 2013	On-site	is in a situation of semi-liberty
ES/DI/M/06	Person with intellectual disabilities	Male	34	90 minutes	Since 2016	On-site	Is serving a sentence in prison
ES/DI/M/07	Person with intellectual disabilities	Male	41	90 minutes	Since 2017	On-site	Serving time in a prison psychiatric facility
ES/HR/M/01	NGO	Male	41	90 minutes	Since 2009	remote	is the coordinator of the prisoner programme

# ANNEXES

## Annex 1 - Profile of the interviewees

ID	Interviewee*	Sex	Age	Duration of the interview	Years when had contact with the justice system	Type of interview (remote, on-site, other)	Other relevant information
ES/HR/F/02	NGO	Female	31	60 minutes	Since 2021	remote	is the coordinator of the prisoner programme
ES/J/M/01	Prosecutor	Male	48	90 minutes	Since 2000	remote	Deputy Prosecutor for the Protection of Persons with Disabilities
ES/J/M/02	Judge	Male	58	120 minutes	Since 1990	On-site	judge of the Second Chamber (Criminal) of the Supreme Court
ES/J/M/03	Judge	Male	61	120 minutes	more than 30 years	remote	Magistrate of the Provincial Court, he is the disability delegate for the High Court of Justice of Madrid.

# ANNEXES

## Annex 1 - Profile of the interviewees

ID	Interviewee*	Sex	Age	Duration of the interview	Years when had contact with the justice system	Type of interview (remote, on-site, other)	Other relevant information
ES/J/M/04	Judge	Male	64	60 minutes	Since 1984	remote	Member of the General Council of the Judiciary. President of the Justice and Disability Forum
ES/J/F/05	Judge	Female	49	90 minutes	Since 2004	remote	Magistrate. Associate of Judges for Democracy and member of the Board of Directors of the Criminal Policy Study Group.
ES/J/M/06	Prosecutor	Male	61	180 minutes	Since 1993	remote	Deputy Disability Prosecutor
ES/L/M/01	Lawyer	Male	35	60 minutes	Since 1993	On-site	Public defender

# ANNEXES

## Annex 1 - Profile of the interviewees

ID	Interviewee*	Sex	Age	Duration of the interview	Years when had contact with the justice system	Type of interview (remote, on-site, other)	Other relevant information
ES/L/F/02	Lawyer	Female	44	65 minutes	Since 2018	On-site	Working with persons with intellectual disabilities
ES/P/M/01	Police	Male	42	90 minutes	Since 2015	On-site	Civil Guard
ES/P/M/02	Police	Male	44	90 minutes	Since 2010	On-site	National Police
ES/S/F/01	Social worker	Female	36	50 minutes	Since 2013	On-site	Social worker in a penitentiary center

# ANNEXES

## Annex 1 - Profile of the interviewees

ID	Interviewee*	Sex	Age	Duration of the interview	Years when had contact with the justice system	Type of interview (remote, on-site, other)	Other relevant information
ES/S/M/02	Forensic Psychologist	Male	52	180 minutes	Since 2003	remote	extensive experience with persons with disabilities
ES/S/F/03	Psychologist	Male	37	90 minutes	Since 2018	On-site	prison psychologist