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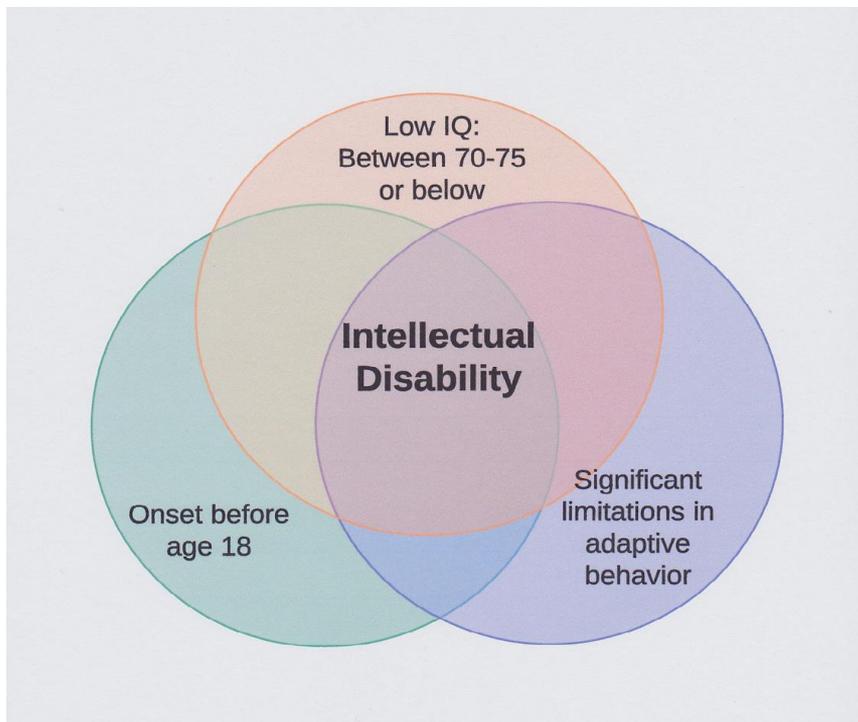
Bulgaria

What is the state-of-play in Bulgaria?

INTELLECTUAL AND PSYCHOSOCIAL DISABILITY

Definitions and implications
in the context of the
criminal justice system

WHAT IS INTELLECTUAL DISABILITY?



- **Intellectual functioning:** challenges in reasoning, problem solving, planning, abstract thinking, judgement, academic learning, and learning from experience
- **Adaptive functioning:** failure to achieve age appropriate standards of behavior

WHAT IS INTELLECTUAL DISABILITY?

Severity Category	Approximate Percent Distribution of Cases by Severity	DSM-5 Criteria (severity classified on the basis of daily skills)	AAIDD Criteria (severity classified on the basis of intensity of support needed)
Mild	85%	Can live independently with minimum levels of support.	Intermittent support needed during transitions or periods of uncertainty.
Moderate	10%	Independent living may be achieved with moderate levels of support, such as those available in group homes.	Limited support needed in daily situations.
Severe	3.5%	Requires daily assistance with self-care activities and safety supervision.	Extensive support needed for daily activities.
Profound	1.5%	Requires 24-hour care.	Pervasive support needed for every aspect of daily routines.

Source: *Mental Disorders and Disabilities Among Low-Income Children*. Committee to Evaluate the Supplemental Security Income Disability Program for Children with Mental Disorders; Board on the Health of Select Populations; Board on Children, Youth, and Families; Institute of Medicine; Division of Behavioral and Social Sciences and Education; The National Academies of Sciences, Engineering, and Medicine; Boat TF, Wu JT, editors. Washington (DC): National Academies Press (US); 2015 Oct 28.

WHY IS INTELLECTUAL DISABILITY IMPORTANT IN THE CONTEXT OF CRIMINAL JUSTICE SYSTEM?

- Intellectual disability can influence the ability of suspects and accused to understand questions, articulate their answers and appreciate their implications.
- People with intellectual disability may be more prone to suggestibility.
- The ability to make informed and rational decisions can be severely impaired.
- People with intellectual disability are likely to fail to fully appreciate the consequences of their participation in this type of judicial proceedings and believe that if they are innocent then the system will protect them regardless of their own statements.

WHAT IS PSYCHOSOCIAL DISABILITY?



- The experience of people with impairments and participation restrictions related to mental health conditions.
- Both functional and cognitive impairments.
- Episodic, invisible and often not well identified.

WHY IS PSYCHOSOCIAL DISABILITY IMPORTANT IN THE CONTEXT OF CRIMINAL JUSTICE SYSTEM?

- People affected by psychosocial disabilities may find it challenging to set goals and make plans.
- Certain impairments can interfere with the ability to be flexible, the ability to monitor one's own behaviour and can cause people to become confused.
- Many people who have mental health conditions are easily distracted by environmental stimuli and find it difficult to focus or concentrate.
- Psychosocial disability relates to a deficit of the working memory.
- People with psychosocial difficulties often try to manage or ignore their impairments in order to appear 'normal' and avoid the stigma experience.

INTERNATIONAL AND
SUPRANATIONAL STANDARDS ON
RIGHTS OF PEOPLE WITH
DISABILITIES

... and where do people with
intellectual and psychosocial
disability fit in?

European Convention on Human Rights (ECHR)

*Article 1: "The High Contracting Parties shall secure to **everyone** within their jurisdiction the rights and freedoms defined in ... this Convention."*

Intellectual and psychosocial disabilities in particular are most commonly detected in the ECtHR case-law, when it comes to violations of **Article 3** (prohibition of inhuman or degrading treatment) and **Article 6** (right to a fair trial).

European Convention on Human Rights (ECHR)

- Three particular elements are to be considered in relation to the compatibility of an applicant's health with his stay in detention:
 - the medical condition of the prisoner,
 - the adequacy of the medical assistance and care provided in detention, and
 - the advisability of maintaining the detention measure in view of the state of health of an applicant. (*Stawomir Musiał v. Poland*)
- Detaining a person, suffering from a mental illness, in a normal prison, where he was treated as an ordinary prisoner, is also considered a violation of Article 3 (*Dybeku v. Albania*)

European Convention on Human Rights (ECHR)

- ECtHR observed that prisoners with serious mental disorders and suicidal tendencies required special measures geared to their condition, regardless of the seriousness of the offence of which they had been convicted. (*Rivière v. France*)
- In cases concerning compulsory confinement, a person of unsound mind should be heard either in person or, where necessary, through some form of representation. A decision on a person's mental capacity, based purely on documentary evidence, is deemed unreasonable and in breach of the principle of adversarial proceedings enshrined in Article 6 § 1 of the Convention. (*Shtukaturov v. Russia*)

Convention on the Rights of Persons with Disabilities (CDPR)

- The Convention does not provide a closed definition of disability and that is a conscious choice.
- **Article 13. Access to justice:**
 1. *States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.*
 2. *In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.*

Convention on the Rights of Persons with Disabilities (CDPR)

- Article 2 (4):

'Reasonable accommodation' means 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.

EU Legal Framework

The Charter of Fundamental Rights of the European Union

Article 26. Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Directive 2012/13/EU on the right to information in criminal proceedings

When providing suspects or accused persons with information in accordance with this Directive, competent authorities should pay particular attention to persons who cannot understand the content or meaning of the information, for example because of their mental or physical condition.

The information concerning those rights shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.

EU Legal Framework

Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

Suspects or accused persons should be able to waive a right granted under this Directive provided that they have been given information about the content of the right concerned and the possible consequences of waiving that right. When providing such information, the specific conditions of the suspects or accused persons concerned should be taken into account, including their age and their mental and physical condition.

Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings

Member States should lay down practical arrangements regarding the provision of legal aid. Such arrangements could determine that legal aid is granted following a request by a suspect, an accused person or a requested person. Given in particular the needs of vulnerable persons, such a request should not, however, be a substantive condition for granting legal aid.

LEGAL STATUS AND PROCEDURAL
RULES AND PRACTICES APPLICABLE
TO OFFENDERS WITH INTELLECTUAL
AND PSYCHOSOCIAL DISABILITIES

in Bulgaria

Legal Status of People with Intellectual and Psychosocial Disabilities in Bulgaria

Legal status

- The general legal status of persons with psycho-social and intellectual disabilities is closely related to their legal capacity and is done in parallel with the regulation of legal capacity of children.
- The formulations of the Persons and Family Act formulations, have little to do with international standards regulating the status of persons with psycho-social and intellectual disabilities.

Exemption from criminal liability

- The Bulgarian Criminal Code differentiates between the intellectual element (the ability to understand the significance of the committed act and its consequences) and the volitional element (the ability to control one's actions) of mental fitness. The absence of either of those elements leads to exemption from criminal responsibility.
- Expert psychiatric and psychological opinions are always sought when there is doubt about the mental fitness of the defendant to be criminally liable

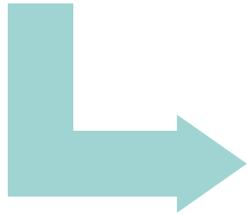
Compulsory treatment measures

- Can be imposed on persons who have committed a crime while being mentally unfit to be criminally responsible, or having fallen into such condition before pronouncing the sentence or while serving it.
- Measures include: 1) entrusting the person to his/her relatives if they commit to his/her treatment in a psychiatric establishment; 2) compulsory treatment in an ordinary or specialised psychiatric establishment, in the latter case if the person is considered particularly dangerous.
- Measures are imposed, terminated or amended by the court.

Procedural Rules and Practices Applicable to Offenders with Intellectual and Psychosocial Disabilities in Bulgaria

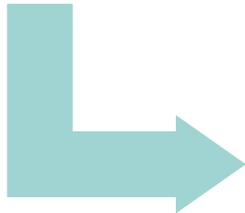
Identification and assessment of special needs

- Personal impressions of investigative police
- Expert examinations



Provision of information

- No special rules for people with intellectual and psychosocial disabilities



Appointment of lawyer

- The existence of physical or mental disabilities which prevent the person from executing his/her own defence is one of the grounds for appointment of mandatory defence in the criminal proceedings

THANK YOU!

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