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ENHANCING THE RIGHTS OF DEFENDANTS AND DETAINEES WITH INTELLECTUAL AND/OR PSYCHOSOCIAL DISABILITIES:

EU CROSS-BORDER TRANSFERS, DETENTION AND
ALTERNATIVES



NATIONAL REPORT FOR BULGARIA



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ABBREVIATIONS

BHC – Bulgarian Helsinki Committee

CC – Criminal Code

CJEU – Court of Justice of the European Union

CPC – Criminal Procedure Code

CPT – Committee for the Prevention of Torture

CRPD – Convention on the Rights of Persons with Disabilities

ECHR – European Convention on Human Rights

ECtHR – European Court on Human Rights

IPD – Intellectual and/or Psychosocial Disabilities

NPM – National Preventive Mechanism

SPH – State psychiatric hospital

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EXECUTIVE SUMMARY

The present research tries to identify and analyse the relevant legal and policy framework as well as the situation in practice of the defendants and detainees with intellectual and/or psychosocial disabilities (IPD) in Bulgaria. It makes the overview of the main and secondary legislation concerning the different phases of the criminal proceedings with the participation of the persons with disabilities, including pre-trial detention and placement for assessment as well as compulsory treatment in psychiatric hospitals in case of identified mental incompetence of the perpetrators with disabilities.

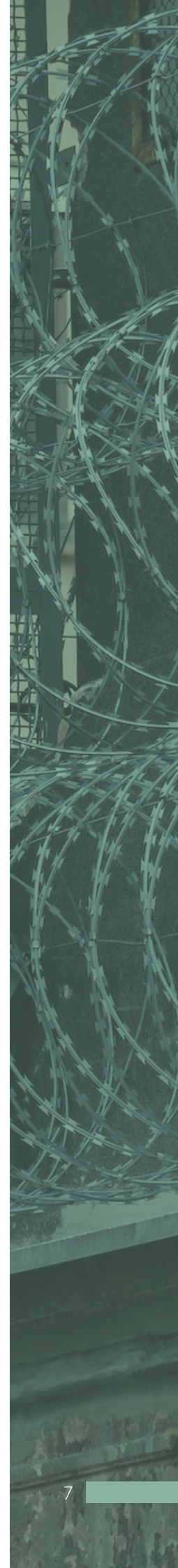
The research also presents policy documents (strategies/action plans) regarding penal, penitentiary and psychiatric treatment systems. It also contains findings of monitoring reports of the Council of Europe Committee for the Prevention of Torture, the National Preventive Mechanism, the national NGOs as well as observations and opinions of interviewed experts such as: judges, lawyers, expert witnesses, prison psychiatrists/psychologists, persons with disabilities and NGOs working in the assessment and advocacy fields. Finally, the research identifies and presents cross-border cases with defendants and detainees with IPD and the implementation of national legislation transposing the Framework Decisions 2002/584/JHA on the European Arrest Warrant (EAW); 2008/909/JHA on the Transfer of Prisoners; 2008/947/JHA on Probation and Alternative Sanctions; 2009/829/JHA on the European Supervision Order.

Regarding cross border proceedings, the main identified challenges are: the lack of database about cross border cases; the difficulties in finding interpreters and expert witnesses in case of defendants who are foreign citizens; the lack of clarity how the consent from the person concerned is obtained when it is required. A common challenge is the lack of coordination, data collection and processing between the Ministry of Interior, the Ministry of Justice, the Ministry of Healthcare and the Ministry of Labour and Social Policy regarding persons with IPD who had perpetrated crimes.

The project identified numerous legislative and practical gaps in both criminal proceedings/detention and compulsory treatment procedures as well as in penitentiary and mental health systems in Bulgaria. The main identified gaps and issues during the criminal proceedings are: the stigma and the low priority given to criminal cases in which disabled persons are involved because of it; the social isolation, the poverty and the lack of

support network to ensure regular outpatient treatment, resocialisation and recovery from crisis and hospital treatment; the lack of identification mechanism for the IPD; the extreme scarcity of forensic experts, hospitals and centres for placement for assessment and treatment; the delayed assessment of the disability; the lack of access to outpatient treatment especially for those who are not health insured; the lack of support services for defendants and detainees with IPD; the lack of sufficient capacity in the hospitals and the mental health centres for inpatient treatment; the sometimes inadequate, unclear, unreasoned assessments during the pre-trial proceedings; the lack of access to a fair trial for defendants declared as criminally irresponsible later in the proceedings; the long stay of persons under compulsory treatment in the psychiatric hospitals due to lack of community support services outside the hospitals; the release from compulsory treatment of persons who are not treated effectively and still pose a threat to themselves and others; the illegal deprivation of liberty of such persons due to social, financial, administrative reasons and lack of alternatives.

The main gaps and issues related to penitentiary system and probation services are: the lack of psychological help and psychiatric therapy for detainees with IPD in pre-trial detention facilities and prisons; the low capacity of the staff who deal with the persons with disabilities in the prisons, in the prison hospitals and in other psychiatric institutions; the lack of mechanism for provision of support by the probation services to convicts with IPD; the lack of training of police, prosecutors, judges, probation officers for interaction with persons with IPD; the lack of database and referral mechanism of the residential, day-care, therapeutic services for persons with IPD.





1 INTRODUCTION

The findings presented in this report are a product of research that was conducted as part of a project co-funded by the European Commission, with the [Ludwig Boltzmann Institute of Fundamental and Human Rights](#) (Austria) leading the project in cooperation with the [Bulgarian Helsinki Committee](#) (Bulgaria), [Dortmund University of Applied Sciences and Arts](#) (Germany), [Antigone](#) (Italy), [Mental Health Perspectives](#) (Lithuania) and [Peace Institute](#) (Slovenia).

Within the EU, the need for better coordinated judicial cooperation between the Member States grew significantly during the past two decades. In order to facilitate and simplify judicial cooperation in criminal proceedings, the European Commission (EC) has adopted a series of procedural rights instruments (2009 Procedural Roadmap), including the [2002/584/JHA on the European Arrest Warrant](#); [2008/909/JHA on the Transfer of Prisoners](#); [2008/947/JHA on Probation and Alternative Sanctions](#); [2009/829/JHA on the European Supervision Order](#).

The Court of Justice of the European Union clarified in various judgments that the application of mutual recognition instruments must not lead to a violation of fundamental rights. Equally, reference to fundamental rights may be found in all Framework Decisions. Respect for fundamental rights is vital to build mutual trust between the Member States and ensure the good functioning of cross border cooperation. Thus, in order to fully analyse cross-border proceedings, it is necessary to have a look at national systems and identify challenges that arise at the national level related to international, regional and national standards (including EU standards, UN-CRPD, UNCAT, ECHR and Council of Europe), which may hinder cross-border cooperation.

The project analyses the implementation of the abovementioned EU Framework Decisions into national law with respect to the rights of defendants and detainees with intellectual and/or psychosocial disabilities (IPD). So far, little to no attention has been given in research to the specific challenges that defendants and detainees with intellectual and/or psychosocial

¹ Judgment of the Court (Grand Chamber) of 5 April 2016, Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen, joined Cases C-404/15 and C-659/15 PPU.

disabilities may face when being subjected to cross border proceedings. At the same time, the research includes an assessment of the situation of defendants and detainees with IPD within the national systems in law and practice and the compliance with international, regional and national standards.

The present research tries to identify and analyse the relevant legal and policy framework as well as the situation in practice of the defendants and detainees with intellectual and/or psychosocial disabilities (including perpetrators who undergo compulsory treatment) in Bulgaria both in national and cross border proceedings. The research did not find any specific studies or reports about defendants and detainees with IPD in Bulgaria. This is due to the stigma, lack of support services, lack of training of criminal proceedings actors about communication with such defendants and detainees and lack of specific recognition and attention to their specific needs. State authorities do not collect, process and keep data about them. According to official data the persons with diagnosed and monitored psychosocial and intellectual disabilities in Bulgaria are close to 119 000.

The present project started by forming a **National Advisory Board (NAB)**. It consists of: Vladislava Carigradska - District Court judge, Dr. Vladimir Velinov - leading forensic psychiatrist, Dr. Cveteslava Gulubova - psychiatrist managing a state psychiatric hospital and functioning as a court expert witness, Boyanka Kornazheva - expert witness psychologist, Dr. Rumen Petrov - university professor (psychiatrist as a background) in social work. The NAB met online on 28 April 2022 and marked the main challenges and legislative and practical gaps related to the topic of the project.

On 8 June 2022 a **national round table** organised by the Bulgarian Helsinki Committee in the State Psychiatric Hospital "St. Ivan Rilski" – Novi Iskar took place. It gathered 20 experts – an expert from the Ministry of Labour and Social Policy, two psychiatrists from the National Centre for Public Health and Analysis (subordinated to the Ministry of Healthcare), one Regional Court judge and one District Court judge, a psychiatrist and a psychologist from the Specialised hospital for prisoners in the town of Lovech and the prison in Lovech, a psychiatrist - head of a ward of the State Psychiatric Hospital in Lovech, a manager of an NGO that runs day-care and residential services for persons with IPD, two social workers and a psychiatrist from the hosting psychiatric hospital near Sofia and a human rights lawyer. A team from the Bulgarian Helsinki Committee led, moderated and recorded the discussions of the round table.

The present research is based on a **desk analysis** of international standards, national legislation and policies, data and reports on the practice in the mental health, justice proceedings, penitentiary and probation systems and **interviews and round table discussion** with professionals involved in all these fields with persons with IPD who committed crimes and were either declared as criminally irresponsible and compulsory treated or were sentenced to imprisonment or probation measures. The desk research started with written requests for access to public information to the Ministry of Justice, the Ministry of Healthcare, the Supreme Cassation Prosecution office, the "Execution of Punishments" Directorate at the Ministry of Justice about sta-

tistics and data about cross-border cases in which persons from the target group had been involved.

The interviews were carried out during the period May-July 2022 with: three judges from different courts and instances, an expert witness psychologist, a psychologist from the National Preventive Mechanism, a psychologist (former probation officer) from a prison, a psychiatrist, two social workers from a service providing NGO who work on compulsory treatment cases and two persons under compulsory treatment.

2 NATIONAL LEGAL FRAMEWORK CONCERNING THE APPLICATION OF CROSS-BORDER INSTRUMENTS TO PERSONS WITH INTELLECTUAL AND/OR PSYCHOSOCIAL DISABILITIES IN LAW AND IN PRACTICE

2.1 European Arrest Warrant

The present research has not found any national statistics concerning the application of the FD about the EAW at all and when persons with IPD are involved. All requested authorities stated that the requested information requires legal analysis which they do not make.² The interviewees under the present research were not aware of any such cases.

The FD is transposed in the **Extradition and the European Arrest Warrant Act**, enforced on 4 July 2005 (the articles after Art. 35 which specifically provide for the EAW procedures were enforced on 1 January 2007)³. According to Art. 38 the regional court at the place of residence of the person is in charge to hear the proceeding and the central authority is the minister of justice.

In case **pre-trial detention of the person** is required the court appoints a lawyer and an interpreter/translator for the person, if he/she does not speak Bulgarian, and informs him/her about the grounds for his/her detention, the content of the European Arrest Warrant, as well as about his/her right to express consent to surrender to the competent authorities of the issuing Member State and the consequences of this. The court hearing takes place within 7 days after the police detention of the person. The

² Bulgaria, Reply to the written request under the Access to Public Information Act № 95-00-53/22/28.04.2022 of the Ministry of Justice; Reply to the written request under the Access to Public Information Act № L-1698/21.04.2022-2 of the "Execution of Punishments" Directorate at the Ministry of Justice; Reply to the written request under the Access to Public Information Act № 93-00-96/21.04.2022 of the Ministry of Healthcare; Reply to the written request under the Access to Public Information Act № 1086/29.04.2022 of the Supreme Prosecution Office.

³ Bulgaria, Extradition and European Arrest Warrant Act (Закон за екстрадицията и европейската заповед за арест) (4.07.2005), available in Bulgarian at: <https://www.lex.bg/laws/ldoc/2135504378>

court is obliged to notify the requested person of his/her right to a lawyer in the issuing member state, who shall assist the lawyer in Bulgaria through information and advice. If the person states that he/she wishes to exercise this right, the court immediately notifies the competent authority of the issuing member state.⁴

When the **hearing about the EAW itself** takes place, the court (sitting in a three persons' panel) again appoints to the requested person a lawyer (public defender), if he/she does not have one, and an interpreter, if he/she does not speak Bulgarian, explains to him/her the right to consent to surrender to the issuing member state, as well as to refuse to apply the principle of particularity and the consequences of these actions.⁵ In the court hearing, the court hears the prosecutor, the requested person and his/her lawyer. The court discusses whether the conditions for surrender are at place and whether there are grounds for refusal, postponing the execution or conditional execution of the order.⁶

The procedure for **consent to surrender** is provided for in Art. 45 which refers to Art. 19 in the law. It states that the court asks the person for consent and if the person expresses consent the court asks the person whether the consent is voluntary and whether the person understands the consequences. After the court makes sure that the consent is voluntary, this is reflected in the protocol which is signed by the requested person and his/her lawyer. The person may withdraw the consent within 3 days after the hearing.⁷

The surrender of the requested person shall be carried out no later than 10 days from the entry into force of the court decision for the execution of the European Arrest Warrant.⁸ When due to reasons independent of the member states, the surrender of the person within this term has not been carried out, the Supreme Cassation Prosecution Office, the National Central Bureau "Interpol" and the issuing authority shall immediately arrange a new date for surrender. In this case, the transfer is made no later than 10 days from the new date. **The surrender may be temporarily postponed by the district court if there is a reasonable assumption that it will endanger the life or health of the requested person.** The European Arrest Warrant shall be executed immediately once this presumption has been removed. The Supreme Cassation Prosecution Office and the issuing authority immediately arrange a new date for surrender. In this case, the transfer takes place within 10 days of the new date.⁹ If the person is not handed over after the expiration of these terms, he/she should be released.

⁴ Bulgaria, Extradition and European Arrest Warrant Act, Art. 43, para. 5.

⁵ Bulgaria, Extradition and European Arrest Warrant Act, Art. 44, para. 3.

⁶ Bulgaria, Extradition and European Arrest Warrant Act, Art. 44, para. 6.

⁷ Bulgaria, Extradition and European Arrest Warrant Act, Art. 45, para. 3.

⁸ Bulgaria, Extradition and European Arrest Warrant Act, Art. 54.

⁹ Bulgaria, Extradition and European Arrest Warrant Act, Art. 54, para. 3.

The EAW is applicable to persons with IPD as there are no provisions which exclude them and there are no specific legal provisions regulating how the European Arrest Warrant should be applied to them or to vulnerable persons in general. No steps were made by Bulgaria to implement Recommendation (2013/C 378/02) to persons with IPD who are subject to European arrest warrant proceedings.

Case law

Only one case related to EAW in which the requested person is with a psychosocial disability has been found in the electronic case-law database. It regards a **refusal for handing over to Austria a person requested with EAW because of his disability and criminal irresponsibility**.¹⁰

The case concerns the termination of criminal prosecution against a man with a psychosocial disability, requested to be extradited to Austria under an EAW issued on 1.10.2019 by the Vienna Regional Criminal Court. It was opened before the Bulgarian second instance court on appeals by his two lawyers against the decision of the first instance - Regional Court in Vratsa, which stated that the person is to be handed to the judicial authorities of Austria. The accused person was detained in the pre-trial detention facility and was present at the hearing, together with two lawyers, as well as an expert witness who prepared a forensic psychiatric assessment (with the task of establishing what the current mental condition of the person is and whether he is able to stand trial). The expert witness stated that the defendant is familiar to her from his previous treatment stays, that his disease/condition deteriorated, and that he is not undergoing treatment at the time of the hearing.

The prosecutor asked the decision of the first instance Regional Court in Vratsa to be confirmed i.e. to hand over the person to the authorities in Austria. Attorney-at-law T. requested suspension of the proceedings due to the person's mental incompetence even at the time of the hearing, which prevents him from participating in the proceedings at all. He requested the court to signal the prosecutor's office to place the person on civil involuntary treatment in accordance with the Health Act. Attorney-at-law D. upheld the opinion of the other defender and alternatively requested the annulment of the decision of the Vratsa Regional Court. He argued that the accused did not commit the crime as he was in a state of mental incompetence. The requested person supported what the lawyers said. The court accepted the conclusion of the forensic psychiatric assessment on the mental incompetence of the requested person and terminated the proceedings on the ground that, after committing the crime, the perpetrator fell into a "prolonged disorder of consciousness/mind", which excludes his mental competence. Due to these considerations, the Sofia Appellate Court annulled the decision of the Regional Court, which allowed the extradition of the Bulgarian citizen to Austria, cancelled his detention

¹⁰ Decision No. 107 of 17.03.2020 of the Sofia Appellate Court.

remand measure and decreed that the requested person be released immediately and terminated the proceedings before the Sofia Appellate Court.¹¹ A copy of the decision was sent to the Ministry of Justice, to the Supreme Cassation Prosecutor's Office and to the District Prosecutor's Office in Vratsa to initiate compulsory treatment in psychiatric hospital.

2.2 Transfer of Prisoners

This research has not found any national statistics concerning the application of the FD about the Transfer of Prisoners at all and when persons with IPD are involved. All requested authorities stated that the requested information requires legal analysis which they do not make.¹² The interviewees under the present research were not aware of any such cases.

The FD about the Transfer of Prisoners is transposed in the **Law on Recognition, Implementation and Transfer of Judicial Acts for the Imposition of Imprisonment or of Measures Including Deprivation of Liberty**, enforced on 1 January 2020.¹³ It does not contain specific provisions related to convicted persons with IPD and is applicable to them. The competent authority in the Republic of Bulgaria to recognise judicial acts for the imposition of deprivation of liberty or of measures involving deprivation of liberty, decreed in another Member State, is the regional court at the place of residence of the convicted person. When the place of residence of the person in Bulgaria is unknown or he/she does not live in the country, the Sofia City Court is competent to consider and recognise the judicial act.¹⁴ During the consultations, **the court may present a reasoned opinion regarding the impossibility of improving the resocialisation of the convicted person in Bulgaria.**¹⁵ If necessary, the court conducts consultations with the competent authority of the issuing country in order to establish the nature of the family, the linguistic, cultural, social, economic or other relations of the convicted person in Bulgaria with a view to improving the possibilities for his/her resocialisation.¹⁶

The court hears the case in a single judge panel with the mandatory participation of a prosecutor and summoning the convicted person. If the person does not have a lawyer, the court ap-

¹¹ Art. 24, para. 1, item 5 of the Criminal Procedure Code states that: *"the initiated proceedings are terminated when, after committing the crime, the perpetrator fell into a prolonged disorder of consciousness/mind, which excludes mental competence."*

¹² Bulgaria, Reply to the written request under the Access to Public Information Act № 95-00-53/22/28.04.2022 of the Ministry of Justice; Reply to the written request under the Access to Public Information Act № L-1698/21.04.2022-2 of the "Execution of Punishments" Directorate at the Ministry of Justice; Reply to the written request under the Access to Public Information Act № 93-00-96/21.04.2022 of the Ministry of Healthcare; Reply to the written request under the Access to Public Information Act № 1086/29.04.2022 of the Supreme Prosecution Office.

¹³ Bulgaria, Law on Recognition, Implementation and Transfer of Judicial Acts for the Imposition of Imprisonment or of Measures Including Deprivation of Liberty (*Закон за признаване, изпълнение и изпращане на съдебни актове за налагане на наказания лишаване от свобода или на мерки, включващи лишаване от свобода*) (shortly, Transfer of Prisoners Transposing Act) (1.01.2020), available in Bulgarian at: <https://www.lex.bg/bg/laws/ldoc/2137193665>.

¹⁴ Bulgaria, Transfer of Prisoners Transposing Act, Art. 7.

¹⁵ Bulgaria, Transfer of Prisoners Transposing Act, Art. 9, para. 3.

¹⁶ Bulgaria, Transfer of Prisoners Transposing Act, Art. 10, para. 3.

points one, as well as an interpreter, if the person does not speak Bulgarian. At the court hearing, the court hears the prosecutor, the person and his/her lawyer. **The non-appearance of the person when regularly summoned is not an obstacle to consideration of the case.** The court discusses whether the conditions for: recognition and execution; postponement of the recognition; refusal of recognition and execution; partial recognition and execution are at place.¹⁷ **The consent of the person in cases where another member state is sending a sentence for execution in Bulgaria is not sought.** The court renders the decision immediately, indicating the number and date of the sentence accepted for execution, the case on which it was decided, the relevant provisions of the Criminal Code, providing for responsibility for the committed crime, the term of the custodial sentence or the measure imposed by the court of the issuing country, including imprisonment and the initial regime of serving the sentence. The court fully deducts the term of the served part of the punishment and the temporary detention from the total term of the imposed penalty of deprivation of liberty.¹⁸

The court may refuse to recognise and execute a judicial act when the imposed punishment includes coercive medical measures (compulsory treatment) or measures involving deprivation of liberty, which regardless of Art. 13, para. 2 cannot be implemented by Bulgaria in accordance with the Bulgarian legislation when such measures are not provided for in it.¹⁹

In cases where the first instance **Bulgarian court sends a sentence for execution in another member state** the court sends the judicial act together with the notification to the competent authority of the executing state, accompanied by **the written consent of the convicted person.**²⁰ The consent of the convicted person is not required when the judicial act is sent to the member state: 1. of which the person is a citizen and in which he/she has a place of residence; 2. in which the person will be deported after being released from serving the sentence on the basis of an expulsion or deportation order contained in the sentence or in an act of a judicial or administrative authority, or of another measure imposed as a result of the sentence passed; 3. in which the person fled or returned due to the presence of pending criminal proceedings or a judgment entered into force against him/her in the Republic of Bulgaria. In the latter cases when the person is located in Bulgaria, the court in an open hearing gives him/her the opportunity to express his/her opinion in writing or orally. Taking into account the person's age, physical or mental condition, the court at its discretion may grant this opportunity to his/her legal representative. When the person expresses his/her opinion orally, the court sends the executing state a written record of the opinion.²¹ The court explains to the person his/her right to consent to transfer to the executing state and the consequences of exercising this right.²² The person's

¹⁷ Bulgaria, Transfer of Prisoners Transposing Act, Art. 12, para. 3-6.

¹⁸ Bulgaria, Transfer of Prisoners Transposing Act, Art. 12, para. 8 and 9.

¹⁹ Bulgaria, Transfer of Prisoners Transposing Act, Art. 15, para. 1, item 11.

²⁰ Bulgaria, Transfer of Prisoners Transposing Act, Art. 22, para. 1.

²¹ Bulgaria, Transfer of Prisoners Transposing Act, Art. 22, para. 3.

²² Bulgaria, Transfer of Prisoners Transposing Act, Art. 22, para. 4.

opinion is taken into account when deciding whether to send the judicial act together with the notification.²³ The court informs the person in a language understandable to him/her about the sending of the judicial act together with the notification, using the notification form. The form is submitted to the competent authority of the executing State for the purpose of notifying the person when he/she is on its territory.

Case law

The search in the electronic case law data base found three court decisions about persons with psychosocial disabilities and about the implementation of the above mentioned provisions which could be relevant to their rights.

The first one is for a **transfer of a 30-years-old drug abusing Bulgarian man²⁵ under compulsory treatment for offenders with psychosocial disabilities in Austria to Bulgaria**. He was convicted in attempted murder of 5 persons while driving a stolen van in September 2019 and was assessed as mentally incompetent. Both the prosecutor and the concerned person's attorney in Bulgaria expressed an opinion for recognition of the decision of the Austrian court and acceptance for implementation of the compulsory treatment in a regular psychiatric hospital in Bulgaria. The concerned person was not present at the court hearing and did not express an opinion. From the declaration of the person attached to the notification from Austria, it is established that he did not consent to the sending of the court decision and the notification to Bulgaria, stating as reasons for this the poor conditions in the prisons and that he would receive no visitations. The Bulgarian court decided that the man should be placed under compulsory treatment in a regular psychiatric hospital near his place of residence in Bulgaria and that his treatment should be reviewed every six months.

The second case is of a **transfer to Bulgaria of a 44-years-old Bulgarian man detained in Austria in September 2019 on suspicion of rape and theft**. In September 2021 the Bulgarian court²⁶ considered two notifications from Austria for recognition and execution of two sentences of the man. The prosecutor decided to accept the sentences for execution and to deduct the sentence served in Austria for one of them. The convicted man did not appear at the hearing because he was serving a prison sentence in Austria and the case was being heard in his absence, with a public defender being appointed. The latter maintained the position that the sentences should not be recognised by Bulgaria, because they must be served in the country where the crimes were committed. Two Austrian court decisions were considered at the hearing. The first

²³ Bulgaria, Transfer of Prisoners Transposing Act, Art. 22, para. 5.

²⁴ Bulgaria, Transfer of Prisoners Transposing Act, Art. 22, para. 6.

²⁵ Decision № 41 of 16 March 2022, on criminal case № 1335/2021 by Regional Court in Varna and Decision No. 609 Hv 5/2019h of the Landesgericht für Strafsachen, Vienna.

²⁶ Decision 127 of 1.09.2021 by Regional Court in Burgas, Bulgaria.

is a Vienna court decision²⁷, by which the man is sentenced to 1 766 days of imprisonment (4 years and 10 months) for rape committed with threat and violence on 13.09.2019. According to the Bulgarian court, the crime corresponds to Art. 152, paragraph 1, point 2 and Art. 144, paragraph 3 of the Criminal Code. The man was previously sentenced by the Vienna court decision²⁸ to 20 months imprisonment for theft of movable property items (television set, phone, etc, jewellery, clothes, as well as service access cards), committed between 13 and 15.09.2019. By decision of 23.05.2021 of the Regional Court for Criminal Cases in Vienna, the sentence was reduced to 18 months of imprisonment. Thus, from 19 September 2019 to 19 January 2020, the man was detained under his first sentence, and then began serving the second sentence. The Federal Office for Foreigners and Asylum in Austria issued a decision dated 21 September 2020 to deport the man and imposed an unlimited residence ban on him from 7 January 2020.

On 8 December 2021, the Regional Court in Bulgaria²⁹ held another hearing regarding the recognition of a third sentence³⁰ of the man, handed down in Austria, which imposes 7 years imprisonment for acts that correspond to Art. 330 (arson), Art. 269 (hindering state official to fulfill his duties) and Art. 131 (bodily injury) of the Criminal Code that took place while the man was in the Austrian detention facility. The prosecutor and the public defender maintained a position of recognition and acceptance for execution of the sentence. The convicted man did not attend the hearing because he was serving a prison sentence in Austria and the case was being held in his absence. He did not consent in Austria to the transfer proceedings and the reasons for this were not discussed in any of the case hearings. On 15 March 2022 the convicted man was deported to Bulgaria. When he arrived in Bulgaria, he did not have any documents from the cases. He was given the decisions of the Regional Court in Burgas, Bulgaria on the second week of his stay in the prison.

The third case is of a **transfer from Germany to Bulgaria of a 38-years-old Bulgarian mentally incompetent offender**.³¹ It was initiated by the complaint of the public defender of the concerned person against the decision of the first instance Bulgarian court³² refusing recognition and acceptance for execution in Bulgaria of the 2019 decision of a German court.³³ The German court convicted the Bulgarian citizen of attempted unintentional murder in combination with dangerous bodily harm³⁴ in the state of mental incompetence/criminal responsibility due to psychosocial disability in accordance with § 20 of the German Criminal Code, for which a measure including deprivation of liberty was applied to him in accordance with § 63 of the German

²⁷ Decision 115 Hv 107/19a, issued on 6.03.2020 by the Regional Court for Criminal Cases in Vienna, entered into force on 9.04.2020.

²⁸ Decision 94 Hv 79/19d, issued on 15.10.2019 by the Regional Court for Criminal Cases in Vienna, entered into force on 19.10.2019.

²⁹ Decision 154 of 8.12.2021, Regional Court in Burgas, Bulgaria.

³⁰ Decision 113 Hv 106/20s, handed down and entered into force on 11.05.2021, of the Regional Court for Criminal Cases in Vienna.

³¹ Decision of 23.06.2022 of the Sofia Appellate Court under criminal case No. 471 SAC/2022.

³² Decision of 11.04.2022 of the Blagoevgrad Regional Court under criminal case No. 104/2020.

³³ Decision of 17.1.2019 of the Stuttgart Regional Court, Germany, in case No. 9 Ks 112 Js 38814/18, enforced on 25.01.2019.

³⁴ Under §§ 223, par. 1, 224, para. 1, item 1, number 2 and number 5.212 and para. 1, 22, 52 of the German Criminal Code.

Criminal Code – placement in a psychiatric hospital. With the appeal, a request is made for the annulment of the appealed decision and for the issuance of a new one, with which the decision of the German court will be recognised and accepted for execution in Bulgaria. At the hearing of the Sofia Appellate Court, the concerned person was not present and the court considered the case in his absence. The man was regularly summoned to the first-instance court proceedings, but was not present, as he was placed in a psychiatric clinic in Germany by virtue of the decision, the recognition of which is requested. The concerned person has been assigned a public defender who effectively participated in the proceedings. The Bulgarian prosecutor considered that: the appeal is not grounded, the *Law on the Recognition, Execution and Transfer of Judicial Acts for the Imposition of Deprivation of Liberty or Measures Including Deprivation of Liberty* is not applicable; the legal systems in Bulgaria and Germany are extremely different; under the German law it was possible to convict a criminally irresponsible person with the imposition of compulsory medical treatment which is impossible under the Bulgarian law; the compulsory medical treatment is not a punishment under the Bulgarian law, which is why it is impossible to accept the sentence of the German court for execution.

The Sofia Appellate Court found that as of June 2022, the concerned man is in the Mental Health Clinic in Ravensburg, Germany on charges of attempted murder in combination with dangerous bodily harm in the case of criminal irresponsibility. As of 22 December 2020, he had spent 698 days in the psychiatric clinic. From the notification sent under Art. 4 of Framework Decision 2008/909/JHA, it is clear that the placement of the man in a psychiatric hospital is not limited in time, but is subject to periodic judicial review of its continuation. In order to make its decision, the Regional Court in Stuttgart accepted that since the end of 2015, the man had been suffering from paranoid schizophrenia.³⁵ After considering the facts of the attempted murder, the German court accepted that due to his illness he was a danger to society, which is why he had to be placed in a psychiatric hospital. The defendant was present at the hearing of the case in Germany, on which the above decision was rendered. His placement in a psychiatric hospital, determined initially by the decision of the Stuttgart Regional Court of 19.1.2019 - 9 Ks 112 Js 38814/18 was continued.³⁶ The first decision states that the hospital where he was admitted has the status of a specialised psychiatric institution for prisoners. From the documents presented in the case, it is established that the concerned person was admitted and treated in

³⁵ He lived in Germany since the beginning of 2017, most recently living in a dormitory for workers in the town of Kornwestheim. On 18.04.2018, around 8 pm, he met another resident in the dormitory. Due to his illness, the concerned person was convinced that he recognised him as the person who attacked him in October 2017. He was of the opinion that the other resident and his friend were planning to attack him again. For this reason, the concerned man took a kitchen knife with a blade length of 12 centimeters and went to the room of the victim, who was standing in the corridor, in front of the door of the room with two pots in his hands. It was only because of this that he was able to fend off the multiple massive impact stabs that were repeatedly inflicted on his neck, body and abdomen with natural intent on the part of the convicted murderer. Because of this, the victim was wounded twice by the stabbings and suffered a severed tendon on the lower part of the left arm. The victim managed, with the help of his friend, to free himself from the perpetrator and run out of the building. The perpetrator pursued the victim on the street with the intention of continuing to run him over, chased him around a car, but was unable to catch up with him. Also, bystanders have stood defensively between him and the victim.

³⁶ With decisions in case No. 2StVK 248/19 of the Regional Court in Ravensburg, Germany (3144 VRs 112 Js 38814/18 Prosecutor's Office, city of Stuttgart, Germany) of 26.2.2020, enforced on 25.3.2020 and from 24.2.2021, which was enforced on 5.3.2021.

Bulgaria with a diagnosis of “polymorphic psychotic disorder with symptoms of schizophrenia, differential diagnosis - Bleuler’s disease” in the period from 17 May 2016 to 24 June 2016, on the occasion of a knife attack on his grandmother. It is explicitly stated that he was treated at the Clinic for Psychiatry, Psychotherapy and Psychosomatic Medicine in Ludwigsburg in April 2018. Attached to the case is a written request from the concerned person, in which **he expressed his wish to be transferred to Bulgaria for treatment.** The Regional Court in Bulgaria has identified the persons from his close circle - his mother, brother and sister. In a court hearing, the mother expressed her consent to undertake the treatment of her son under the supervision of the local Mental Health Center. The overall assessment of the proceedings in Germany, allowed the Sofia Appellate Court to accept that it is in principle in accordance with the Bulgarian national regulations.³⁷ The German court guaranteed and provided the Bulgarian citizen with a comprehensive and full exercise of his right to defense in the criminal proceedings, which ended with the imposition of a compulsory medical measure. The concerned person participated personally and with a defense attorney in the proceedings; was informed about the accusation; was able to make evidentiary requests and actively participate in the process of gathering evidence for the authorship and other elements of the objective side of the act. Particularly significant importance when deciding the case, according to the Sofia Appellate Court, should be given to the main purpose of Framework Decision 2008/909/JHA – the increase of the possibility of social reintegration of the convicted person. The case contains undoubted data that the therapeutic medical care applied to the Bulgarian citizen in a psychiatric clinic in Germany did not give good results due to the language barrier and the impossibility of full contact between the treating doctors and specialists; the lack of contacts outside the clinic; lack of daily contact by telephone with his family, to whom he is attached. In the decisions of the German Court special attention is paid to the fact that the concerned person is attached to Bulgaria and his family linguistically, emotionally and culturally, which is why the prospects and forecasts for continuing treatment in Bulgaria are more positive than in the clinic in Germany. The decision also states that the major difficulties facing the treatment of the Bulgarian citizen are the lack of a supportive environment inside and outside the hospital, the lack of opportunity to be involved in social and other integration/support programs, as they are not accessible to him due to his unsettled social and health status in Germany. Thus the Sofia Appellate Court rendered a decision for recognition of the decision of the German court and placement of the concerned person under compulsory treatment in a mental health centre in Bulgaria.

³⁷ Both under German law and under Bulgarian law, in order to impose compulsory medical measures under Art. 89 of the Criminal Code, it is necessary to establish that the person against whom coercive intervention is intended has committed a socially dangerous act, i.e. the authorship and other elements from the objective side of the act, as well as the fact of his/her mental incompetence.. The only difference between the two pieces of legislation, which is irrelevant to the case, is that Art. 63 of the German Criminal Code provides for the imposition of coercive medical measures not only in case of lack of criminal responsibility, but also in case of diminished criminal responsibility of the person, which the Bulgarian substantive criminal law does not know.

2.3 European Supervision Order

The present research has not found any national statistics concerning the application of the FD about the ESO at all and when persons with IPD are involved. All requested authorities stated that the requested information requires legal analysis which they do not make. The interviewees under the present research were not aware of any such cases. No such cases have been identified in the electronic case-law database either.

The FD on European Supervision Order is transposed in the **Law on the Recognition, Execution and Transmission of Acts for the Imposition of Restraint Measures, other than Measures Requiring Detention**, enforced on 27 May 2016.³⁹ It does not contain specific provisions related to persons with IPD and is applicable to them. According to Art. 4 the regional court at the place of residence of the person is in charge to hear the proceeding. The court may recognise the act of imposing measures for procedural coercion/restraint measures, issued in another EU Member State, when the person for whom the measure was issued resides long-term or permanently in Bulgaria, provided that **he/she has expressed his/her consent to return to Bulgaria** after having been notified by the issuing State of the relevant measures.⁴⁰ The court may also recognise the act when the person for whom the measure was issued does not reside long-term or permanently in Bulgaria, but has requested from the competent authority of the issuing country that the measure be executed in Bulgaria. In this case, it is necessary for the court to notify the competent authority of the issuing country that it agrees the document to be sent.⁴¹

The court hears the case in a single judge panel, in an open court hearing, with the mandatory participation of a prosecutor and summons of the person for whom the measure was issued. **The failure of the person to appear when regularly summoned is not an obstacle to the consideration of the case.** The court hears the prosecutor, the person for whom the measure was issued, and his/her lawyer.⁴² The court may refuse to recognise the act of imposing procedural coercion measures among other reasons when the judicial act was issued for a person who, due to his/her age, according to Bulgarian legislation, cannot be criminally responsible for the acts in connection with which the measure was enacted.⁴³ **The court in Bulgaria may send the act of imposing procedural coercion measures/restraint measures to the competent authority**

³⁸ Bulgaria, Reply to the written request under the Access to Public Information Act № 95-00-53/22/28.04.2022 of the Ministry of Justice; Reply to the written request under the Access to Public Information Act № L-1698/21.04.2022-2 of the "Execution of Punishments" Directorate at the Ministry of Justice; Reply to the written request under the Access to Public Information Act № 93-00-96/21.04.2022 of the Ministry of Healthcare; Reply to the written request under the Access to Public Information Act № 1086/29.04.2022 of the Supreme Prosecution Office.

³⁹ Bulgaria, Law on the Recognition, Execution and Transmission of Acts for the Imposition of Restraint Measures, other than Measures Requiring Detention (*Закон за признаване, изпълнение и изпращане на актове за налагане на мерки за процесуална принуда, различни от мерките, изискващи задържане*) (shortly, ESO Transposing Act) (27.05.2016), available in Bulgarian at: <https://www.lex.bg/bg/laws/ldoc/2136803088>.

⁴⁰ Bulgaria, ESO Transposing Act, Art. 6, para. 3.

⁴¹ Bulgaria, ESO Transposing Act, Art. 6, para. 4.

⁴² Bulgaria, ESO Transposing Act, Art. 7, para. 2 and 3.

⁴³ Bulgaria, ESO Transposing Act, Art. 9, para. 1, item 8.

of the executing country in which the accused person resides for a long time or permanently, when, after presenting the act, **the person expresses written consent to return to that country.**⁴⁴ In case the concerned person did not give consent or does not reside in Bulgaria and did not give consent, the court conducts consultations with the competent authority of the issuing country and may request additional information from it, setting a deadline for its receipt. The case is adjourned until the expiry of this term.⁴⁵

The court renders a ruling by which: 1. recognises the act of imposing measures of procedural coercion and determines a measure of procedural coercion that corresponds to the greatest extent to the measure enacted in the issuing country; the measure of procedural coercion determined by the court cannot be more severe than the measure imposed in the issuing country; 2. refuses to recognise and execute the act of imposing procedural coercion measures in the presence of any of the grounds enlisted in Art. 9.⁴⁶

None of the FD's provisions which may be relevant for persons with IPD have been transposed in the Bulgarian legislation. i.e. Bulgaria did not confirm that it would supervise therapeutic treatment or treatment for addictions measures; health condition is not taken into account when criminal responsibility is being assessed.⁴⁷

2.4 Probation and Alternative Sanctions

The present research has not found any national statistics concerning the application of the FD about Probation and Alternative Sanctions at all and when persons with IPD are involved. All requested authorities stated that the requested information requires legal analysis which they do not make.⁴⁸ The interviewees under the present research were not aware of any such cases. No such cases have been identified in the electronic case-law database either.

⁴⁴ Bulgaria, ESO Transposing Act, Art. 16.

⁴⁵ Bulgaria, ESO Transposing Act, Art. 7, para. 4.

⁴⁶ Bulgaria, ESO Transposing Act, Art. 7, para. 5.

⁴⁷ Notification made by the Republic of Bulgaria on the Transposition of Council Framework Decision 2009/829/JHA on Supervision measures, 4.01.2017, <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/1921>. Notifications pursuant to Article 9(4) ('Criteria relating to the Member State to which the decision on supervision measures may be forwarded') In accordance with Article 9(4), Bulgaria can recognise and supervise a decision on a supervision measure with respect to a person who is not continuously or permanently resident within the territory of the Republic of Bulgaria, when one or more of the following conditions are met: 1. the person is a Bulgarian citizen; 2. the supervision measure may be supervised in the Republic of Bulgaria; 3. the person has stated that he or she will reside within the territory of the Republic of Bulgaria with a view to carrying out specific work; 4. the person is a member of family which resides permanently in the Republic of Bulgaria; 5. the person has stated that he or she will reside within the territory of the Republic of Bulgaria in order to study for professional qualifications or a degree.

⁴⁸ Bulgaria, Reply of written request under the Access to Public Information Act № 95-00-53/22/28.04.2022 of the Ministry of Justice; Reply of the written request under the Access to Public Information Act № L-1698/21.04 2022-2 of the "Execution of Punishments" Directorate at the Ministry of Justice; Reply of the written request under the Access to Public Information Act № 93-00-96/21.04.2022 of the Ministry of Healthcare; Reply of the written request under the Access to Public Information Act № 1086/29.04.2022 of the Supreme Prosecution Office.

The FD about Probation and Alternative Sanctions is transposed in the **Law on Recognition, Execution and Transmission of Court Decisions on Probation with a view of Supervision over the Probation Measures and Alternative Sanctions**, enforced on 28 April 2012.⁴⁹ The regional court at the place of residence of the person is in charge to hear the proceeding.⁵⁰ Among the other probation measures prescriptions for the convicted person related to the behavior, residence, education or training, recreational activities, or containing restrictions or conditions in connection with the performance of a professional activity⁵¹ and **obligation of the convict to undergo therapeutic treatment or treatment for addictions** are included.⁵² When the nature or duration of the imposed probation measure or alternative sanction or the duration of the probation period are incompatible with the Bulgarian legislation, the Bulgarian competent authority may adapt them in accordance with the nature and duration of the punishments provided for in the Bulgarian legislation for similar acts. The adapted probation measure, alternative sanction or the duration of the probationary period shall comply as much as possible with that imposed in the issuing country.⁵³ Adapted punishments may not be more severe or longer than those originally imposed.⁵⁴ **The court may refuse to recognise a decision** for probation or alternative sanctions and may refuse to exercise supervision over probation measures or alternative sanctions, **when the court decision provides for medical or therapeutic treatment over which Bulgaria cannot exercise supervision** in accordance with the current Bulgarian legislation.⁵⁵ However, no case law has been identified in implementation of this provision.

After receiving the decision and the notification to it, the court starts recognition proceedings and schedules the hearing within 7 days. The court examines the case in a three judges panel, in an open court hearing, with the mandatory participation of a prosecutor and the summoned convicted person. **The failure of the person to appear when regularly summoned is not an obstacle to the consideration of the case.** When the person cannot be found to be regularly summoned, a public defender is appointed for him/her and the case is heard in his/her absence. The court acquaints the convicted person or his/her lawyer with the decision for probation/alternative sanctions. The court may request additional information directly from the competent authority of the issuing country, setting a deadline for its receipt and postponing the pronouncement of a decision on recognition until the expiry of this deadline. The court hears the prosecutor, the convicted person and his/her lawyer and adjourns to a conference for an immediate decision.⁵⁶

⁴⁹ Bulgaria, Law on Recognition, Execution and Transmission of Court Decisions on Probation with a view of Supervision over the Probation Measures and Alternative Sanctions (shortly, Alternatives and Probation Transposing Act) (*Закон за признаване, изпълнение и изпращане на съдебни решения за пробация с оглед упражняване на надзор върху пробационните мерки и алтернативните санкции*), (28.04.2012), available in Bulgarian at: <https://www.lex.bg/bg/laws/ldoc/2135782661>.

⁵⁰ Bulgaria, Alternatives and Probation Transposing Act, Art. 8.

⁵¹ Bulgaria, Alternatives and Probation Transposing Act, Art. 4, item 4.

⁵² Bulgaria, Alternatives and Probation Transposing Act, Art. 4, item 10.

⁵³ Bulgaria, Alternatives and Probation Transposing Act, Art. 5.

⁵⁴ Bulgaria, Alternatives and Probation Transposing Act, Art. 5, para. 4.

⁵⁵ Bulgaria, Alternatives and Probation Transposing Act, Art. 15, para. 1, item 11.

⁵⁶ Bulgaria, Alternatives and Probation Transposing Act, Art. 16.

The interviewed judges stated that the interpreters especially to and from rare languages are scarce in number and interpreters even in European languages is difficult to find in smaller cities. In Sofia the court administration selects them, but there is no specialisation for the interpreters anymore, neither for those who participate in proceedings where minors are involved nor in criminal matters where disabled persons are involved – so they are not aware of the specific terminology.



NATIONAL LEGAL AND POLICY FRAMEWORKS CONCERNING DEFENDANTS AND PERSONS DEPRIVED OF LIBERTY WITH INTELLECTUAL AND/ OR PSYCHOSOCIAL DISABILITIES IN LAW AND IN PRACTICE

3.1 National legal framework and its application in practice

3.1.1 National definitions and statistics

Bulgarian legislation does not contain a definition for “a vulnerable person” nor does it define “persons with intellectual and/or psychosocial disabilities”. The **Persons with Disabilities Act** provides for the general definition of “persons with disabilities” as “persons with physical, mental, intellectual and sensory disabilities who, when interacting with their environment, the latter could hinder their full and effective participation in public life” (in essence it is the definition the UNCRPD uses).⁵⁷ The only article in the **Criminal Procedure Code** (CPC) that mentions the group of persons concerned in relation to access to legal assistance uses the term “physical or mental handicaps”.⁵⁸ **The Criminal Code** uses the terms “mental retardation or long-term or temporary mental disorder” to refer to a lack of mental competence/criminal responsibility (Art. 33) and uses the term “mentally ill” in reference to the enforcement of compulsory treatment (Art. 90). The Criminal Code (Art.33) states that “criminal responsibility is excluded when a person was in a state of mental incompetence at the time of committing the offence; that is, when due to mental retardation, an enduring mental disability or a temporary mental disorder he/she was unable to understand the nature or consequences of his/her actions or was not able to manage his/her actions.”⁵⁹ However, medical experts who

⁵⁷ Bulgaria, Persons with Disabilities Act (*Закон за хората с увреждания*) (1.01.2019), Additional provisions, para.1, item 1, available in Bulgarian at: <https://www.lex.bg/bg/laws/ldoc/2137189213>.

⁵⁸ Bulgaria, Criminal Procedure Code, (*Наказателно-процесуален кодекс*) (29.04.2006), Art. 94, para. 1, item 2, available in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135512224>.

⁵⁹ Bulgaria, Criminal Code (*Наказателен кодекс*) (1.05.1968), Art. 33, para.1, available in Bulgarian at: <https://lex.bg/laws/ldoc/1589654529>.

are appointed by the courts to determine a supposed intellectual or psychosocial disability refer to the definitions set by the *International Classification of Diseases (ICD – 10)*. In cases of legally incapacitated persons, the two legislative acts that must be considered are the **Persons and Family Act**⁶⁰ and the **Family Code**⁶¹. They regulate the placement under guardianship and the appointment of a full/partial guardian of the vulnerable person inasmuch as the latter acts as the legal representative of the vulnerable person and is able to (and should) make decisions on the part of the vulnerable person throughout the course of the proceedings in cases of full guardianship or give one's consent or disagreement with the vulnerable person's decisions in cases of partial guardianship.

The author of this research requested in written statistics about the numbers of suspected, accused, defendant, convicted or found criminally irresponsible persons with IPD in national and cross-border cases by the Ministry of Healthcare, the Ministry of Justice, the "Execution of Punishments" Directorate at the Ministry of Justice and the Supreme Prosecution Office. All these institutions replied that they do not collect, process and keep such statistics.⁶²

The **National Centre for Public Health and Analyses at the Ministry of Healthcare** is the only institution that collects annual data about the number of persons with IPD whose condition is monitored by mental health centres and psychiatric hospitals in the whole country. According to its most recent data at the end of 2020 the total of 118 778 persons suffered from psychosocial and intellectual disabilities in Bulgaria.⁶³ The Centre also is the only state institution that keeps and provides statistical data about the number of forensic psychiatric assessments of persons with IPD in criminal proceedings. According to its unofficial data in 2020 the total of 1 303 forensic assessments have been performed in criminal cases out of which 287 declared the assessed persons as mentally incompetent. The total of 293 were performed in psychiatric hospitals (144 of which for mentally incompetent persons); 503 were performed in mental health centres (57 of which for mentally incompetent persons); 55 were performed in psychiatric clinics (12 of which for mentally incompetent persons); 208 in psychiatric wards of general hospitals (45 of which for mentally incompetent persons), 244 in outpatient facilities (29 of which for mentally incompetent persons). The current research had not found any official data about the number of persons with IPD who are placed under compulsory treatment at present or in the past.

⁶⁰ Bulgaria, Persons and Family Act (Закон за лицата и семействата) (10.09.1949), Art. 5, available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2121624577>.

⁶¹ Bulgaria, Family Code (Семеен кодекс), (1.10.2009), Art. 153, available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2135637484>.

⁶² Bulgaria, Reply to written request under the Access to Public Information Act № 95-00-53/22/28.04.2022 of the Ministry of Justice, Reply to the written request under the Access to Public Information Act № L-1698/21.04.2022-2 of the "Execution of Punishments" Directorate at the Ministry of Justice, Reply to the written request under the Access to Public Information Act № 93-00-96/21.04.2022 of the Ministry of Healthcare, Reply to the written request under the Access to Public Information Act № 1086/29.04.2022 of the Supreme Prosecution Office.

⁶³ Bulgaria, National Centre for Public Health and Analyses, Number of ill persons under monitoring of psychiatric facilities as of 31.12.2020, available in Bulgarian at: https://ncpha.government.bg/uploads/statistics/annual/health_B_5.pdf. According to these data persons with psychosocial and behavioural disabilities are 114 032 (including dementia (3 000), mental disorders due to alcohol and substance/drug abuse (10 300), schizophrenia – 30 000, affective disorders – 20 000, intellectual disability – 26 000, etc.)

3.1.2 National framework concerning deprivation of liberty

First of all, it is important to note that police, investigative authorities and prosecutors have no mechanism to identify and assess common indicators that a person (a suspect, witness or victim) has a disability. The law fails to require that when there are signs of vulnerability in a criminal suspect this information be relayed to the appropriate authorities so as to trigger further medical assessment and care/support.

3.1.2.1 Police detention

The Bulgarian legislation does not use the term “suspect”, but only the term “detainee” and “accused”. The detainee is a person for whom “there is information that he/she has been involved in the commission of an offence” and who is held at the police department against his/her will on an arrest order which is valid for 24 hours.⁶⁴ Bulgarian legislation does not contain any provisions that specifically regulate the manner in which information is conveyed to suspected or accused persons with IPD about their procedural rights nor does it contain any specific provisions for the very right to information. Police officers do not have access to information pertaining to the disability status of the detained persons, nor are they aware of whether or not the detainees have any appointed guardians (whenever that is the case). The general rule is that immediately upon arrest **all detainees must be informed** of the reasons for their arrest and the ensuing legal consequences, as well as of their procedural rights.⁶⁵ All persons held in police custody are informed of their right to medical assistance,⁶⁷ the right to a lawyer,⁶⁸ and the right to inform a third party of their detention⁶⁹ and they complete a designated form⁷⁰ to declare their intention to exercise or waive these rights.⁷¹

⁶⁴ Bulgaria, Ministry of the Interior Act (27.06.2014), Art. 72. The police have the right to detain a person: for whom “there is information that he/she has been involved in the commission of an offence” or who knowingly obstructs law enforcement authorities from performing their duties, or who shows signs of a serious psychiatric disorder and whose behaviour disturbs the public order, or who puts his/her own life or the life of others in danger, etc.

⁶⁵ The summons for questioning are available only in two generalized formats: one is for persons who are participants in the proceedings under the Criminal Procedure Code (CPC), and the other is for general questioning at the police department which can be used for persons who are actual suspects. However, the summons for questioning are not available in a format that is specifically designed and worded for persons with IPD.

⁶⁶ Bulgaria, Ministry of Interior Act (27.06.2014), Art. 74 and Instruction 81213-78 of 24 January 2015 on the Order for Executing Arrests, and the Accommodation Requirements, Rules and Procedures at Detention Facilities of the Ministry of Interior, (Инструкция № 81213-78 от 24 януари 2015 г. за реда за осъществяване на задържане, оборудването на помещенията за настаняване на задържани лица и реда в тях в Министерството на вътрешните работи), Art. 15, available in Bulgarian at: <http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?sessionId=C90D4AE4E1A53C0CD2D603FEF8CF166D?idMat=91688>.

⁶⁷ Bulgaria, Instruction 81213-78 of 24 January 2015 on the Order for Executing Arrests, and the Accommodation Requirements, Rules and Procedures at Detention Facilities of the Ministry of Interior, Art. 15, para. 1, item 3 and the Ministry of Interior Act (shortly, Instruction 81213-78 of 24 January 2015), Art. 74, para. 2, item. 6, “c”.

⁶⁸ Bulgaria, Instruction 81213-78 of 24 January 2015, Art. 15, para. 1, item 2 and the Ministry of Interior Act (27.06.2014), Art. 74, para. 2, item 6, “b”.

⁶⁹ Bulgaria, Ministry of Interior Act, (27.06.2014), Art. 74, para. 2, item 6, “d”.

⁷⁰ Bulgaria, Instruction 81213-78 of 24 January 2015, Annex № 1 to Art. 15, para. 2.

⁷¹ Bulgaria, Instruction 81213-78 of 24 January 2015, Art. 15, para. 1, item 3 and the Ministry of Interior Act, Art. 74, para.3.

A crucial detail is that police/investigative authorities have the general obligation to inform persons of their procedural rights and to make sure that they are able to exercise them, but **only after pre-trial proceedings have been initiated**.⁷² Bulgarian legislation does not contain any special provisions regulating the manner in which information is provided to persons with IPD with respect to any of the steps of a pre-trial investigation, such as the conducting of a police interrogation (questioning in those cases when a person is detained in accordance with the *Ministry of Interior Act* on the basis of available information that the person has committed an offence). Other than the mandatory appointment of an attorney at the time of indictment - and only in those cases when the indicted person has been found to have an intellectual/psychosocial disability (based on an expert opinion) that prevents him/her from defending him/herself in criminal proceedings - police officers are under no obligation to utilize a different approach in situations when detained persons are presumed or found to have IPD.

All police detainees have the right to request the **notification of a third party** of their arrest by completing a designated form, in which case the notification of the third party is carried out by the police officer on duty, and not personally by the detained person.

The right to access to a lawyer is a fundamental right under the Constitution of the Republic of Bulgaria; this right can be exercised immediately upon the time of arrest or the time of indictment of a person.⁷³ Persons with intellectual and/or psychosocial disabilities cannot waive the right to a lawyer.⁷⁴ However, this right pertains only to those persons who have already been indicted and whose disabilities prevent them from legally defending themselves in the proceedings.⁷⁵ The law does not specifically provide for the right to a lawyer to persons with disabilities who are in police custody; in fact, before they are officially indicted, they can use legal counsel only if they specifically request so. Apart from this, even when a disabled person is the subject of criminal proceedings, there is no specific legal requirement mandating that his/her lawyer should be present and consulted at each and every stage of the criminal proceedings. The general procedure is that when a detained person specifically requests legal services the police officer on duty is under the obligation to immediately contact by phone the detainee's lawyer of choice, or a public defender if the detainee does not have a personal/private lawyer, with information about the detainee's personal data and state, as well as about the reasons for his/her arrest.⁷⁶ The detainee has the right to choose a public defender from a list of such lawyers on call which should be available in the police department and displayed at a location that is accessible by the detainees.⁷⁷ However, the Legal Aid Act does not guarantee that the

⁷² Bulgaria, Criminal Procedure Code (29.04.2006), Art. 15, para. 3.

⁷³ Bulgaria, Constitution of the Republic of Bulgaria (13.07.1991), Art. 30, para. 4, available in Bulgarian at: <http://www.lex.bg/laws/ldoc/521957377>.

⁷⁴ Bulgaria, Criminal Procedure Code (29.04.2006), Art. 94, para. 1, item 2.

⁷⁵ Bulgaria, Criminal Procedure Code (29.04.2006), Art. 94 in relation to Art. 55, para. 1 and Art. 97, para. 2.

⁷⁶ Bulgaria, Instruction 81213-78 of 24 January 2015, Art. 15, para. 7.

⁷⁷ Bulgaria, Legal Aid Act (1.01.2006), Art. 28, para. 2, available in Bulgarian at: <https://www.lex.bg/bg/laws/ldoc/2135511185>.

detainee will receive the services of the public defender of his/her choice. Police officers have additional obligations **to provide the detained person with a lawyer within 2 hours of his/her arrest, to ensure that within 30 minutes of the lawyer's arrival at the detention facility he/she is allowed access to the detainee**; to ensure that a lawyer is present at the very first police interrogation of the detainee; if the appointed lawyer fails to appear at the detention facility in a timely manner the investigative authorities may file a complaint requesting that the lawyer be subject to disciplinary action.⁷⁹ In Bulgaria there are **no lawyers who specialise in providing legal assistance to persons with IPD**, nor does the legislation require so. Legal defence services are currently not subject to any quality assessment. As part of a research carried out on police detention in 2015, a number of practicing lawyers were interviewed who were of the shared opinion that, generally, **detainees have access to legal aid if and only after they are indicted**.⁸⁰

All persons detained at police departments may receive a **medical examination** upon their own request or if their health condition requires it according to the police officers on duty.⁸¹ A medical examination may also be requested by a parent, a guardian, a lawyer or a foreign diplomat (in those cases when the detainee is a foreign citizen). The current procedure requires that the physician performing the medical examination should issue a report, a copy of which should be provided to the detainee or his/her lawyer. The legislation does not contain any provisions specifying which physicians are eligible to perform this service and who is responsible for the payment for non-emergency doctors' visits to police departments⁸² (in the event that a detainee requests that a particular physician perform this service then he/she is responsible for covering that doctor's bill⁸³). Currently, there are no regulations governing the qualifications, the place of work and the professional requirements of designated medical personnel who are to provide medical assistance to detainees with IPD held in police custody. They cannot request further examination or examination by a psychiatrist free of charge.

⁷⁸ Bulgaria, Legal Aid Act (1.01.2006), Art. 25, para. 5. - "whenever possible, the bar association shall appoint the attorney requested by the person receiving the legal assistance".

⁷⁹ Bulgaria, Chief Prosecutor, Instruction 134/11.04.2011 on the Actions that Pre-trial Authorities may Undertake in Relation to Lawyers (Инструкция 134 от 11.04.2011 г. на главния прокурор относно действията, които могат да извършват органите на досъдебното производство по отношение на адвокати), Art. 7, Art. 8 and Art 14, available in Bulgarian at: available at: <http://svak.lex.bg/news.html&pn=15&id=964>.

⁸⁰ Bulgaria, Bulgarian Helsinki Committee, The Normative and Practical Obstacles to Effective Prosecution of Ill-Treatment by Official Persons, 2017, available in English at: http://www.bghelsinki.org/media/uploads/2016police_en.pdf.

⁸¹ Bulgaria, Ministry of Interior Act (27.06.2014), Art. 74, para. 2, item 6, b and c and Instruction 81213-78 of 24 January 2015 on the Order for Executing Arrests, and the Accommodation Requirements, Rules and Procedures at Detention Facilities of the Ministry of Interior, Art. 21.

⁸² Bulgaria, Open Society Foundation, Independent Custody Visiting at Police Detention Facilities 2010–2011, 2010–2011, page. 20, available in English at: http://www.osi.bg/cyeds/downloads/Grajd_nabljudenie_policia_ENG.pdf.

⁸³ Bulgaria, Ministry of Interior, Instruction 81213-78 of 24 January 2015, Art. 21, para. 4.

3.1.2.2 Pre-trial proceedings

Once the pre-trial proceedings are initiated, the person with IPD suspected in perpetration of the crime should be accused/indicted. However, the judges interviewed under the present research stated that the most significant problem from the proceedings point of view is **the fact that persons with IPD are not indicted/accused and thus not provided with their procedural rights as accused persons**. This common practice was raised in **Case C 467/18 of the Court of Justice of the European Union**.⁸⁴ The case concerns the compulsory treatment of a man with psychosocial disability who allegedly committed murder of his mother in 2015. Informed of his disability by witnesses, the police officers took him to the emergency unit of a psychiatric hospital and two weeks later the court ordered that the disabled person be placed under civil involuntary treatment in a psychiatric hospital for a period of 6 months under the Health Act. This order was renewed continuously until the date of the request by the judge to the CJ (3 years later). The forensic psychiatrists found that the person was suffering from paranoid schizophrenia. One year later the district prosecutor suspended the criminal proceedings because the disabled person was suffering from a psycho-social disability. Since the person was unable to participate in the proceedings, the prosecutor did not serve that decree on him. More than two years later, the Appellate Prosecutor ordered the criminal proceedings to be resumed and made provision for the continuation of the person's committal under the Health Act. Two and a half years later a prosecutor's decree closed the criminal proceedings initiated against the disabled person. The Prosecutor's Office concluded that compulsory treatment should be ordered because the disabled person had intentionally committed an offence in a state of mental incompetence that made him criminally irresponsible. That decree was served on his sister. The prosecutor brought an application before the referring District Court for committal to compulsory treatment a psychiatric hospital under the Criminal Procedure Code. The disabled person (perpetrator) was never questioned during the investigation, was not notified of the criminal procedure initiated against him, was not the subject of criminal proceedings, was not given access to a lawyer and had no recourse to a judicial remedy against the findings of law or fact of the prosecutors.

The judge who requested preliminary ruling from the Court of Justice raised her doubts whether the national Criminal Procedure Code and the Health Act provisions governing the compulsory and involuntary treatment procedures are in conformity with the rights guaranteed by Directives 2012/13, 2013/48 and 2016/343 and by the Charter. She also posed the issue that the Criminal Procedure Code (Art. 427) does not enable a court to verify whether, during the initial investigation, the person considered to be the perpetrator was granted the minimum procedural guarantees for the exercise of his rights of defense. The perpetrator also has alleged

⁸⁴ Case C 467/18 of the Court of Justice of the European Union, 19 September 2019, available at: <https://curia.europa.eu/juris/document/document.jsf?docid=217905&doclang=EN#:~:text=In%20Case%20C%E2%80%9191467%2F18%2C%20REQUEST%20for%20a%20preliminary%20ruling,July%202018%2C%20in%20the%20criminal%20proceedings%20against%20EP%2C>.

a violation of his rights to be informed of the charge brought against him, to remain silent and to have access to a lawyer.

The Court of Justice decided that:

1. Directive 2012/13/EU on the right to information and Directive 2013/48/EU on the right of access to a lawyer apply to judicial proceedings for compulsory psychiatric treatment of criminally irresponsible persons.
2. Persons suspected of having committed a crime must be informed as soon as possible of their rights from the moment when they are subject to suspicions which justify, in circumstances other than an emergency, the restriction of their liberty by the competent authorities by means of coercive measures and, at the latest, before they are first officially questioned by the police.
3. Article 47 of the Charter of Fundamental Rights of the European Union, Article 8(2) of Directive 2012/13 and Article 12 of Directive 2013/48 preclude national legislation for compulsory treatment of persons who are criminally irresponsible, where that legislation does not enable the court with jurisdiction to verify that the procedural rights covered by those directives were respected in proceedings prior to those before that court, which were not subject to such judicial review.
4. Directive (EU) 2016/343 on the presumption of innocence and the right to be present at the trial in criminal proceedings and Article 51(1) of the Charter of Fundamental Rights do not apply to judicial proceedings for civil involuntary treatment (Article 155 of the Health Act).
5. The principle of the presumption of innocence referred to in Article 3 of Directive 2016/343 requires, in judicial proceedings for compulsory treatment of criminally irresponsible persons, that the Public Prosecutor's Office provides proof that the person whose committal is sought is the perpetrator of the crime.

However, as of 2022-2023 no legislative amendments have been adopted and the practice of placement of perpetrators of crimes under civil involuntary treatment and not bringing accusations against them continued. The judge who had sent the request to the Court of Justice stated that: *people with disabilities are not indicted and the door to their human rights remains closed under some seemingly humanitarian reasons - "we will not indict him, but in fact he is our only suspect."* - this problem exists in 95% of the pre-trial proceedings regarding persons with IPD.⁸⁵

⁸⁵ Bulgaria, Interview with District Court judge V.C on 13 May 2022. *Such proceeding proceeds usually at best with one police questioning of the person as a witness, but not being brought as an accused, not being given the opportunity to explain what*

Bulgarian legislation regarding the compulsory treatment proceedings⁸⁶ contains no guarantee that the court will ensure compliance with the minimum standards for the right to legal assistance, which are applicable to every single person from the EU - these are the directives on the right to information, the right of access to a lawyer, to legal aid and to translation. This is why the EU court in case C467 from 2018 ruled that the Bulgarian Criminal Procedure Code, which provides for control by the court on whether the person's rights were respected in the pre-trial phase, the prosecutor despite the requirements, that he himself decided to terminate the proceedings, should prove to the court that the person committed the crime but the proceedings are terminated because the perpetrator is disabled and criminally irresponsible. It was accepted that the Bulgarian Criminal Procedure Code does not meet these requirements. It has been 2 and a half years since the decision of the EU court until today. I am not yet aware of any legislative initiative to amend the Criminal Procedure Code.⁸⁷

Another judge explains the possible reasons for this phenomenon: *In practice, the disabled person is not accused and the pre-trial proceedings are terminated directly. He is not notified about the decree terminating the pre-trial proceedings. When the proceedings are terminated, there is a statutory period for appeal and the person can initiate such proceedings. But this is not done. Instead a proposal for compulsory treatment under Art. 89 of the Criminal Code is directly submitted to the court by the prosecutor. Perhaps because of the prosecutors' misunderstanding of the nature of this main criminal proceeding itself, which precedes the protective treatment proceedings, and that the right to legal defense of the disabled person must be guaranteed.^{88,89} Because the above described procedure is not respected by the prosecutors the Sofia District Court the judge states that in these cases he terminates the compulsory treatment proceedings and returns them to the prosecutor, in order to remedy the substantial procedural violations, which significantly limited the right of defense of the disabled person.⁹⁰*

happened, to defend him/herself, to remain silent if he/she so wishes, to be informed of what he/she is suspected. The Bulgarian Criminal Code, Article 94, paragraph 1, point 2, provides that accused persons who suffer from disabilities that prevent them from defending themselves, should use a lawyer's defense, but they must first become accused. The Bulgarian procedural law does not recognize the figure of a suspect and therefore it depends arbitrarily on the will of the investigator or the prosecutor whether he/she will give the person the status of accused, so that he/she can enjoy his/her rights.

⁸⁶ Proceedings authorising, on therapeutic and safety grounds, the committal to a psychiatric hospital of persons who, in a state of incompetence, have committed acts representing a danger to society to which procedural rights and the principle of innocence should apply.

⁸⁷ Bulgaria, Interview with District Court judge V.C. on 13 May 2022.

⁸⁸ Bulgaria, Interview with Sofia District Court judge V.K. on 9 June 2022.

⁸⁹ Bulgaria, Interview with Sofia District Court judge V.K. on 9 June 2022. *In order the right to legal assistance of the disabled person to be ensured the proceeding should be done in the following way: when the person is accused, a mandatory legal assistance must be appointed; the prosecutor must explain to the accused (in accordance with the decision of Court of Justice of the European Union - C 467 of 2018) in accessible, gentle language and in an accessible, sparing manner, that this pre-trial proceeding is pending and may be discontinued, and that the termination of the pre-trial proceeding may be subject to review by a court in which he can file a complaint, he can participate in the proceedings (that's why a public defender is appointed to him) and this must be recorded in some way - either with a declaration or with a specific decree of the prosecutor. If the prosecutor has done this, he should serve the accused person a copy of the decree through the lawyer or in person. The deadline for appeal should be awaited, possibly for this termination decree to enter into force or for the relevant instance control to be carried out, and only then a motion for compulsory treatment should be submitted.*

⁹⁰ Bulgaria, Interview with Sofia District Court judge V.K. on 9 June 2022. The judge presented some of his cases showing this tendency – criminal case 15165/2019, criminal case 7009/2020, criminal case 3967/2020, criminal case 11061/2020 of the Sofia District Court.

The Bulgarian legislation contains a definition only for a **legal representative** in the meaning of a guardian to a person with an IPD who has been placed under guardianship by the court.⁹¹ No procedure has been set out by any authority for any type of proceedings regulating the appointment of a guardian/support person for the adults with IPD who are not placed under guardianship when they participate in justice proceedings (their number is exceedingly larger than the number of persons placed under guardianship). However, the general rule of the Criminal Procedure Code regulates that a husband or a lineal descendent or ascendent of the person can serve as a defender of such a person if he/she is indicted.⁹²

It is only once the person with disability has been accused - and then mostly when poverty is indicated or when required by the severity of the offence - that a *pro forma* **public defender is appointed** with the assumption, but not the legal obligation, that he/she shall provide adequate support and assistance to the accused. **Legal defence/assistance is mandatory in cases:** when persons are accused of an offence that is punishable by deprivation of liberty for a minimum of 10 years or an offence punishable with a more serious penalty; if the case is decided in the absence of the defendant; if the defendant cannot afford to pay for the attorney's services but wants to have an attorney and this is required in the interests of justice.⁹³ All of these legal scenarios are applicable to persons with IPD, as shown in real cases. In this way even when persons with IPD are not assessed as such and not provided legal aid under the provision of Article 94, para.1, item 2 of the Criminal Procedure Code, they receive mandatory legal aid in some cases under the abovementioned provisions.

No other "**reasonable accommodation**" measures are provided for in the Criminal Procedure Code. Since 2019 the Persons with Disabilities Act provides that *"the judiciary, as well as all state institutions, shall ensure that persons with disabilities have effective access to justice on an equal basis with others, including by providing them with procedural and age-appropriate support measures in view of their role in all phases of the process. The programs of the National Institute of Justice and the Academy of the Ministry of Interior include training programs for working with people with disabilities."*⁹⁴ However, this provision is not implemented in practice at present.

⁹¹ Bulgaria, Persons and Family Act (10.09.1949), Art.5, available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2121624577>. According to Art. 5 "minors and adolescents who, due to feeble-mindedness or spiritual malady are unable to manage their affairs shall be placed under full guardianship and shall be declared legally incapable. Adults suffering from such disabilities whose condition is not so serious so as to necessitate full guardianship shall be placed under partial guardianship. The legal transactions of persons under para. 1 shall be regulated according to Art. 3, para. 2, and the legal transactions of persons under para. 2 shall be regulated according to Art. 4, para. 2." According to Art. 3, "minors are persons under the age of 14. Their legal representatives – parents or guardians – are required to perform legal transactions instead of and on behalf of the minors." According to Art. 4, "Adolescents are all persons between the ages of 14 and 18. They may not perform legal transactions without their parents' or guardians' consent. They may, however, carry out ordinary acts forming part of everyday life and have access to the resources obtained in consideration for their work." Family Code (1.10.2009), Art. 153, available at: <http://www.lex.bg/bg/laws/ldoc/2135637484>.

⁹² Bulgaria, Criminal Procedure Code, Art. 91, para. 2.

⁹³ Bulgaria, Criminal Procedure Code, Art. 94, para. 1, items 3, 8, 9.

⁹⁴ Bulgaria, Persons with Disabilities Act, Art. 67.

Regarding reasonable accommodations the interviewed Sofia Regional Court judge shared that while she was working at the District Court she has visited the hospitals where persons were placed under compulsory treatment (and was aware of the conditions, regime, relationships between staff and patients) but her younger colleagues in general are not aware of them. During COVID 19 pandemic part of the cases were heard by the court on Skype and the person with disability was involved directly from the room where he/she was placed. Because of the pandemic the most appropriate place where the court hearings should take place has been discussed by the Sofia Regional Court judges. Arguments for both court rooms and hospitals rooms were considered, but the prevailing ones seemed to be that court hearings would be better to take place in the psychiatric hospitals in order judges to receive immediate impression of the treatment conditions and difficulties for the disabled person to be spared.⁹⁶ However, in 2016 when the judge has worked at the District Court she heard that the majority of the disabled persons wanted to be in the courthouse because they felt resentment towards the hospital from which they were brought for the hearings and the doctors accordingly.⁹⁷ A District Court judge is of the opinion that: *it is very important that judges are required to have immediate impressions and in an environment that is conducive and safe for the concerned disabled person. Because the Bulgarian law allows, e.g. compulsory treatment proceedings that the person should not be brought before the court if his/her health condition does not allow it, which may actually be a form of abuse and the person with a disability may be eliminated as a person in the proceedings and in his case.*⁹⁸

The third interviewed judge underlines also that the behavior of the judge should be predisposing and relaxing in these cases. *I always give the disabled defendants the opportunity, if they want to ask questions of witnesses and experts, to make any requests, objections, whatever they want in the court proceedings itself, because it is important to answer the most important question - does this person need compulsory medical treatment.*⁹⁹

⁹⁵ Bulgaria, Interview with Sofia Regional Court judge M.T. on 13 May 2022.

⁹⁶ Bulgaria, Interview with Sofia Regional Court judge M.T. on 13 May 2022. *Because it is kinder to the person who is supposed to have some difficulty and the stress and inconvenience of being there in a courthouse (where there are many other people who do not have the same difficulties as him, because the cases are heard by criminal judges and are on their general schedule) will be spared.*

⁹⁷ Bulgaria, Interview with Sofia Regional Court judge M.T. on 13 May 2022. *So the considerations trial hearings to take place in the hospital are substantiated by the view that the judge sees where the person is placed, is aware of the conditions and that the transportation of the person and the humiliation is saved.*

⁹⁸ Bulgaria, Interview with District Court judge V.C. on 13 May 2022.

⁹⁹ Bulgaria, Interview with Sofia District Court judge V.K. on 9 June 2022. *In my opinion, these proceedings should be carried out by the panel in a gentle environment, in gentle conditions. The judge must first predispose the defendant to speak, to relax, and he should tell from his point of view what happened; why it happened; does he wish to tell anything specific about the event that necessitates his treatment; how he feels; does he show emotions - for example crying, sharp change of behaviour, laughter - these should be recorded in the hearing protocol.*

Public defenders in compulsory treatment cases

The interviewees generally did not mention at all the ex officio lawyers (public defenders) of persons concerned. One judge¹⁰⁰ stated that ex officio lawyers consider these cases formal, as awkward situations because they don't know what to do with their clients. They pose almost no serious legal problems and are generally uninvolved in most cases. They are mostly public defenders and.... the state can make an effort to teach them. I.e. there should be some specific assessment of the quality of the lawyer's work in these cases, something like a more special methodology should be developed.¹⁰¹

3.1.2.3 Assessment of the person with presumed disability

Forensic medical assessment is required only after the suspect has been accused by law and in practice. The goal of the assessment is solely to determine whether or not the accused is mentally competent/criminally responsible (not to provide support). In the course of criminal proceedings, a **medical assessment is mandatory after indictment when there is evidence that the accused person may be incompetent or when the accused person's physical and/or mental condition prevents him/her from comprehending factual information pertaining to the case or from providing a reasonable explanation of facts relating to the case.**¹⁰² In these cases the main purpose of the competency assessment by medical experts is to facilitate the work of the judiciary. The experts' findings are not binding on the court and the pre-trial authorities. If the authority that appointed the assessment disagrees with the conclusions made by an expert witness then it must substantiate their disagreement.¹⁰³ The forensic findings may not be appealed by either of the parties involved in the criminal proceedings. In the event that they disagree with the findings either of the parties involved may request a second or an additional forensic assessment to be conducted. The authority receiving the request is under no obligation to grant the request for a subsequent forensic assessment. Forensic psychiatric assessment, forensic psychological assessment or combined forensic psychiatric and psychological assessment are requested in order to determine the mental and/or psychiatric condition of a defendant. The terms and conditions of ordering forensic assessment of mental competence/criminal responsibility are set out in *Decree #2 of 26 October 2011* of the Ministry of Justice, the Ministry of Interior and the Ministry of Health.¹⁰⁴

¹⁰⁰ Bulgaria, Interview with Sofia Regional Court judge M.T. on 13 May 2022

¹⁰¹ Bulgaria, Interview with Sofia Regional Court judge M.T. on 13 May 2022.

¹⁰² Bulgaria, Criminal Procedure Code, Art. 144, para. 2, item 3, item 4.

¹⁰³ Bulgaria, Criminal Procedure Code, Art. 154.

¹⁰⁴ Bulgaria, Decree # 2 from 26 October 2011 for the terms and conditions of carrying out forensic, forensic psychiatric and forensic psychological assessments, including reimbursement of healthcare institutions for the provided services issued by the Ministry of Justice, the Ministry of Interior, and the Ministry of Health, promulgated, State Gazette №91/18.11.2011, (*Наредба № 2 от 26 октомври 2011 г. за условията и реда за извършване на съдебномедицинските, съдебнопсихиатричните и съдебнопсихологичните експертизи, включително и за заплащането на разходите на лечебните заведения, издадена от Министерството на правосъдието, Министерството на вътрешните работи и Министерството на здравеопазването, обн. ДВ. бр.91 от 18 Ноември 2011*), available at: <http://www.lex.bg/bg/laws/ldoc/2135760470>.

Forensic psychiatric assessment is ordered to determine the mental condition of a person if a bona fide doubt exists regarding the existence of a mental disorder.¹⁰⁵ Its goal is to provide an expert assessment of the person's capacity to comprehend the nature and consequences of his/her actions and his/her ability to control those actions at the time of the offence, the person's mental capacity at the time of ordering the forensic assessment, as well as their projected mental capacity in the future.¹⁰⁶ The assessment also may have the goal to assess: the person's mental fitness to participate in pre-trial or judicial proceedings; the person's mental fitness to serve punishment and the need for medical care during the punishment; the need to apply compulsory treatment measures and their type.¹⁰⁷ Forensic psychiatric assessments for persons who are held in detention take place in health centres that have dedicated wards for the treatment of criminal offenders which have been approved by the Ministry of Health in concordance with the Ministry of Justice. These wards/centres provide a regime of detention with constant behavioural monitoring. **Inpatient forensic psychiatric assessment may not exceed 30 days.**¹⁰⁸ This time limit may be extended only once for a period of no more than 30 days. Outpatient forensic psychiatric evaluations take place in health centres for outpatient care and in centres for psychiatric health.¹⁰⁹ Forensic psychiatric assessments are prepared in the form of **reports** that contain information about the expert witness, the person who is being assessed and the goals of the assessment.¹¹⁰

Forensic psychological assessments are performed with the goal to provide information about, among other things, the level of cognitive development of the defendant, his/her personality and intellectual abilities and how well these match the subject's chronological age, his/her psychological capability to comprehend factual information pertaining to the case, and communicative skills and other tasks defined by the authority who ordered the assessment.¹¹¹ Forensic psychological experts can be psychologists with a degree in clinical psychology and, whenever possible, with special training in forensic psychology.¹¹² Forensic psychological assessments may be performed on their own, in rare cases, or, more commonly, in combination with forensic psychiatric evaluations and may be conducted as an inpatient or outpatient service.¹¹³ They are summarized in the form of reports which contain data about the expert witness, information from the case

¹⁰⁵ Bulgaria, Decree #2 of 26.10.2011, Art. 19.

¹⁰⁶ Bulgaria, Decree #2 of 26.10.2011, Art. 21.

¹⁰⁷ Bulgaria, Decree #2 of 26.10.2011, Art. 21.

¹⁰⁸ Bulgaria, Decree #2 of 26.10.2011, Art. 22, para. 3.

¹⁰⁹ Bulgaria, Decree #2 of 26.10.2011, Art. 22.

¹¹⁰ Additional data included in the Forensic Psychiatric Assessment report are the case number and the date when it was initiated, as well as the name of the authority that initiated the proceedings, basic information about the nature of the case and the criminal offence, and a short summary of the statements given by the defendant and the witnesses or the parties. Bulgaria, Decree #2 of 26.10.2011, Art. 22-23. The section on the psychiatric research information includes patient's health history and all information that was gathered from the offender's previous medical records, along with the results from the complete physical tests. The forensic expert analysis involves a review of the family and social medical history, of the biological, psychological and social development of the offender, of past illnesses and of the person's current health status, as well as an analysis of the defendant's psychiatric state before, during and after the commission of the offence. The findings reflect the scientific conclusions of the evaluation along with specific medical recommendations in regards to providing adequate medical care for the person who is the subject of the assessment.

¹¹¹ Bulgaria, Decree #2 of 26.10.2011, Art. 26.

¹¹² Bulgaria, Decree #2 of 26.10.2011, Art. 25.

¹¹³ Bulgaria, Decree #2 of 26.10.2011, Art. 27.

that the assessment pertains to, data from the psychological research, professional analysis and conclusions.¹¹⁴ It is not the goal of forensic assessments to lead to recommendations for appropriate measures to provide support to the vulnerable person during the criminal proceedings. Since 2020 all performed assessments are subject to registration, documentation and storage.¹¹⁵

The procedure for **registration and the requirements for the qualification** of experts is regulated by Ordinance No. H-1 of 14 February 2023 on the registration, qualification and remuneration of experts, issued by the Ministry of Justice.¹¹⁶ The *Ordinance defines a number of requirements and procedures for the selection and approval of experts*, which must guarantee their professional skills and independence.¹¹⁷ **The expert witness directories** are approved by a commission comprised of the chairpersons of different levels of courts in the regions. However, the **Criminal Procedure Code does not mandate that only expert witnesses selected from the Expert Witness Directory be appointed as forensic experts**. According to Article 147 of the CPC the only requirement for forensic experts is that they are specialists in the respective field of science, art or engineering, and Art. 148, para. 1, lists a number of exceptions to that requirement – however, not being registered in the expert witness directory is not among those exceptions barring professionals from serving as forensic experts. **There are several fundamental shortcomings related to expert witnesses - the lack of major and detailed legislative act about their work; the current situation of lack of assessment of their knowledge/quality of the work; the scarce number of expert witnesses; their uneven distribution in the country; the low remuneration and their dependence on the body ordering the assessment.** The forensic psychiatric assessments of persons placed under civil involuntary treatment under the Health Act are performed according to another Ordinance, issued by the Minister of healthcare and Minister of justice on 31 May 2005.¹¹⁸

¹¹⁴ Bulgaria, Decree #2 of 26.10.2011, Art. 28.

¹¹⁵ Bulgaria, Decree #2 of 26.10.2011, Art. 6.

¹¹⁶ Bulgaria, Ordinance No. H-1 of 14 February 2023 on the registration, qualification and remuneration of experts, issued by the Ministry of Justice, available at: <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp;sessionId=BCA823F24D5299CFEC26069F-29C1E8C4?idMat=186961>.

¹¹⁷ Bulgaria, Ordinance No. H-1 of 14 February 2023, Art. 7. (1) A legally capable person who meets one of the following requirements can be approved as an expert: 1. holds an academic position - "associate professor" or "professor" in higher schools, scientific organizations or the Bulgarian Academy of Sciences; 2. has a higher education with a master's degree and has at least 5 years of experience in the specialty; 3. has a higher education with an acquired educational and qualification degree "bachelor" and has at least 7 years of experience in the specialty; 4. has secondary education and at least 10 years of experience in the specialty; 5. is an employee of the Ministry of the Interior and has completed special training at the Academy of the Ministry of the Interior or the National Institute of Criminalistics of the Ministry of the Interior; 6. is a doctor with a recognized specialty in forensic medicine, a doctor without such a specialty who works in the structure of a medical institution carrying out activities in forensic medicine, a doctor with another medical specialty or a doctor in dental medicine. (2) The person under para. 1 must also meet the following conditions: 1. not have been convicted of a crime of a general nature; 2. not be deprived of the right to exercise a profession or activity; 3. not to carry out functions of administration of justice in the judicial system; 4. to have a permanent residence permit in the Republic of Bulgaria, if the person is not a Bulgarian citizen or a citizen of the European Union, of a state party to the Agreement on the European Economic Area, or of the Swiss Confederation; 5. to be entered in the relevant register of persons possessing a certain profession, legal capacity or qualification, when such entry is required by law; 6. to possess a diploma, certificate, license or other document issued by a higher school, professional organization or institution pursuant to law, which document certifies the existence of the relevant qualification or legal capacity.

¹¹⁸ Bulgaria, Ordinance 16 of 13 May 2005 for forensic psychiatric assessments for involuntary treatment of persons with mental disorders, issued by the minister of healthcare and minister of justice (*Напегба 16 от 13 май 2005 за съвбедно-психиатричните експертизи за задължително настаняване и лечение на лица с психични разстройства, издадена от министъра на здравеопазването и министъра на правосъдието*), available in Bulgarian at: <https://www.ciela.net/svobodna-zona-normativ/view/2135504229/naredba-%E2%84%96-16-ot-13-may-2005-g-za-sadebno-psihiatrichnite-ekspertizi-za-zadalzhitelno-nastanyavane-i-lechenie-na-litsa-s-psiichni-razstroystva>.

According to the **National Strategy for Mental Health 2021-2030** there are only four forensic psychiatrist departments and only 8 forensic psychiatrists for the whole country. It underlines the significantly smaller number of assessments for termination of involuntary treatment which *"shows a lack of patient follow-up and practically turns placement under involuntary treatment into a sentence – after the "punishment" has expired, the patient is discharged without follow-up care."* Another finding of the Strategy is that *"significant proportion of people who have committed a crime and are recognised as criminally irresponsible are being treated in a general psychiatric hospital. The stay of these patients is usually long, and they also pose a greater danger to other patients and staff. There are no psychiatrists in the prisons".*¹¹⁹

In practice, the interviewed judges and expert witnesses mention several problems related to forensic assessment and expert witnesses. Below they are enlisted and illustrated with quotes from the interviews. **If any identification of the disability is done by the pre-trial investigative authorities – police, prosecutors – it is delayed and appointment of the forensic assessment is also delayed.**^{120,121}

Another issue is the scarcity of expert witnesses¹²² and forensic psychiatrists. The investigative bodies and the court still have the option to appoint as expert witnesses any psychiatrists who are not specifically forensic psychiatrists. A disputable issue in this regard is whether the task of the forensic psychiatrist is only the assessment without treatment while some practicing psychiatrists are of the opinion that treatment whenever needed should be applied together with the assessment. The interviewed judges share that they select the expert witnesses who they appoint on compulsory treatment cases by reading case-law and assessments and by searching in academic literature databases available on the Internet. **The expert witnesses entered into in the court directories are persons who formally meet the education requirements in the field**

¹¹⁹ Bulgaria, Council of Ministers, *National Strategy for Mental Health of the Citizens of Republic of Bulgaria 2021 – 2030*, adopted on 23 April 2021, p.9 and 16, available in Bulgarian at: <https://www.mh.government.bg/bg/politiki/strategii-i-kontseptsii/strategii/nacionalna-strategiya-za-psihichno-zdrave-na-grazhdanite-na-repu/>. The Strategy also notes that there is a lack of a system for forensic psychiatric assessments, a system for staff development and programs for tracking patients with socially dangerous behaviour. The Strategy envisages establishment of a specialised forensic psychiatry clinic independent of the penitentiary system with sufficient capacity to provide assessment and treatment of forensic psychiatric cases and opening of small and compact (between 30 and 40 beds) inpatient psychiatric facilities for every 150 000 persons of the general population to serve psychotic crises, to be in continuous communication with the network of day centres and mental health outpatient clinics.

¹²⁰ Bulgaria, Interview with Regional Court judge M.T. on 13 May 2022. *In practice, in the cases in which an indictment was already filed, i.e. criminal responsibility is not excluded; it is noticed that a considerable period of time passes before it is established that the detainee or defendant has a disability. I.e. immediate identification mechanism and an algorithm for what should be done and how, are lacking, the disability is neglected. Otherwise, the investigating authorities must notice this and give indications to the prosecutor. Most often, initially the person is on his own in the proceedings, then on a later stage a lawyer is involved. An expert assessment is appointed and it is relied upon it. Although in a significant part of the cases, the disability, which requires mandatory legal defence/aid, is clear. But in any case, social protection measures of some kind should be applied from the beginning and they are not. The effort of the pre-trial authorities consists only of appointment of assessment and a defense attorney.*

¹²¹ Bulgaria, Interview with District Court judge V.C. on 13 May 2022. Another judge underlines a different aspect: *The small percentage of pre-trial disability assessments should be noted. It takes place mostly when the accused tried to avoid criminal responsibility, pointing out that he had some disabilities. At the defense lawyer's insistence an assessment is usually conducted. Police officers and prosecutors are not trained to recognise symptoms of impairment and therefore do not order assessments.*

¹²² Bulgaria, Interview with Regional Court judge M.T. on 13 May 2022. *Even in the capital - Sofia, there is also a big problem the psychiatrists to agree to be expert witnesses, except for those who are usually appointed in pre-trial proceedings - experts from the Mental Health Centres or already retired experts, former psychiatrists from the Mental Health Centre and psychologists. But psychiatrists with specialized competence, for example in addictions to drugs, have a hard time agreeing.*

the courts need. However, there is no effective evaluation of their knowledge.^{123,124} The District Court judge in Sofia states that some expert witnesses (appointed by the Ministry of Interior due to the low remuneration and their old age) produce *assessments which are identical, not reasoned, carried out pro forma, based only on the statements to the assessed person, without expert research, comparison and discussion of medical records. While other experts present excellent assessments* (and he showed the list with the names of both groups of experts).¹²⁵ **In practice, there are no safeguards for the independence (regarding protection from conflict of interests¹²⁶ and from the appointing authority^{127,128}) of expert witnesses.** A Sofia Regional Court judge explains **the trend the forensic psychiatric assessments to find less persons than in the past as criminally irresponsible** in this way: *Mental incompetence/criminal irresponsibility is now much less commonly recognised, which is mainly due to psychiatrists who have higher requirements for irresponsibility. They take the view that the assessed person is always responsible, that mental deficiencies/mental illness, did not prevent him/her from comprehending the nature and meaning of the crime and should only be considered as circumstances to be taken into account in determination of the punishment. Perhaps this is some form of modern psychiatry that becomes more cruel. Somehow a culture is created, I don't know to what extent it is conscious, in which the prosecution is aided. Psychiatrists should normally be involved already in the pre-trial proceedings and they are part of the prosecution mechanism, the incrimination mechanism.*¹²⁹ The third judge does not completely share the above problems with the overall quality of the assessments (although he mentions problems with especially two experts appointed often during pre-trial proceedings who do not meet the quality requirements of providing reasoned and

¹²³ B Bulgaria, Interview with District Court judge V.C. on 13 May 2022. Through assessments, a huge part of pre-trial proceedings can be manipulated, not only those related to the health condition of the citizens... As magistrates, we are subject to continuous quality control of our work; we periodically pass certifications, go through trainings. And expert witnesses may never be trained in their lifetime and will continue to be self-proclaimed experts.

¹²⁴ Bulgaria, Interview with an expert witness psychologist B.K. on 9 June 2022. An expert witness with over 20 years of experience states that: There is no control over the selection of expert witnesses and their degrees of education and qualification (a several days' course or seminar is reflected in CVs as training or education) and they are appointed by the court and carry out assessments. Professional communities do not give a recommendation for the candidate for an expert witness.

¹²⁵ Bulgaria, Interview with Sofia District Court judge V.K, 9 June 2022.

¹²⁶ Bulgaria, Interview with District Court judge V.C. on 13 May 2022. Because in our judicial district the state psychiatric hospital is located very close to the court, we appoint expert witnesses from there - they are actually only two who are engaged in assessments. Sometimes I have doubts about their competence when the cases are more complex, and sometimes I have doubts about a conflict of interest, and in such cases I have often appointed repeated assessments. And for the conflict of interest in compulsory treatment proceedings, on the one hand, the hospital heads or the doctors who work in the hospitals are somewhat dependent and the conclusion they give is not always cleared of any side factors, especially with the problematic patients who pose high-risk.

¹²⁷ Bulgaria, Professor Ivaylo Conkov, The possibilities of the legal defence in relation to the assessments in the criminal proceedings in Bulgaria and the requirements of Article 6 of the ECHR (ВЪЗМОЖНОСТИТЕ НА ЗАЩИТАТА ВЪВ ВРЪЗКА С ЕКСПЕРТИЗИТЕ В НАКАЗАТЕЛНИЯ ПРОЦЕС НА РЕПУБЛИКА БЪЛГАРИЯ И ИЗИСКВАНИЯТА НА ЧЛЕН 6 ОТ ЕВРОПЕЙСКАТА КОНВЕНЦИЯ ЗА ЗАЩИТА НА ПРАВАТА НА ЧОВЕКА И ОСНОВНИТЕ СВОБОДИ), 2007, available in Bulgarian at: <https://humanrights.bg/Media/Default/Documents/Statii,%20analizi/Експертизите%20в%20нак.%20процес%20и%20изискванията%20на%20чл.%206%20ЕКПЧ.pdf>.

¹²⁸ Bulgaria, Interview with District Court judge V.C. on 13 May 2022. The author presents his arguments that the experts enter into a dependence on the investigating prosecutors appointing them, and in fact the court is given a conclusion that has been previously prepared at their request. The procedure of the appointment is not adversarial, it does not include active participation of the defense lawyer in this pre-trial phase and request the appointment of other experts. The author justifies his thesis that the expert witnesses (and this could probably be traced) serve the accusatory function. And the one and same expert witnesses, incl. psychiatrists, are appointed and this is their main additional income which puts them in a permanent dependence on their "employer" - the prosecutor or the investigator with his/her accusatory function.

¹²⁹ Bulgaria, Interview with Regional Court judge M.T. on 13 May 2022.

justified assessments) and the time when they are provided (they are prepared in 10-14 days in his experience). He states that complex assessments are often appointed, because it is checked from a mental point of view in the field of psychology: the attitude of the person to the specific act/crime and his own condition/disability; what psychological, social and personal weight he attaches to the committed public offense/crime; how he perceives himself in the specific crime, etc.¹³⁰ The judge also states that in his cases a forensic assessment is being appointed by the prosecutor during the pre-trial proceedings. **Another problem is that expert witnesses are not provided sufficiently suitable conditions for carrying out the assessments.**¹³¹

The key state authorities involved in compulsory treatment cases are the Ministry of Healthcare (which mainly elaborates legislation, collects some data by its National Centre for Public Health and Analyses and funds and manages state psychiatric hospitals) and the Ministry of Justice (which elaborates legislation and funds judicial authorities). The present research found that they do not interact in any way regarding criminal proceedings where persons with IPD are involved.

3.1.2.4 Compulsory treatment of defendants with psychosocial and intellectual disabilities, based on an assessment of unfitness to stand trial and incapacity to be found criminally responsible

Under the Criminal Code, the court may rule on one of the following three measures with respect to **persons who were in a state of incompetence when they committed a criminal act or who became incompetent before the judgment was delivered (while they are defendants) or while serving their sentence**: the person may be placed in the care of his/her relatives on the condition that they take on the obligation to ensure that he/she receives treatment under the supervision of a psychiatric clinic (outpatient treatment); inpatient compulsory treatment in a general psychiatric facility; inpatient compulsory treatment in a specialised psychiatric hospital or in a specialised ward in a general psychiatric facility.¹³² **Compulsory treatment in a general psychiatric facility** may be ordered by the court for a person suffering from an IPD who, in view of his/her mental condition and the nature of the committed offence, does need hospital care and compulsory treatment. **Compulsory treatment in a specialised psychiatric hospital or in a**

¹³⁰ Bulgaria, Interview with Sofia District Court judge V.K. on 9 June 2022.

¹³¹ Bulgaria, Interview with an expert witness psychologist B.K. on 9 June 2022. Regarding the way of carrying out the assessment, the interviewed psychologist stated that: there is a problem with the coordination between the expert witnesses and the pre-trial facilities/prison administrations - they bring the person to be assessed with handcuffs and 5 guards, the assessment is done for about 3 hours, in the cold and through a grill, in the presence of 3 policemen at the beginning. The assessment report of one case sometimes is edited over 30 times. Experts wanted to know more about the childhood of the assessed person to be able to recommend how to work with him in long-term perspective, but if he goes to prison he will most likely get stone-age drugs and no psychological help. The remuneration of the experts is about BGN 20 (EUR 10) per hour/gross according to the regulation. Most of the psychiatrists write half a page with the name and description of the case and often wrong data because they are in a hurry and they are not well paid.

¹³² Bulgaria, Criminal Code (1.05.1968), Art. 89.

specialised ward may be ordered by the court for a person suffering from an IPD who, in view of his/her mental condition and the nature of the committed offence, **may be deemed a serious threat to society or to his/her relatives**. In these cases the concerned person is under close supervision so as to prevent him/her from the commission of further offences.¹³³ The court-ordered compulsory medical treatment may be discontinued or amended when this is required by changes in the patient's condition or if it is necessitated by the course of his/her treatment. In all cases, after six months of having ordered a person to be placed in a medical facility, the court must deliver an *ex officio* decision on whether or not the compulsory treatment should be continued, discontinued or replaced with another measure.¹³⁴

The compulsory medical treatment during pre-trial proceedings is ordered **on the motion of a district prosecutor if the person is not detained or of a regional prosecutor if the person is detained**¹³⁵ who, prior to petitioning for the treatment, requests a **forensic assessment** and authorises an investigative body to determine the conduct of the person before and after the commitment of the offence and to determine **whether this person poses a threat to society**. Requests for orders of compulsory medical treatment are considered by the district court at the person's place of residence if the person is not detained and by the regional court at the place of the detention facility if the person is already detained.¹³⁶

The court hearing on the compulsory treatment is attended **by the person for whom the measure is requested, by his/her parents or guardians, and the victim**, all of whom are summoned to the hearing by the prosecutor. It is not mandatory that the person for whom the measure is requested be present at the court hearing when his/her health condition does not allow for it. **The participation of the prosecutor and the lawyer of the person with presumed disability is mandatory**. In all cases the court hears the conclusions of the expert witness (who is a psychiatrist)¹³⁷. The adjudication of the defendant's competence is delivered by a single judge and can be appealed or contested within seven days of its pronouncement.¹³⁸ If the adjudication by a first instance court is repealed, then the case is elevated to a court of appeal whose decision is final.

After six months have passed since the placement of the person under compulsory treatment, the court at the location of the psychiatric facility where the person is placed *ex officio* pronounces on the continuation, replacement or termination of compulsory treatment.¹³⁹ Before the expiration of the six-month period from placement under compulsory treatment, as well as in the cases when the person is placed under the outpatient care of his relatives and under the

¹³³ И Bulgaria, Criminal Code (1.05.1968), Art. 90.

¹³⁴ Bulgaria, Criminal Code (1.05.1968), Art. 91.

¹³⁵ Bulgaria, Criminal Procedure Code (29.04.2006), Art. 427.

¹³⁶ Bulgaria, Criminal Procedure Code (29.04.2006), Art. 428.

¹³⁷ Bulgaria, Criminal Procedure Code (29.04.2006), Art. 430.

¹³⁸ Bulgaria, Criminal Procedure Code (29.04.2006), Art. 431.

¹³⁹ Bulgaria, Criminal Procedure Code (29.04.2006), Art. 432, para. 1.

supervision of the local mental health centre, the court may replace or terminate the compulsory treatment at the proposal of the prosecutor.¹⁴⁰ The court rules *ex officio* on the continuation, replacement or termination of compulsory treatment in a court hearing, after mandatory consideration of the opinion of the relevant psychiatric facility and the conclusion of an expert psychiatrist.¹⁴¹ The concerned person or his/her lawyer are not heard.

The 1981 (last amended in 2004) *Instruction/guidelines No. 1 of the Ministry of Healthcare on the activities of health authorities in the case of involuntary placement of persons in psychiatric hospitals* governs the activity of health authorities in case of placement of persons in psychiatric hospitals for compulsory and involuntary treatment and for forensic psychiatric assessment.¹⁴² According to it compulsory treatment is to take place in psychiatric facilities designated by an order of the minister of healthcare upon a court decision.¹⁴³ When it is imposed together with deprivation of liberty it is performed in psychiatric hospitals at the prisons. If there are not such hospitals it takes place in the psychiatric hospitals outside penitentiary system. Out-patient forensic psychiatric assessment is performed in a medical facility, at the investigative body, in the court, in pre-trial detention facility/prison or at the home of the assessed person. Inpatient forensic psychiatric assessment is performed in general psychiatric facility or a profiled facility for detainees and prisoners.¹⁴⁴ The assessment of the person is carried out by the medical authorities only with the person's consent. When the person does not give consent, the medical authorities immediately request from the prosecutor or the court a written order and assistance for an outpatient assessment or accommodation of the person temporarily in a psychiatric hospital for an inpatient forensic psychiatric assessment.¹⁴⁵ The conclusion of the forensic psychiatric assessment, appointed with a view to applying compulsory treatment must contain: 1. a recommendation to the court about the nature of the psychiatric hospital where the treatment should be carried out; 2. opinion to what extent the patient's condition requires his/her temporary accommodation in a psychiatric hospital until the case is heard in court. In this case, the expert notifies the head of the psychiatric facility about the need to apply this measure.¹⁴⁶ Admission to an inpatient psychiatric facility takes place after assessment of the

¹⁴⁰ Bulgaria, Criminal Procedure Code (29.04.2006), Art. 432, para. 2.

¹⁴¹ Bulgaria, Criminal Procedure Code (29.04.2006), Art. 432, para. 3.

¹⁴² Bulgaria, Ministry of Healthcare, Instruction/guidelines No. 1 of the Ministry of Healthcare on the activities of health authorities in the case of involuntary placement of persons in psychiatric hospitals (Инструкция № 1 за дейността на здравните органи при настаняване на лица в психиатрични стационари по принудителен ред), (shortly, Instruction/guidelines No.1) (24.07.1981), last amended on 4.06.2004, available in Bulgarian at: https://econ.bg/Нормативни-актове/Инструкция-1-за-дейността-на-здравните-органи-при-настаняване-на-лица-в-психиатрични-стационари-_I.I_i128593_at.5.html.

¹⁴³ Bulgaria, Ministry of Healthcare, Instruction/guidelines No. 1, Art. 2, para. 2.

¹⁴⁴ Bulgaria, Ministry of Healthcare, Instruction/guidelines No. 1, Art. 4.

¹⁴⁵ Bulgaria, Ministry of Healthcare, Instruction/guidelines No. 1, Art. 4, para. 2. The temporary accommodation of persons for forensic psychiatric assessment in a profiled psychiatric hospital for detainees is carried out only after court's decision on remand measure, detention in pre-trial facility or detention for serving a sentence of deprivation of liberty (Art. 4, para. 3). After the 30-days period for inpatient assessment (or its extension) if the prosecutor or the court did not instruct otherwise, the patient is discharged from the psychiatric hospital immediately, unless he/she declares in writing that he/she wishes to remain in treatment and there are medical indications for this. In both cases, the head of the psychiatric facility, notifies of the patient's discharge the authority that appointed the forensic psychiatric assessment and ordered the temporary accommodation of the person in the institution for the assessment, as well as the person's relatives. (Art. 5, para. 3) If the person is detained or imprisoned he should be brought back to the detention facility/prison (Art. 5, para. 4).

¹⁴⁶ Bulgaria, Ministry of Healthcare, Instruction/guidelines No. 1, Art. 6.

need for inpatient psychiatric treatment, except in cases of involuntary or compulsory treatment ordered by the court.¹⁴⁷ The admitting doctor collects additional anamnestic data, performs a preliminary physical and psychiatric examination, determines the working diagnosis, the initial treatment and the degree of dependence on care. Within 24 hours after admission, the basic psychiatric examination is carried out by conducting a diagnostic interview, discussion of the case, consultations, formulation of the case and a treatment plan are prepared, a personal therapist is appointed. Within 24 hours the relevant district prosecutor is notified in writing if there are grounds for placing the patient on involuntary or compulsory treatment, as well as the relatives of a patient admitted for treatment without their knowledge, in cases when the patient is placed under full or partial guardianship or his condition is grounds for limiting his legal capacity.¹⁴⁸ The guidelines/protocols for all therapeutic activities, staff duties, staff ratio, keeping documentation in psychiatric facilities are provided for in *Ordinance 24 of 7 July 2004* issued by the minister of healthcare.¹⁴⁹ Part of the initial assessment of any patient are the **assessment of the suicidal and aggression risk**. While performing these assessments the psychiatrist takes into consideration the family, social, housing, financial and job situation of the person among other risk factors.

In practice, regarding the **nature of the committed crimes** the interviewed judges state different impressions – the Sofia District Court judge hears more cases about murder, physical abuse/bodily harm, arson, property destruction; the Sofia Regional Court judge while working at the District Court has heard mostly petty crimes – hooliganism, breaking of public property in the streets, bus stops, thefts etc. and lighter bodily harm; the District Court judge in a smaller town where a large psychiatric hospital is located deals with all kinds of crimes but most often physical abuse/harm, destruction of property and murders. The interviewed judges stated that **they saw and heard the persons with disabilities personally** and are of the opinion that this is crucial for the proceedings. The parents/close relatives are also present at the hearings and are also important participants especially when they take the responsibility to supervise the therapy of the person with disability at home in petty crime cases.¹⁵⁰

The interviewed judges stated that **during the hearings most of the persons concerned refuse to confess/try to hide that they performed the violent or a shameful act/crime, are not aware of their condition (sometimes they are still psychotic) and complain of the medicines, the doctors, the treatment conditions in the hospitals and sometimes of the police conduct during their detention and escort to the hospitals.**^{151,152}

¹⁴⁷ Bulgaria, Ministry of Healthcare, Regulations on the structure and operation of medical facilities for inpatient psychiatric care under Article 5, Paragraph 1 of the Law on Medical Facilities (1.08.2000), Art. 10, available in Bulgarian at: <https://lex.bg/laws/ldoc/-12550144>.

¹⁴⁸ Bulgaria, Regulations on the structure and operation of medical facilities for inpatient psychiatric care under Article 5, Paragraph 1 of the Law on Medical Facilities, Art. 11.

¹⁴⁹ Bulgaria, Ordinance 24 of 7 July 2004 for medical standard "Psychiatry", issued by the minister of healthcare.

¹⁵⁰ Bulgaria, Criminal Code, Art. 89, "a".

¹⁵¹ Bulgaria, Interview with Sofia District Court judge V.K. on 9 June 2022. *Some persons with disabilities themselves deny having a disease - they are not critical. Others are simulating. They have a practice to pretend that they are healthy, that they are being held in hospitals against their will, that they do not want to be treated because they do not need to be treated. They even judge*

All judges talked about **different combinations between compulsory treatment under the Criminal Procedure Code and civil involuntary treatment under the Health Act which are applied to offenders** due to various reasons (duration of the proceedings/the authority which reacted first to a signal about the offence/the funding of the different psychiatric facilities and the measures/the legislative gaps between criminal and healthcare legislation/overcrowded psychiatric facilities/lack of clear guidance to all actors about their functions in the process of urgent placement, etc.). According to the law the compulsory treatment is applied in case a crime under the Criminal Code has already been committed while involuntary treatment is applied as a prevention measure in case the disabled person is assessed as at risk to perform a crime or to self-harm. However, depending on the concrete circumstances in each case persons who had committed crimes may end up in involuntary treatment. According to one of the interviewed judges **the majority of the disabled persons who had committed petty crimes are placed under involuntary instead of under compulsory treatment.** This is mainly because the civil proceedings under the Health Act are more speedy.¹⁵³ One judge explained also an illegal practice of psychiatrists in psychiatric hospitals who misuse the consent of the disabled persons to treatment¹⁵⁴ and illegally (without court permission) detain patients.¹⁵⁵

There are cases in which once a court decision for compulsory/involuntary treatment is issued, **the appointed psychiatric hospital refuses to implement it.** Then the relatives or other persons notify the court about this and then a case law is now being elaborated on imposing fines to the hospital for non-implementation of a court's decision.¹⁵⁶ **In practice, persons on**

for themselves what therapy and what medicines to take, how much to take, they complain, for example, that medicines made them sick, irritated them, made them sleep...

¹⁵² Bulgaria, Interview with Sofia District Court judge V.K. on 9 June 2022. *But they always have experience with previous treatments, and it shows when I ask questions about what therapy and medicines they are prescribed, what they take and what they should not take, and they list the specific names of the drugs, how many times a day, how many milligrams a day they take. There are different types of medicines and they know them very well. Predisposed by the court, they also talk about how they stopped taking medication and why, how they felt when they took it.*

¹⁵³ Bulgaria, Interview with District Court judge in Sofia, 9 June 2022. *They are urgent, they are allocated to a judge on duty and are quickly decided, within about 15 days maximum. The first phase is scheduled a day or two after the case enters the court and after seven days, maximum 10 a second phase is scheduled. That is, up to 10 days (maximum 15) in view of the specific judge's workload, we have already pronounced an act.*

¹⁵³ Bulgaria, Interview with District Court judge in Sofia, 9 June 2022. *They are urgent, they are allocated to a judge on duty and are quickly decided, within about 15 days maximum. The first phase is scheduled a day or two after the case enters the court and after seven days, maximum 10 a second phase is scheduled. That is, up to 10 days (maximum 15) in view of the specific judge's workload, we have already pronounced an act.*

¹⁵⁴ Bulgaria, Interview with Sofia District Court judge V.K. on 9 June 2022: *It happens in practice that when a person commits a public dangerous act (not a crime under the Criminal Code) falling under the scope of the Health Act, the police team arrives at the scene of the accident, they escort him/her to the psychiatric hospital and in practice the doctors motivate the person to voluntarily sign an informed consent to treatment, and subsequently during the treatment, the person refuses it. It turned out that when the person is treated voluntarily in the psychiatric hospital, the clinical path is less paid than when he/she is compulsory treated.*

¹⁵⁵ Bulgaria, Interview with Sofia District Court judge V.K. on 9 June 2022: *When a person is escorted to a psychiatric hospital by the police and admitted, the person is held for more than 24 hours in the hospital. Within these 24 hours, the doctor fails to complete all the documentation and notify the court for extension of the treatment period. This is involuntary detention for more than 24 hours without judicial permission. The person is treated voluntarily, but later the doctors submit a request outside this period for involuntary treatment under the Health Act.*

¹⁵⁶ Bulgaria, Interview with Sofia District Court judge V.K. on 9 June 2022: *In Sofia, in our case law, we observe rather a practice of medical facilities not implementing the court decisions for the treatment of the specific person under the Health Act, since they have no available places, no beds and cannot make a commitment to treat the person. However, in my case with the "Aleksandrovska" hospital, for three months, it was inactive and this mentally ill person was not treated, although the hospital had*

compulsory treatment are placed in all mental health centres and state psychiatric hospitals in the country and live predominantly together with patients on civil involuntary and voluntary treatment. The choice of the facility is done by the court upon proposal by the expert witnesses.

Overview of the inpatient psychiatric care

In 2019-2020, Bulgaria has 12 state psychiatric hospitals (SPH), 12 mental health centers (MHC), 5 psychiatric clinics (in university hospitals) and 17 psychiatric departments at multi-specialty hospitals.¹⁵⁷ The total bed base is about 4 000 beds (4 072 beds for 2020), with additional about 1 000 daycare places. Most of the **state psychiatric hospitals** are located outside the populated areas and thus patients are accommodated and treated at a considerable distance from their place of residence, which disrupts the relationship with their loved ones and hinders their resocialisation. Most of the hospitals are of the pavilion type with buildings (and barracks) with different functions - acute closed wards separated by sex, geriatric wards, rehabilitation wards, occupational therapy. Recently day care centers for adults with IPD have been opened in a number of primary care centers and clinics at the multi-disciplinary hospitals, which offer psychosocial rehabilitation.¹⁵⁸ Psychiatric institutions do not have a defined clinical profile, but as a practice, patients with severe psychosocial disabilities such as schizophrenia, affective disorders and addiction to alcohol/psychoactive substances are hospitalised in the SPH; patients with somatic comorbidity and severe psychosocial disabilities - in university clinics and those with acute psychotic conditions, incl. and exacerbation of chronic psychoses - mainly in the MHC.¹⁵⁹ The inpatient treatment of addictions is carried out in one specialised hospital in Sofia and narcological or psychiatric departments at the SPH, MHC, multi-disciplinary hospitals, psychiatric clinics at university hospitals with a total of 169 beds for addiction treatment (115 in the SPH, 22 in the MHC and 32 in psychiatric clinics). The **mental health centers** were structured to ensure the transition from institutional/inpatient to outpatient treatment for the persons with psychosocial disabilities. Until the end of 1999, their activity was limited to the distribution of patients from the community to the hospital, maintaining a database for the treated persons from a certain area and performing outpatient activities. After the decentralisation of outpa-

sufficient number of beds, staff, funding provided and did not point out any motive for non-implementation of the court decision. The court was approached with a request from the mother of the mentally ill person that his condition had worsened and he had not been treated. The care of the execution of the court decision for treatment under the Health Act or the Criminal Code always rests with the psychiatric hospital. It is obliged under the Health Act and the Criminal Code to comply with a court order.

¹⁵⁷ Bulgaria, Council of Ministers, *National Strategy for Mental Health of the Citizens of Republic of Bulgaria 2021 – 2030*, adopted on 23 April 2021, p.7-8, available in Bulgarian at: <https://www.mh.government.bg/bg/politiki/strategii-i-kontseptsii/strategii/nacion-alna-strategiya-za-psihichno-zdrave-na-grazhdanite-na-repu/>. The largest number of beds are in SPH, followed by MHC, clinics and psychiatric wards in multidisciplinary hospitals. The territorial distribution of psychiatric hospitals is extremely uneven - there are 6 regions where there is only one psychiatric department at the local multidisciplinary hospital.

¹⁵⁸ Bulgaria, Council of Ministers, *National Strategy for Mental Health of the Citizens of Republic of Bulgaria 2021 – 2030*, adopted on 23 April 2021, p.7-8. There is also a reform in the field of deinstitutionalization of care for the disabled and the elderly people, within which it is planned a number of new social services and integrated health and social services to be set up.

¹⁵⁹ Bulgaria, Council of Ministers, *National Strategy for Mental Health of the Citizens of Republic of Bulgaria 2021 – 2030*, adopted on 23 April 2021, p.7-8.

tient care, much of the outpatient functions of MHC were taken over by private psychiatric offices, which took their patient records with them. In the last 10 years, the function of the MHC has been shifted in the direction of mainly inpatient services due to the specifics of financing the activity. In this way, the main function of the MHC for follow-up and outpatient care of the persons with psychosocial disabilities is not adequately fulfilled.¹⁶⁰

The number of psychiatrists in Bulgaria is about 500, very unevenly distributed. A serious imbalance between individual professionals is also at stake - psychiatrists, psychotherapists, social workers, psychologists, nurses, orderlies and other personnel. In practice, the system is dominated by doctors and the remaining staff is insufficient to form multidisciplinary teams. **There is hardly any psychiatric treatment facility in the country that covers the requirements of the medical standard "Psychiatry" in terms of staff**, and this makes it pointless to give different levels of competence.¹⁶¹ After discharge from the psychiatric hospital, the patient has no regulation of referral for follow-up, supportive therapy and any psychosocial interventions with a view to his/her reintegration into the community.¹⁶² These activities are undertaken haphazardly depending on the condition and coverage of that patient by a relevant outpatient service or at the initiative of relatives.¹⁶³ A significant problem is the lack of continuity of care after completion of inpatient treatment and the lack of a unified information system for the psychiatric patients being treated. There are local information databases for patients transferred to the respective SPH or MHC, without these data being used by other medical institutions. In cases where emergency patients do not have accompanying documentation and their identity is unknown, there is no possibility to check this by reference in an information system, which complicates the diagnostic-treatment process.¹⁶⁴ There is no system for evaluating the effectiveness of the activities carried out during the treatment.

In practice, **the persons who had committed the most severe crimes** are placed in the State Psychiatric Hospital in Lovech. According to the interviewees in this research mental health centres keep these patients up to 20-30 days and remove them to state psychiatric hospitals because of funding reasons as usually these patients stay on compulsory treatment for years. Their relatives and next of kins either do not wish or are not able to take care of them (or are dead) and hope to get rid of them by placement in psychiatric hospital. The courts considering the lack of treatment and resocialisation chances in the community for the disabled person on one hand and the public interest for protection on the other hand often continue compulso-

¹⁶⁰ Bulgaria, Council of Ministers, *National Strategy for Mental Health of the Citizens of Republic of Bulgaria 2021 – 2030*, adopted on 23 April 2021, p.10.

¹⁶¹ Bulgaria, Council of Ministers, *National Strategy for Mental Health of the Citizens of Republic of Bulgaria 2021 – 2030*, adopted on 23 April 2021, p.11.

¹⁶² Bulgaria, Council of Ministers, *National Strategy for Mental Health of the Citizens of Republic of Bulgaria 2021 – 2030*, adopted on 23 April 2021, p.13.

¹⁶³ Bulgaria, Council of Ministers, *National Strategy for Mental Health of the Citizens of Republic of Bulgaria 2021 – 2030*, adopted on 23 April 2021, p.13.

¹⁶⁴ Bulgaria, Council of Ministers, *National Strategy for Mental Health of the Citizens of Republic of Bulgaria 2021 – 2030*, adopted on 23 April 2021, p.13.

ry treatment for years. Social residential services exclude these patients from the list of their potential users under the on-going implemented *Plan for Long-term Care 2018-2027* which deinstitutionalises persons from state psychiatric hospitals and social care institutions for disabled persons. According to the National Preventive Mechanism there are around 200 “social” patients who live in the hospitals. They do not have their own homes, their relatives do not wish to take care of them and they had been on compulsory and involuntary treatment many times during the past years in different hospitals.¹⁶⁵

Challenges of the compulsory treatment cases

Deprivation of liberty solely due to unfavourable social factors

The interviewed District Court judge who has rich experience with compulsory treatment cases shared her main concerns about the effect of compulsory treatment **in conjunction with Art. 5 of the ECHR**. In her view in only a few cases persons who had been compulsory treated for years in psychiatric hospitals still pose a high risk because of which the treatment should be continued. In 90 % of the cases she hears a stable remission due to medicine therapy has been achieved. According to the judge the third requirement (under Art.5 “e” of the ECHR - the treatment to be absolutely necessary) is disputable in Bulgaria. The risk factors in these cases are entirely social ones related to the lack of support, family, job, housing which lead to interrupting the treatment, worsening the condition of the person and pose a danger to others or for self-harm.¹⁶⁶ Thus this group of persons are detained illegally under compulsory treatment in order to prevent them from committing crimes or self-harm solely due to unfavourable social factors. This phenomenon made several judges to propose to the Supreme Judicial Council to create a specialised unit in its administration, in which judicial officers with social work competence to be appointed to coordinate and direct to appropriate social and health services the vulnerable persons who are participants in the judicial proceedings, according to the decision of the court.¹⁶⁷ The same judge described the rest of the **challenges** of cases with persons with

¹⁶⁵ Bulgaria, Ombudsman, 2020 Annual report of the National Preventive Mechanism, p.38, [https://www.ombudsman.bg/pictures/Annual%20Report%20NPM%202020\(1\).pdf](https://www.ombudsman.bg/pictures/Annual%20Report%20NPM%202020(1).pdf).

¹⁶⁶ Bulgaria, Interview with District Court judge V.C on 13 May 2022. From a medical point of view, there is no risk - neither with the course of the disease, nor with the patient’s personality itself. But in fact risks are entirely in the social sphere. Risks because of lack of supportive family, home, job, conditions for social functioning. And this, according to the regulations, increases the risk, because when he goes out of the hospital, he has no shelter, nothing to eat, the probability that he will interrupt the medical treatment is very high, and after a short time the disease will conquer him again. Thus there is a risk for both the person and others. So in the Bulgarian context it is a big challenge not to detain persons illegally. I have often had dilemmas and in the end I choose the right to life when I am convinced that this process outside without social support will inevitably lead to a worsening of the condition and may cause death. There are people, especially in winter conditions, if they go out and don’t have loved ones or a social system to replace them, they are doomed to freeze to death or be beaten by someone else or do something which would cause harm to them or others.

¹⁶⁷ Bulgaria, Judges asked the Supreme Judicial Council to help them help the most vulnerable, 5 May 2022, <https://news.lex.bg/съд-ии-поискаха-всс-да-им-помогне-да-пом/?fbclid=IwAR1Vp1YSkz2DMYlygfp-lyuWMvvRyQnqYVOWlDW6ltJDW6lJDuWNDP42S1YclclM>.

IPD. The first one is the **stigma**, the second is the **lack of practical experience and the ability of professionals to recognise any disabilities and deficits** that require some additional measures to be taken.¹⁶⁸ **The inhumane treatment of people during their compulsory treatment** due to lack of any meaningful activities is the third one - not because of their behavior when accidents occur and the totally inhumane conditions they are forced to live in, but the very act of doing nothing for me is torture, and most often this torments them, not the very stay in the psychiatric hospital itself.¹⁶⁹

According to the other interviewed judge one of the challenges is the lack of clarity about the way in which the **prerequisites for compulsory treatment are evaluated**. The existence of an intellectual or psychosocial disability is one of them but the public danger based on it is disputable. So far the case law derives the danger solely from the assessment. However, the expert witnesses do not assess the circle of contacts of the concerned person, including those who can provide care and informed consent for treatment.¹⁷⁰ The same judge also underlines the issue with the **informed consent** for compulsory treatment which is not sought while for involuntary treatment it formally is. But it is impossible for the judges to decide whether the disabled person is able to give consent, who should give it instead of the person in case this is needed and in case when there are no relatives and close ones whether the municipal social workers appointed to do so, perform this duty indeed.¹⁷¹ Another challenge is related to a **legislative gap**. **When a person is placed in a hospital for a forensic assessment while in detention during the trial proceedings and is declared criminally irresponsible at the first or second instance court, the restraint measure should be terminated**. Then there is an option that the person is released after having committed a severe crime and left without treatment, supervision and care until the sentence/the court decision becomes final. The Criminal Procedure Code does not link this time during the proceedings with a compulsory treatment procedure or similar to it in case the court decides the person still poses a public danger or a danger of self-harm. The

¹⁶⁸ Bulgaria, Interview with District Court judge V.C. on 13 May 2022. *My experience shows that this need is never recognized in criminal proceedings by pre-trial authorities or the police. For me, how a person behaves in a courtroom is the first indicator that I need to take further action, which is to bring in experts to help me with the assessment. In my opinion, if justice deals with a person's mental problems, it is only to clarify whether he was able to understand the nature and significance of what was done. I have rarely come across cases in practice where it is investigated whether, after committing the act, the person did not fall into a state of mental incompetence. The reason for this is the lack of such training.*

¹⁶⁹ Bulgaria, Interview with District Court judge V.C. on 13 May 2022.

¹⁷⁰ Bulgaria, Interview with Sofia Regional Court Judge M.T. on 13 May 2022. *One legal question related to these cases is how the prerequisites for compulsory treatment are evaluated, because the existence of a mental illness/intellectual deficiency alone is not enough. For years, the legal practice has been inert and the public danger is derived from the assessment. The experts are not the witnesses who can say that there is such a danger and the personal circle of the person concerned has not been examined, respectively the potential of the close relatives and friends to provide care and to give informed consent was unexplored either. When there are no relatives to request the treatment and yet the court has taken the trouble to establish this, a person from the municipality is appointed to give informed consent instead of the person concerned. But these are anonymous people and we have no evidence that they do this after we appoint them*

¹⁷¹ Bulgaria, Interview with Sofia Regional Court judge M.T. on 13 May 2022. *The issues related to the need of involuntary treatment and the informed consent for it are problematic. For years we have been hearing these cases without ever establishing informed consent. How we are supposed to decide whether the person is able to give informed consent to be treated? How the persons are selected who, if he/she cannot give informed consent, give it instead? When there are relatives, we try to search and motivate someone. And when I say we try, we are still a few, because the rest of the judges do not and I can't even blame them as the workload in Sofia is great and these cases are extremely unprestigious from the point of view of the idea of professional satisfaction.*

Criminal Procedure Code does not allow such a person to stay in the hospital. In the particular case the judge gives as an example where there was data that the person concerned caused several abuse incidents in the prison. Then a possible option is placement in a high level security psychiatric hospital under civil involuntary treatment (under the Health Act) upon request by the head of the hospital. But some authorities need to be obliged to bring the person from the detention facility to the hospital and the head of the hospital needs to be obliged to examine the person. This procedure is not regulated in legislation.¹⁷² The interviewed judges stated that **outpatient compulsory treatment with the supervision of the relatives/close persons (Art. 89, "a", Criminal Code) ended up being imposed in the majority of compulsory treatment cases for petty crimes.**¹⁷³ According to another interviewed judge the biggest challenge in compulsory treatment cases is **the lack of active state policy for provision of high quality treatment of persons with psychosocial disabilities.** According to him, the overall conditions in which they are placed must be improved as Bulgaria is a potential subject of judgements before the ECtHR for the conditions in which they are medicated, treated and detained.¹⁷⁴

One of the psychiatrists interviewed in the framework of the project¹⁷⁵ enlisted several challenges related to compulsory treatment. Both laws - Health Act and Criminal Procedure Code – provide for **no clear regulation for the discharge of patients on involuntary/compulsory treatment.** It is not clear whether the presence of relatives outside the hospital is a criterion for this decision as observed also by the CPT.¹⁷⁶ The properties of many patients have been taken/stolen by relatives and close ones, and they themselves have been discarded and forgotten. **Long stays (for more than 1 year) in a psychiatric hospital due to social circumstances** is often because of lack of property/housing, lack of social services and lack of desire of the relatives to take care of the disabled persons, confirmed also by several monitoring visits of the CPT.¹⁷⁷ Another chal-

¹⁷² Bulgaria, Interview with Sofia Regional Court Judge M.T. on 13 May 2022.

¹⁷³ Bulgaria, Interview with Sofia Regional Court Judge M.T. on 13 May 2022. *It is far more common to find relatives and friends of a person who had committed a crime in a state when he/she is not criminally responsible than under the Health Act for whom civil involuntary treatment was sought. People placed under compulsory treatment are a much smaller number than those placed under involuntary treatment under the Health Act. While compulsory treatment cases, in my practice, maybe in more than 80% of the cases has always been with the participation of relatives who eventually take the responsibility to treat the concerned person at home. This applies of course for petty crimes perpetrators, like hooliganism, destruction and damage to property, breaking of objects in the street and thefts. Whereas under the Health Act, since the number of persons to be placed under involuntary treatment is much higher and there the relative share of those who still have relatives who would care for them is smaller.*

¹⁷⁴ Bulgaria, Interview with District Court judge in Sofia V.K on 9 June 2022.

¹⁷⁵ Bulgaria, Statement of a psychiatrist on 28 April 2022 at the National Advisory Board discussion. She gives an example with a patient under compulsory treatment who has been living in the psychiatric ward for 27 years, although he has relatives who even visit him occasionally. There are cases of people who have been in the hospital where she works for 5 to 10 years.

¹⁷⁶ CPT, *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 August 2020*, p.26, available at: <https://rm.coe.int/t/1680a090b7>.⁴⁶ However, it also transpired that the courts were occasionally unable to accept the recommendation of the hospital to release a forensic patient from the hospital on the condition of his or her subsequent outpatient treatment. As envisaged by Article 89(a) of the Criminal Code, such release depends on the next-of-kin assuming personal responsibility for ensuring that the released person would continue his or her treatment. In cases when there was no such family member available or willing to assume such a responsibility, the courts had no choice but to continue in-patient compulsory treatment under Article 89(b) of the Criminal Code."

¹⁷⁷ CPT, *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 August 2020*, p.10.¹⁴ It is noteworthy that, as during the visit in 2017, the delegation was informed that in all three hospitals there were a number of patients who no longer

lenge is the **unreasoned stay in psychiatric hospital of drug abusers whose assessments while in compulsory treatment are made every 6 months (and not earlier)**. There are increasing cases of patients who have fallen into a psychotic state as a result of drug abuse. These people stabilize after about a week and are completely asymptomatic, but have no choice but to wait for the 6 months to expire. Patients under compulsory treatment are often transferred from one hospital to another for years. Although SPHs treat people who have committed severe crimes such as murder, they cannot be separated and supervised differently. No funds are provided for security in psychiatric wards and the function of the SPH is not of a prison. The location of the SPHs leads to patients being distanced from their relatives.

According to a forensic psychiatrist¹⁷⁸ in Bulgaria the main challenges are: **the pseudo-humane tendency to discharge undertreated patients** that is perceived as beneficial to the treated, but poses a high risk to those around them (such practice is often observed in the Mental Health Centres in regional cities) and the practice of **placing people who have already committed a crime under an involuntary treatment procedure (under the Health Act) in psychiatric hospitals**. He gives an example of good practice with a judge's practice of consulting with a doctor, a social worker and the mayor of the locality before discharging a patient in order to build a **care network** around the him/her. In most cases such network is missing and/or is not researched at all.

According to the only social service provider for persons with IPD the biggest problem is **the lack of clarity who is the leading figure/institution in the process of establishing and reporting the disability and providing support** in compulsory treatment cases.¹⁷⁹ The manager of the services states that one side of the study of each person's case, of formal factors and of relations in general, is problematic because it invariably involves intervention. The other is whether this study of a person's social functioning could become part of the pretrial forensic assessment. The Criminal Code and the Social Services Act do not have any intersection and thus there is none to take responsibility for persons currently under outpatient compulsory treatment (especially those who are not placed under guardianship).

Independent monitoring in psychiatric facilities is performed by the National Preventive Mechanism (Ombudsman institution) and the Committee for Prevention of Torture. It was specifically because of poor psychiatric care why the CPT visited Bulgaria in 2017, 2020, 2021 for monitor-

needed to be hospitalised but who allegedly remained in the hospitals as there was no alternative place for them to live nor sufficiently robust community care to allow for their care in the community. The Committee reiterates its view that for persons to remain in a psychiatric hospital purely as a result of the absence of appropriate community facilities is highly regrettable. Further, such patients who are not de jure but de facto detained should be free to leave. If their condition places them at risk of danger to themselves or others, the patient must be assessed to establish if an involuntary hospitalisation should take place."

¹⁷⁸ Bulgaria, Statement of a psychiatrist on 28 April 2022 at the National Advisory Board discussion.

¹⁷⁹ Bulgaria, Interview with the manager of community-based social services for persons with intellectual and psychosocial disabilities K.I on 8 June 2022. She gives an example with the work on cases of persons undergoing compulsory treatment, placed under guardianship. When the social workers talk to the relatives who refused to be the guardians of the person who is blocked in the hospital for years of compulsory treatment, the relatives' motives are heard, but there are invariably opportunities to agree something with them, because otherwise there is no one else to do this job. But for advocacy to be successful, appropriate support services need to be developed which are unavailable yet.

ing purposes and in June 2022 (only for high-level meetings). On 4 November 2021 the **Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)** has issued a public statement on Bulgaria which addresses the persistent lack of implementation of long-standing recommendations of the CPT concerning the situation of persons placed in social care institutions and psychiatric hospitals in Bulgaria.¹⁸⁰ The CPT emphasized the complaints of persons having been slapped, punched, kicked, and/or hit with sticks by the staff in social care homes and psychiatric hospitals (*it almost seemed that sticks had become "standard items of equipment" for staff in many institutions*); the deplorable shortage of staff; the use of seclusion and mechanical restraint which continues illegally in social care institutions and, in psychiatric hospitals, does not conform with international guidelines and is often recorded fraudulently or not at all; the non-provision of a range of modern psychiatric treatments, which is in itself neglectful and harmful to patients' wellbeing; the persisting scarcity of effective community based mental health support services, resulting in many persons being inappropriately held in large psychiatric institutions without hope of return into the community.¹⁸¹ The CPT states that: **"urgent action is needed in all areas – legislation, infrastructure, human resources and training, and the development of bio-psychosocial treatments in line with modern practices across Europe. The whole systemic approach to mental health care and institutional social care in Bulgaria must radically change. And this change must include fundamentals – fighting the stigma around mental health, changing the paternalistic, controlling attitude towards patients with psychiatric disorders and social care residents, involving them in their treatment and care, and making genuine efforts to integrate persons with psychiatric disorders and learning disabilities into communities"**. During its 2020 visit to Bulgaria the CPT stated that: most dormitories were bare and lacked personalisation and privacy, with few personal belongings and no personal lockable space, inadequate, and often grossly insufficient numbers of ward-based staff; the atmosphere on many of the wards visited often appeared less than therapeutic, sometimes neglectful and even controlling, oppressive and punitive; treatment, was predominantly pharmacotherapeutic; many patients had no, or only very limited, access to daily outdoor exercise; **a number of legally competent patients who had signed consent to hospitalisation forms and were still deemed voluntary, were nevertheless not truly consenting to their hospitalisation, stating that they wanted to leave but were not allowed to do so, and were thus de facto detained.**

¹⁸⁰ European Committee for Prevention of Torture, Council of Europe anti-torture Committee issues public statement on Bulgaria, 4.11.2021, available at:

<https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-issues-public-statement-on-bulgaria>

¹⁸¹ The CPT also notes that although restraint with metal chains, as found in 2020, was not found during the most recent visit, patients continued to give consistent and credible accounts of being placed in 4 or 5-point belt fixation to beds in seclusion rooms for days, in incontinence pads throughout, into which they had to urinate and defecate. Some also reported that their hands had been fixed above their head, causing pain, swelling and loss of sensation in their upper limbs, which could be described as ill-treatment.

¹⁸² CPT, *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 August 2020*, p.3-4, available in English at: <https://rm.coe.int/1680a090b7>

The Bulgarian Ombudsman institution functions as a **National Preventive Mechanism** and monitors psychiatric hospitals also. In its 2020 Annual report it sent a statement to the Ministry of Health in which two major problems related to psychiatric care provided in state psychiatric hospitals were underlined – funding and shortage of staff.¹⁸³ According to the statement the insufficient number of doctors, nurses and paramedics creates conditions for untimely and low-quality treatment of patients, as well as risk in terms of monitoring and care for patients with aggression and auto-aggression. Social rehabilitation and psychological care, long hospital stays and repeated hospitalisations of persons with severe social status are also a problem according to the Ombudsman.¹⁸⁴ State psychiatric hospitals have patients (eg homeless persons) who live permanently in them due to a lack of sufficient residential social services for people with IPD.¹⁸⁵ The interviewed psychologist from the NPM underlined several serious problems – the extremely low budget of the hospitals¹⁸⁶, the lack of coordination and functioning between state and municipal institutions in cases of persons under or needing compulsory treatment¹⁸⁷ and the lack of residential services appropriate for them.¹⁸⁸ In its report on Bulgaria (2018) the European Psychiatric Association underlined that the Bulgarian psychiatric care system is “fragmented”, which leads to a lack of continuity and ultimately to a violation of human rights in the sense of the UN Convention on the Rights of Persons with Disabilities.

¹⁸³ Bulgaria, Ombudsman, 2020 Annual report of the National Preventive Mechanism, p.12, [https://www.ombudsman.bg/pictures/Annual%20Report%20NPM%202020\(1\).pdf](https://www.ombudsman.bg/pictures/Annual%20Report%20NPM%202020(1).pdf). On p.36 details about the funding are presented: historical budgeting is a system that was in place before the time of health insurance system and is outdated. With this budget, there is no direct relationship between the volume and quality of the performed medical activities and the received funding. The financial resources allocated to state psychiatric hospitals are extremely insufficient. The so-called historical budget is the reason both for the poor conditions in the medical facilities where the patients are treated, and for the marked shortage of medical personnel, due to the low remuneration for their work and poor working conditions.

¹⁸⁴ Bulgaria, Ombudsman, 2020 Annual report of the National Preventive Mechanism, p.12.

¹⁸⁵ Bulgaria, Ombudsman, 2020 Annual report of the National Preventive Mechanism, p.12.

¹⁸⁶ She states that she is “very angry about the state psychiatric hospital budgets in recent years. It is incredible misery, incredible! There could be no quality of health service. In the psychiatric hospital in Byala, where one of the largest number of patients on compulsory and involuntary treatment were accommodated in 2019, the food daily allowance is BGN 1.96 (EUR 1), the medicines daily allowance is BGN 0.89 (EUR 0.45), and the funds allocated for bedding and clothing is BGN 0.47 (EUR 0.23) per patient for the entire stay. In 2021, there is an increase in the food daily allowance – BGN 2.50 (EUR 1.25), and in the medicine daily allowance – BGN 2.00 (EUR 1). In this hospital for the total of 6 wards there are three psychiatrists employed and the head works every day for 12 hours a day. The acute male ward does not have any doctor employed.” She also adds that the substinence funding of another psychiatric hospital – in Carev brod (visited by the CPT) was even reduced in 2020 compared to 2019.

¹⁸⁷ She describes a case in which she got a phone call from the only women’s prison in Bulgaria from which a woman with psychosocial disabilities was to be discharged but in a psychotic state. The woman was sentenced for several thefts and one of them done during probation period. She has a daughter with a baby and the daughter could not take care of her at that time. It took 9 months and many phone calls for the whole NPM unit to find a place where the woman can live permanently. In the meantime, she was placed in the same psychiatric hospital where she used to be treated before the prison due to the good will of the head. Another recent case is of a woman who was placed in a hospital for a forensic assessment but after that was not released as the judge went on a sick leave and the case was blocked. So the lawyer of the woman notified the NPM about this illegal detention and asked for intervention for her release.

¹⁸⁸ Bulgaria, Interview with a psychologist at the National Preventive Mechanism I.V. on 3 June 2022.

3.1.2.5 Deprivation of liberty during pre-trial proceedings/ restraint measures

After indictment, the first instance court may issue (upon a motion by the prosecutor) an **order for pre-trial detention** for a person for whom there is reasonable grounds to believe that he/she has committed a crime which is punishable by imprisonment, and when there are reasonable grounds to believe that there is a danger of the accused person's absconding or engaging in further criminal activities.¹⁸⁹ The court immediately hears the case about the restraint measure with the participation of the prosecutor, the accused and his/her lawyer. Pre-trial detention may not be longer than 8 months when the person is charged with a felony and it may be no longer than 18 months if the person is charged with a crime that is punishable by minimum of 15 years of imprisonment or another, more serious sentence. In all other cases pre-trial detention may not exceed 2 months.¹⁹⁰ Bulgarian legislation does not provide for alternatives to detention in instances of persons with IPD. Otherwise, the Criminal Procedure Code does provide for lighter measures in general cases such as home arrest, daily reporting to police, or posting a bail, but this research did not find that any of these were used in reference to persons with IPD.

Persons with a measure of remand in custody are placed in the detention center in the area where the pre-trial proceedings are carried out or the case is considered.¹⁹¹ Once placed in a pre-trial facility any detainee may immediately notify his/her family or relatives of his/her arrival at the facility. If the detainee does not wish to notify them, he/she signs a declaration to that effect. Then the administration cannot notify the relatives on its own initiative. The detained person is immediately informed of **his/her rights** to visitation, telephone connection, correspondence, food parcels and the amount of sums for personal needs.¹⁹³ Detainees who are not Bulgarian citizens are notified of their right to contact diplomatic or consular representatives of the country of which they are citizens, and they are immediately provided conditions for this. When they are nationals of two or more countries, they can choose the consular authorities of which country to be notified of their detention and with whom they wish to contact.¹⁹⁴ Upon placement of the detained persons in the places of deprivation of liberty, they are immediately notified against a signature of their rights and obligations in respect of the internal order and discipline, as well as of the foreseen sanctions for committed violations.¹⁹⁵ Persons admitted to detention are examined for the risk of harm and their behavioral manifestations are monitored for the duration of detention. The documentation on the case is transferred with the person when he/she is transferred

¹⁸⁸ Bulgaria, Interview with a psychologist at the National Preventive Mechanism I.V. on 3 June 2022.

¹⁸⁹ Bulgaria, Criminal Procedure Code (29.04.2006), Art. 63, para.1.

¹⁹⁰ Bulgaria, Criminal Procedure Code (29.04.2006), Art. 63, para.4.

¹⁹¹ Bulgaria, Execution of Punishments and Restraint Measures Act (Закон за изпълнение на наказанията и задържането под стража) (1.06.2009), Art. 241, available in Bulgarian at: <https://www.lex.bg/bg/laws/ldoc/2135627067>.

¹⁹² Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 243.

¹⁹³ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 243, para. 2.

¹⁹⁴ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 243, para. 3.

¹⁹⁵ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 243, para. 4.

to another detention center or to a prison.¹⁹⁶ Accused and defendants are visited by a **doctor** at least once a week, and in urgent cases - immediately. In emergency cases, immediate medical assistance is provided, and if necessary, the detainee is accommodated in a specialised medical facility, including outside the penitentiary system, about which the investigative body, the relevant prosecutor or court are immediately notified. The doctor's prescriptions are mandatory for the employees of the security and administration of the prison or detention center.¹⁹⁷ All detainees in pre-trial detention facilities are entitled to receive medical assistance at the places of detention¹⁹⁸; the medical assistance is provided by a medical professional working at the place of detention. There is no special regime in place to ensure the regular provision of medical care to persons with IPD during the pre-trial proceedings. However, there are some general provisions that regulate the enforcement of compulsory medical treatment in cases when the person is in a state of mental incompetence/criminally irresponsible¹⁹⁹, in need of hospitalisation, or needs to be admitted to a specialised psychiatric facility.²⁰⁰

The prisons also accommodate persons **detained on request for extradition to a foreign country, as well as Bulgarian citizens sentenced to imprisonment by a foreign court** and handed over to Republic of Bulgaria to serve the imposed sentence. Until the execution of the extradition decision to the foreign country and until the entry into force of the court's decision regarding the execution of the foreign sentence, these persons enjoy the rights of the accused and the defendants under Bulgarian law.²⁰¹

The total number of persons in pre-trial detention in 2021 was 10 795, compared to 10 683 in 2020.²⁰² The number of pre-trial detention facilities is 26. The number of detained foreign nationals in 2021 was 1 469, which is 50% more than in 2020, when their number was 962.²⁰³ The growth can be explained by the changed migration situation in the country and the larger number of citizens of third countries detained by the Ministry of Interior during the year - three times more than in 2020.²⁰⁴ In 2021, the total of 1 537 persons were detained for up to 72 hours; 8 767 persons were detained for up to two months; 1 491 persons - from two to six months and 537 persons for over six months.²⁰⁵ **Out of the 26 detention facilities, in a number of them material**

¹⁹⁶ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 243, para. 5.

¹⁹⁷ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 255.

¹⁹⁸ Bulgaria, Decree № 2 of 22.03.2010 r. on the Rules and Conditions for the Provision of Medical Services at Detention and Correctional Facilities (*Наредба № 2 от 22.03.2010 г. за условията и реда за медицинското обслужване в местата за лишаване от свобода*), Art. 54, available in Bulgarian at: <http://www.lex.bg/mobile/ldoc/2135675773>.

¹⁹⁹ Bulgaria, Criminal Procedure Code (29.04.2006), Art. 427 - Art. 432 and Criminal Code, Art. 89-92.

²⁰⁰ Bulgaria, Decree № 2 of 22.03.2010 r. on the Rules and Conditions for the Provision of Medical Services at Detention and Correctional Facilities, Art. 32 and Art. 33.

²⁰¹ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 260.

²⁰² Bulgaria, "Execution of Punishments" Directorate, Information, received under the Access to Public Information Act by the BHC, letter № L-186/18.01.2022.

²⁰³ Bulgaria, "Execution of Punishments" Directorate, Information, received under the Access to Public Information Act by the BHC, letter № L-186/18.01.2022.

²⁰⁴ Bulgarian Helsinki Committee, 2021 Annual Report, p. 88, available in Bulgarian at: <https://www.bghelsinki.org/bg/reports/prav-ata-na-choveka-v-bylgarija-prez-2021>.

²⁰⁵ Bulgaria, "Execution of Punishments" Directorate, Information, received under the Access to Public Information Act by the BHC, letter № L-186/18.01.2022.

conditions do not meet the minimum standards of humane treatment.²⁰⁶ Detainees remain permanently locked in their cells, with the exception of one hour - one and a half hours per day, intended for outdoor time and physical activity. Almost everywhere, the cells are small, poorly ventilated, furnished very sparsely or with nothing but a bed with bed bugs, and no opportunity to participate in any meaningful activities.²⁰⁷

3.1.2.6 Placement in psychiatric ward/hospital for assessment

Other legal grounds for pre-trial detention could be the decision to **admit a person to a psychiatric hospital for assessment for a duration of up to 30 days**; this type of measure is considered a form of pre-trial detention by law.²⁰⁸ An accused person can be admitted to a psychiatric hospital for assessment for up to 30 days either during pre-trial proceedings, (whereby this measure is ordered by the first instance court comprised of a judge and two jurors who are appointed based on a request by the prosecutor), or during trial proceedings (whereby it is ordered by the court that hears the case as requested by the parties), or on the court's own motion. The court shall promptly pronounce a ruling in a public session wherein it hears the expert witness (a psychiatrist) and the person whose admittance is sought with this procedure. **The participation of a prosecutor and a lawyer of the person with presumed IPD is mandatory. The failure of the accused to appear in court without a compelling reason is not a reason to cancel the court hearing.** The time period for the assessment may be extended once by no longer than 30 days following the same procedure as above if the court-appointed period proves insufficient.²⁰⁹

3.1.2.7 Defendants, whose intellectual and/or psychosocial disabilities have been identified during trial, have been considered as fit to stand trial and criminally responsible, tried and convicted to a sentence of imprisonment

In case the persons with IPD are sentenced with imprisonment they are placed in regular prisons. Since 2006 the Criminal Code only provides that *"in relation to convicted persons with severe psychopathy or suffering from a disorder of consciousness that does not exclude mental competence, as well as in relation to convicted persons who are dependent on narcotic substances, appropriate medical care is provided"*.²¹⁰

²⁰⁶ In eight detention facilities the cells are not equipped with sanitary facilities; in five detention facilities there is no access to sunlight in the cells; in seven detention facilities there are no places for outdoors stay and rooms have been adapted for walking while in the detention center in Svilengrad, movement is possible only in the corridor.

²⁰⁷ BHC, 2021 Annual Report, p. 89.

²⁰⁸ The experts claim that this legal scenario is rarely enforced in practice and mostly in those cases when it is imperative that the accused person's mental state be evaluated and he/she refuses to cooperate with the assessment and determination of his/her psychiatric state.

²⁰⁹ Bulgaria, Criminal Procedure Code (29.04.2006), Art. 70.

²¹⁰ Bulgaria, Criminal Code, Art. 40, para. 4 (enforced on 13.10.2006).

The *Execution of Punishments and Restraint Measures Act* (EPRMA) provides for the rights and obligations of prisoners. Some challenging aspects of their implementation could arise when prisoners with IPD are concerned in two areas. The first is that all newcomers prisoners are informed in **an understandable language** while in the reception unit about the internal rules and their rights and obligations. This information might be handed in written upon request from the prisoner.²¹¹ The second is that all newcomers prisoners are obliged to cooperate in carrying out **medical examination and psychological assessment**.²¹² Mandatory psychological assessment is carried out for those sentenced to life imprisonment, to those sentenced to a sentence of more than 10 years of imprisonment, as well as to the prisoners with a "very high" and "high" identified risk of harm. In other cases, assessment is conducted at the reasoned request of an inspector of social activity and educational work.²¹³ One of the **few reasonable accommodation measures** is Art. 60 of the EPRMA providing that *"by order of the head of the prison, separate wards can be set aside for the accommodation of prisoners with a high degree of public danger, suffering from alcoholism or drug addiction, persons with mental disorders or vulnerable persons with a view to their safety, as well as the safety of other prisoners and prison employees as well."*²¹⁴ In case of **suspicion of a psychosocial disability of a prisoner**, clinical-psychological and psychiatric examinations are conducted to clarify the diagnosis.²¹⁵ Those suffering from **psychosocial disability** who require hospital treatment are placed in the specialised hospital for active treatment of prisoners.²¹⁶ If mental incompetence is established, the prisoner shall be sent for treatment in a specialised psychiatric facility²¹⁷ (outside the penitentiary system). The prisoners with addictions or suicidal behaviour are kept under supervision by the psychiatrist and the psychologist-inspector. Specialised treatment programs are elaborated for them.²¹⁸ **Medical care** for prisoners is carried out in medical centers and specialised hospitals for active treatment of prisoners at the prisons.²¹⁹ Such hospitals are located only in Sofia and Lovech.

During the stay in the reception unit, each convict is involved in the **adaptation program and an assessment of the risk of recidivism and harm** and an initial report are prepared.²²⁰ **For persons with IPD for whom it is impossible the abovementioned diagnostic activities to be carried out, a psychiatric and psychological assessment is conducted.**²²¹ After completion of the

²¹¹ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 52.

²¹² While in the reception unit, an assessment of the risk of recidivism and harm is prepared for each new arrival, regarding personal characteristics, health status and work capacity, and recommendations for future group or individual work are elaborated by the relevant social worker, the prison doctor and the psychologist.

²¹³ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 55.

²¹⁴ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 60.

²¹⁵ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 147, para. 1.

²¹⁶ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 147, para. 2. There is only one such hospital - in the town of Lovech.

²¹⁷ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 147, para. 3.

²¹⁸ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 148.

²¹⁹ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 129.

²²⁰ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 154, para. 1 and 2. The initial report includes: assessment of the risk of recidivism and the risk of harm; factors forming the risk of recidivism; proposals for compensation of personal deficits and limitation of the factors forming the risk of recidivism and the risk of harm.

²²¹ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 154, para. 3.

adaptation program, an individual sentence execution plan is drawn up for each convict, which includes activities and impact programs for resocialisation of the convict.²²² The specialised programs aim at: motivating and promoting lawful behavior; increasing social competence and building behavioral skills and overcoming addictions. The participation of convicted persons in them is voluntary.²²³ One month before the release of the prisoner, the administration notifies the municipal council at his permanent address and the relevant monitoring commission. In this notification the work experience/qualification of the person subject to release is described and the necessary assistance for his work and household arrangements are indicated.²²⁴ **If the prisoner, who is about to be released, suffers from alcohol or drug addiction, from an IPD or from a chronic illness, the notification letter notes the results achieved during the serving of the sentence and recommendations for their treatment in the period after the release.**²²⁵

In practice, despite of the abovementioned legally provided mechanisms for identification and monitoring of prisoners with IPD the "Execution of Punishments" Directorate at the Ministry of Justice does not mention concrete figures of the share of this group of prisoners among the general prison population neither in its annual reports (that are not publicly available), nor in the specific request for access to public information sent under the present research.²²⁶ According to its 2020 Annual report, in the Psychiatric Ward of the Specialised Hospital for Active Treatment of Prisoners in Lovech, in 2020 the total of 159 prisoners have been treated with an average hospital stay of 37 days, while in 2019 they were 199 prisoners. Of these 159 prisoners, 29 were suffering from drug addiction, 2 from alcohol addiction and 119 were with other psychosocial disabilities.²²⁷ The report also notes that there is an extreme shortage of medical personnel in the penitentiary system.²²⁸ According to the "Execution of Punishments" Directorate's reply to the author of this research at the end of 2021 there were 37 patients with various psychosocial disabilities in the Psychiatric ward of the Specialised Hospital for Active Treatment of Prisoners in Lovech while as of April 2022 – 10 prisoners underwent treatment there.²²⁹ **The capacity of this hospital serving the whole penitentiary system is 55 places for men and 14 for women.**

²²² Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 156. The individual sentence execution plan is drawn up based on: the type and nature of the crime committed; the imposed punishment; the assessment of convicted persons and the factors that form the risk of recidivism and harm; the initial place of serving the imposed sentence of imprisonment. The individual sentence execution plan aims at: inclusion of convicts in programs and activities for personal change and removal of the factors that form the risk of recidivism and harm; transfer to serve the imposed sentence in a lower level of security prison and conditional early release. An annual report on the outcomes of the individual sentence execution plan is prepared for each convict.

²²³ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 157. The specialised programs for individual and group work are implemented by the inspectors of social activity and educational work together with the employees from the other areas of activity, volunteers and external experts with appropriate training.

²²⁴ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 183, para. 1-2.

²²⁵ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 183.

²²⁶ Bulgaria, Reply L-1689/2, dated 21 April 2022, signed by Ivaylo Yordanov, head of the "Execution of Punishments" Directorate.

²²⁷ Bulgaria, "Execution of Punishments" Directorate at the Ministry of Justice, 2020 Annual Report, p.58, available in Bulgarian at: <https://prisonreform.bg/otchet-gdin-2020/>.

²²⁸ Bulgaria, "Execution of Punishments" Directorate at the Ministry of Justice, 2020 Annual Report, p.58. There are only 20 nurses employed in it, general practitioners (GP) are employed on civil contracts and 14 GPs are ex officio appointments of the National Health Insurance Service.

²²⁹ Bulgaria, Reply L-1689/2, dated 21 April 2022, signed by Ivaylo Yordanov, head of the "Execution of Punishments" Directorate.

According to the *National Strategy for Mental Health 2021-2030*, currently there is a lack of coordination between individual professionals, services and institutions in the field of **addictions**²³⁰, the available treatment places are insufficient, the services and related professionals are very unevenly distributed and some services are not paid for in any way by the state. The Strategy underlines the need to introduce effective and efficient treatment/rehabilitation services as elements of probation and imprisonment for addicts.²³¹ An alarming fact is that the **National Preventive Mechanism** has identified over the years high percentage of prisoners with psychosocial disabilities or those who subsequently develop them while serving their sentence.²³² In 2019, the Council of Ministers adopted a *Strategy for the Development of the Penitentiary System in Bulgaria for the period until 2025*, as well as an action plan for its implementation (Strategy 2019-2025). Along with the improvement of the material conditions and activities related to the improvement of the professional training of the employees of the "Execution of Punishments" Directorate, one of the main goals of this strategy is "improving the rehabilitation of offenders".²³³

Overall picture of the prison system in practice

According to the *2021 Annual report* of the Bulgarian Helsinki Committee the number of prisoners as of 31 December 2021 placed in prisons was 5 978, of which 4 978 were housed in closed-type prisons and 932 - in open-type prison hostels.²³⁴ There were also 489 accused and defendants in prisons as of 31 December 2021.²³⁵ Bulgaria clearly lags behind in terms of the indicator of the daily allowance of a prisoner. With an average expenditure for Europe of EUR 133.7 per day per prisoner, in Bulgaria this amount is only EUR 5.70.²³⁶ **Despite partial repairs, the material and living conditions in the prisons remain unsatisfactory.**²³⁷ **Also 2021 was another year in which medical care in the penitentiary system continued to deteriorate, often putting the lives of prisoners in real danger.** The problems affect every aspect of due health care - superficial initial examinations; lack of prevention and access to a dentist; long delays in referral to

²³⁰ Bulgaria, Council of Ministers, *National Strategy for Mental Health of the Citizens of Republic of Bulgaria 2021 – 2030*, adopted on 23 April 2021, p.6.

²³¹ Bulgaria, Council of Ministers, *National Strategy for Mental Health of the Citizens of Republic of Bulgaria 2021 – 2030*, adopted on 23 April 2021, p.6.

²³² Bulgaria, Ombudsman, 2020 Annual report as National Preventive Mechanism, p. 39, available in Bulgarian at: <https://www.ombudsman.bg/bg/p/godishni-dokladi-za-deynostta-na-ombudsmata-558>. In October 2019, during the inspection carried out in the only female prison in the city of Sliven, it was established that 42 women have psychosocial disabilities. In this regard, the NPM recommended a screening program for the prisoners with IPD in the penitentiary system.

²³³ Bulgaria, Council of Ministers, *Strategy for the Development of the Penitentiary system in Bulgaria for the period up to 2025*, adopted on 27.12.2019, available at: <https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=1297>.

²³⁴ Bulgaria, "Execution of Punishments" Directorate, Information, received under the Access to Public Information Act by the BHC, letter № L-186/18.01.2022.

²³⁵ Bulgaria, "Execution of Punishments" Directorate, Information, received under the Access to Public Information Act by the BHC, letter № L-186/18.01.2022.

²³⁶ Council of Europe, *Annual Penal Statistics – SPACE I – 2007*, p. 130, available at: https://wp.unil.ch/space/files/2011/02/SPACE-1_2007_English_rev.pdf.

²³⁷ BHC, 2021 Annual Report, p. 81.

external specialists and external hospital facilities; low quality of services provided and critical state of prison hospital care.²³⁸ A striking example is the Specialised Hospital for Active Treatment of Prisoners at the prison in Sofia. In August 2021, during an inspection carried out by the Executive Agency “Medical Supervision” of the Ministry of Healthcare, it was established that the activity of this medical facility does not comply with basic regulatory requirements and mandatory medical standards.²³⁹ In 2021, the **Committee of Ministers of the Council of Europe once again asked Bulgaria to take “decisive actions and comprehensive reforms” to improve medical care in prisons and detention centers.**²⁴⁰ In the same year, the government adopted a Roadmap for the Implementation of the ECtHR Judgments against Bulgaria, in which one of the set measures for the implementation of the decisions of the Kehayov group cases states: “elaboration of a strategy and plan for ensuring adequate medical care together with the Council of Europe.

The interviewed under this research prison psychologist noted that in the prison where he works they are privileged because the prison in Lovech has the only psychiatric ward in the penitentiary system. Every new entrant to the prison goes through a psychological evaluation, where it is expected that the presence of some disability will be identified and in most cases, it is. Then the big problem arises, because if the psychologist determines that the prisoner has symptoms of an IPD, he is referred to the psychiatric ward for assessment. The ward psychiatrists then examine the detainee, and if he is found to have an IPD, the district prosecutor is notified. An assessment is appointed and if a disability is found that prevents the sentence from being served, the sentence is terminated or suspended for 6 months for undergoing treatment in a forensic psychiatric department. **If the disability does not prevent the punishment from being served, the person is treated within the prison where staff and treatment options are non-existent in practice.**²⁴² According to the interviewed expert witness psychologist *the problem is that there is no place and no way to provide specialised medical and psychological help during the serving of the punishments in order to prevent further illegal behavior - in the specialized hospital for those deprived of liberty in Lovech, such work is not carried out because there is no knowledge, specialists and desire. Otherwise, only temporary solitary confinement in a cell and medicines are applied in prisons.*²⁴³

²³⁸ BHC, 2021 Annual Report, p. 82.

²³⁹ Bulgaria, Ministry of Healthcare, Executive Agency “Medical Supervision”, Findings report from an inspection performed № 631/20.08.2021.

²⁴⁰ CM/Del/Dec(2021)1411/H46-10..... Council of Europe. Communication from Bulgaria concerning the case of Kehayov v. Bulgaria (Application No. 41035/98) and Neshkov and Others v. Bulgaria (Application No. 36925/10), DH-DD(2021)698-rev, available at: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)698revE](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)698revE).

²⁴¹ Bulgaria, Council of Ministers, *Roadmap for the Implementation of the ECtHR Judgments against Bulgaria*.

²⁴² Bulgaria, Interview with a prison psychologist, former probation officer M.V on 6 June 2022.

²⁴³ Bulgaria, Interview with an expert witness psychologist, B.K. on 9 June 2022.

3.1.3 National framework concerning alternatives and probation

Bulgarian legislation does not provide for specific alternatives to deprivation of liberty or specific probation measures for persons with IPD (nor for mandatory treatment/therapy). Since 2005 the Criminal Code introduced the general probation measures as “a set of non-custodial control and impact measures that are imposed together or separately”. Probation measures are: mandatory **registration at the current address**, not less than twice a week - from 6 months to three years; mandatory **periodic meetings with a probation officer** - from 6 months to three years; **restrictions on free movement** (visiting places, areas and establishments precisely defined in the sentence; leaving the place of residence for more than 24 hours without permission from the probation officer or the prosecutor; leaving the residence for a certain period of the day) - from 6 months to three years; inclusion in **professional qualification courses, community impact programs** (labour integration/social habits) - from 6 months to three years; **corrective labour** - from three months to two years; **unpaid work for the benefit of society** - from 100 to 320 hours per year for no more than three consecutive years.²⁴⁴ **Community impact programs** are organized and paid for by the regional probation service and may be developmental or correctional. Developmental programs include literacy courses, job skills training, counselling sessions and discussions with social services and police representatives. Correctional programs are aimed at changing the attitudes, values, behaviour of convicts and overcoming addictions.²⁴⁵ Regional probation services subordinated at the “Execution of Punishments” Directorate at the Ministry of Justice organize and supervise the work of probation officers. At the request of the court, probation officers prepare pre-trial reports. In the area of operation of each district court, probation councils are established.²⁴⁶ The probation council meets at least once a month. The probation councils make decisions among others for **the preparation of an opinion to the prosecutor for the application of compulsory treatment.**²⁴⁷

In practice, according to the latest *2020 Annual Report* of the “Execution of Punishments” Directorate in 2020, a probation sentence was imposed in 3 826 cases:²⁴⁸ 30% for up to 6 months, 40% - from 6 months to 1 year and 30% - from 1 to 3 years. The biggest number of them was imposed for crimes like thefts and bodily harm. Only 255 probationers were rated as high-risk.²⁴⁹ The number of held individual meetings with a probation officer was 63 283.²⁵⁰ According to the report, **community impact probation programs are rarely imposed as punishment.** They are “Thinking skills”, “Skills for anger and aggression management”, “Literacy skills”, “Skills for active behaviour in the labour market”. The problems that occur most often in the implementation of

²⁴⁴ Bulgaria, Criminal Code, Art. 42a.

²⁴⁵ Bulgaria, Execution of Punishments and Restraint Measures Act, Art. 217.

²⁴⁶ Bulgaria, Execution of Punishments and Restraint Measures Act (1.06.2009), Art. 202. The probation councils are composed of: chairman - probation officer or legal consultant from the relevant territorial office; members - representatives of municipalities, regional administrations of the Ministry of Interior and territorial departments of health care, education, social care and employment services.

²⁴⁷ Bulgaria, Execution of Punishments and Restraint Measures Act, Art. 203.

²⁴⁸ The most in the cities of Sofia, Plovdiv, Plevna, Varna and Burgas.

²⁴⁹ Bulgaria, “Execution of Punishments” Directorate, *2020 Annual Report*, p.66.

²⁵⁰ Bulgaria, “Execution of Punishments” Directorate, *2020 Annual Report*, p70.

probation programs for community impact are described in this way: ***“for those convicted with a measure imposed by the court, but illiterate and with a low intellectual capacity, or with mental problems, they go through a program, due to its mandatory nature, but with them it is difficult to achieve any results”***.²⁵¹ A total of 654 convicts went through such programs for 2020 and 214 for 2019 and most of them took place in the towns of Dobrich, Lovech and Varna.²⁵² In vocational qualification courses only 46 convicts have participated for 2020 because they have a low level of education and no personal identity documents.²⁵³ In corrective labour the total of 56 convicts had participated and the problem there is the slow payment procedure.²⁵⁴ The total of 115 454 hours of unpaid work for the benefit of society were spent in 2020 by 867 convicts at 1 824 work sites.²⁵⁵ For electronic monitoring the “Execution of Punishments” Directorate has 200 sets with radio frequency control and 50 with GPS. The total of 246 persons under home arrest, 26 on probation and 27 on imprisonment for 2019-2020 were monitored in this way.²⁵⁶

No data is available about the number of convicted persons with IPD who were sentenced to probation measures.²⁵⁷ The “Execution of Punishments” Directorate’s reply to the author of this research explains that in case the risk assessment for recidivism and harm of the convicted person shows intellectual or emotional deficits he/she may be involved in a community impact programme but unless it is not explicitly imposed by the court, the involvement in the programme is voluntary. The Directorate also underlined in a very sophisticated manner that the priority for probation officers is the smooth functioning of the group work when implementing such programmes and whenever it might be spoiled by the involvement of a person with IPD, this presence is avoided.²⁵⁸

According to the interviewed judges, probation has a great potential which is not used at all at the moment due to lack of training, guidance and decent remuneration of the probation officers. From the questioning of the people during the cases the judge hears, according to them, the meetings with the probation officer are absolutely formal and have no benefit.^{259,260}

²⁵¹ Bulgaria, “Execution of Punishments” Directorate, 2020 Annual Report, p.65.

²⁵² Bulgaria, “Execution of Punishments” Directorate, 2020 Annual Report, p.76.

²⁵³ Bulgaria, “Execution of Punishments” Directorate, 2020 Annual Report, p.77.

²⁵⁴ Bulgaria, “Execution of Punishments” Directorate, 2020 Annual Report, p.78.

²⁵⁵ Bulgaria, “Execution of Punishments” Directorate, 2020 Annual Report, p.79.

²⁵⁶ Bulgaria, “Execution of Punishments” Directorate, 2020 Annual Report, p.72.

²⁵⁷ Bulgaria, Reply L-1689/2, dated 21 April 2022, signed by Ivaylo Yordanov, head of the “Execution of Punishments” Directorate. In a reply to a specific request from the authors of the research the “Execution of Punishments” Directorate stated that *no register for convicts with IPD is kept at the probation services as the probation officers do not have the competence to determine the existence of such disability. Probation officers have graduated either law or social pedagogy or other suitable education. No medical professionals are employed in probation services. Given that the probation punishments are served in the community, when problems in the two fields – emotional balance and thinking skills – are identified by the probation officer, he/she may refer the convict to a medical or other professional but has no powers to force the convict to consult the professional.*

²⁵⁸ The exact quote is: *Having in mind that very often the mental health problems are transitory and accentuate the personality or the personal characteristics of the convicted person, that do not violate seriously the functioning of the person, it is extremely important that professionals who lead the programs be pedantic in selection of the participants. The failure of proper assessment of the personality and the character of the convict poses a great risk to the group work as due to personality specific features the dynamics, the rules and the structure of the group may be violated.*

²⁵⁹ Bulgaria, Interview with Sofia Regional Court judge M.T. on 13 May 2022. *Probation has great potential and a lot of effort needs to be put in to develop it, because so far the implementation of probation is quite formal and rather poor. It can be seen that probation officers do not know what to do with the convicts - most of the actions that are taken with a person sentenced to probation are pro forma. Part of the probation sentences impose just mandatory address registration and a meeting with a probation officer.*

According to the judge: ***It is an extraordinary coincidence if a person comes out of prison not further damaged and violent.***²⁶¹ *It's nonsense at best, at best.* She has suggestions that *along the lines of the social and educational work in the prison a link can be made with the Social Services Act and if there is no resource inside the prison itself, providers can be brought in and also the early release is a great opportunity to incorporate probation into the remainder of the probationary period and thus achieve a really smooth transition to unsupervised life.*²⁶²

The District Court judge explains that she tries to engage the probation officers and convicted persons in real correctional work, not repression. Article 67 of the Criminal Code provides for the possibilities for the court, during the probationary period or conditional early release, to also assign educational care or a probation measure. This possibility exists, although these are "dead provisions", but the court still has a legal basis in paragraph 5 that says that the control is carried out by the court.²⁶³ The same judge elaborates further on the **mechanism of developing "social intellectual disability" of convicted persons.**²⁶⁴

The interviewed psychologist from the prison in Lovech who also had worked as a probation officer explained the challenges he meets with: the lack of training, lack of a clear mechanism for work with disabled prisoners or persons on probation and lack of professionals who can be consulted once the disability is identified. According to him, **there is no methodology in the probation services that takes into account a presumed psychosocial/intellectual disability or addiction**, and even if such a problem is noticed, there is no referral mechanism. Both prisons and probation services use an outdated recidivism and harm risk assessment methodology (OASIS) to account for addictions.²⁶⁵ It figuratively implies the presence of an addiction problem, IPD and behavioural disorders to some extent. Most often, **probation officers work with a person sentenced to probation with mandatory probation measures (address registration and individual meetings).**²⁶⁶

²⁶⁰ Bulgaria, Interview with Sofia Regional Court judge M.T. on 13 May 2022. *Probation plans are clichéd texts. I had a parole hearing today. I interviewed all the social workers who had worked with the prisoner. Basically, when you ask them what they do with him, they answer that they hand him papers and answer his questions, if he has any. Everyone deflects the question when the initiative is with the social worker himself, after all, what are they calling him for, what are they talking about. I was thinking of writing to the Minister of Justice again about this because I think it's just unbelievable - what a dysfunction!*

²⁶¹ Bulgaria, Interview with Sofia Regional Court judge M.T. on 13 May 2022.

²⁶² Bulgaria, Interview with Sofia Regional Court judge M.T. on 13 May 2022.

²⁶³ Bulgaria, Interview with District Court judge V.C. on 13 May 2022. *For me, a successful job is the selection of some measure during the probationary period, and periodically I ask for reports of the probationer, I call them in court, the probation officer and the convicted. Otherwise, especially during the pandemic, especially at the local level, I think that we have a complete failure of the effectiveness of probation.*

²⁶⁴ Bulgaria, Interview with District Court judge V.C. on 13 May 2022. Very often, convicted persons develop intellectual disabilities not because of a medical reason, but because of the environment in which they grew up. That environment has made them completely intellectually disabled - he is an adult, he does not have any mental illness or intellectual condition by birth, but in reality his social experience is that of a 6-7 year old child. Because he didn't go to school and his marginalized environment is clear what can produce. And you have to work with this person like a small child - teach him, give him skills and opportunities. And they go and sign papers in the village to prove they still live at the same address, and even if they sign every day, it can't produce any benefit in terms of achieving any goals for their future. The periodic meetings with the probation officer are not clear how and when they happen and almost all were suspended during the pandemic. And the content of these meetings through the programs. We try to include something more meaningful and have an alternative, but most often these 2 mandatory measures - address registration and meetings with the probation officer are applied, and for me it is better not even to have them.

²⁶⁵ This is a questionnaire that is filled out by a social work inspector or a probation inspector in the probation services based on an interview with the prisoner.

²⁶⁶ Bulgaria, Interview with prison psychologist, former probation officer, M.V. on 6 June 2022. When the sentenced person ap-

According to the judges it is **useful pre-trial reports** to be ordered by the court to the probation services so that information about disability can be identified and reflected by the court.²⁶⁷

However, the interviewed psychologist says that **pre-trial reports are not often ordered** by the court in order to establish exactly what the condition of the convict is and what the most adequate probation measure for him/her would be. While working as a probation inspector he received decrees to prepare a pre-trial report and did so, but he said that he and his colleagues were not trained, they do not have a methodology for preparing a full-fledged pre-trial report, and they do not know what its legal value is. Thus, the probation officer risks giving unreliable information to the court, for it to be taken into account and to sentence, or not to sentence the relevant person to probation.²⁶⁸

Trainings

The present research **did not find information about any training for professionals in criminal justice proceeding about their interaction with persons with IPD**. The judges stated that they often ask each other for information or train themselves by attending paid (by them personally) courses abroad but in general *"these cases are not considered as particularly important"*. A junior judge stated that in the training he had at the National Institute of Justice, he did not have lectures or practical training on how to work with disabled people. The manner of working with these people took place in the courtroom when he first met them as a junior judge in the City Court. According to him the way to conduct legal proceedings is also a matter of legal culture and it depends on the judge. In his opinion, a judge who hears such cases should at least once have gone to such a psychiatric hospital to see for himself what the conditions are like. It is very important in these proceedings that the court personally and immediately sees, perceives the specific disabled person and hears him/her. If it is not possible to bring the person concerned before the court, the judge must go to see him/her and make an adjourned hearing.²⁶⁹ The interviews showed that police, prosecutors and probation officers do not receive any training either. The expert witnesses do not pass any assessment tests about their expertise either.

appears at the probation office, he meets with the probation officer to complete this OASIS questionnaire. If the probation officer finds that this person is speaking incoherently, confused, has a peculiar behavior, he really has nothing to do. Because this person already has an enforced sentence, the court did not take into account the possible presence of a disability, it sentenced him and the probation officer's hands are tied, he is obliged to comply with the court's decision.

²⁶⁷ Bulgaria, Interview with District Court judge V.C. on 13 May 2022. I really want pre-trial reports from the probation officers. They work according to a methodology – OASIS and it is very useful, because through the pre-trial report there can be information at an earlier stage that the person probably has some intellectual or mental health problems. Because when they examine the person according to this methodology, they have separate criteria and it has happened in a pre-trial report that the probationer has an opinion that maybe the convicted person should be examined to determine whether or not there is any more serious deficiency.

²⁶⁸ Bulgaria, Interview with a prison psychologist, former probation officer M.V. on 6 June 2022.

²⁶⁹ Bulgaria, Interview with Sofia District Court judge V.K. on 9 June 2022.

4 CONCLUSIONS

The main legal and practical gaps identified in this research are:

- The **stigma** and the low priority given to criminal cases in which disabled persons are involved because of it;
- The biggest problems related to persons with IPD who have committed crimes is the **social isolation**, the **poverty** and the **lack of support network** to ensure regular outpatient treatment, resocialisation and recovery from crisis and hospital treatment;
- The **lack of identification mechanism** for the IPD, the extreme **scarcity of forensic experts, hospitals and centres** for placement for assessment and treatment, the delayed assessment of the disability, the **lack of access to outpatient treatment** especially for those who are not health insured;
- The **lack of support services for defendants and detainees** with IPD;
- The **lack of sufficient capacity in the hospitals and the mental health centres** for inpatient treatment;
- The sometimes inadequate, unclear, unreasoned assessments during the pre-trial proceedings;
- The **lack of access to a fair trial for defendants declared as criminally irresponsible** later in the proceedings. They are not accused at all and are not informed about their procedural rights including about their right to mandatory legal assistance;
- The **long stay of persons under compulsory treatment** in the psychiatric hospitals due to lack of community support services outside the hospitals; the release from compulsory treatment of persons who are

not treated effectively and still pose a threat to themselves and others; the **illegal deprivation of liberty** of such persons due to social, financial, administrative reasons and lack of alternatives;

- The **lack of psychological help and psychiatric therapy** for detainees with IPD in **pre-trial detention facilities and prisons**, a main challenge identified under the present research is the **low capacity of the staff** who deal with the persons with disabilities in the prisons, in the prison hospitals and in other psychiatric institutions;
- The **lack of mechanism for provision of support by the probation services** to convicts with IPD;
- The **lack of training** of police, prosecutors, judges, probation officers for interaction with persons with IPD
- The **lack of database and referral mechanism of the residential, day-care, therapeutic services** for persons with IPD.
- The lack of database about cross border cases, difficulties in finding interpreters and expert witnesses in case of defendants who are foreign citizens, lack of clarity how the consent from the person concerned is obtained;
- The **lack of coordination, data collection and processing** between the Ministry of Interior, the Ministry of Justice, the Ministry of Healthcare and the Ministry of Labour and Social Policy regarding persons with IPD who had perpetrated crimes.

5 RECOMMENDATIONS

- **Forensic psychiatry** should be considered as a current condition and perspectives and the personnel bank should be renewed.
- **Greater opportunity for an informed choice to the judge when choosing expert persons** - psychiatrists and psychologists - should be provided by creating an electronic database or a register.
- The **professional qualification of the actors in criminal proceedings**: expert witnesses, investigative bodies in pre-trial proceedings, investigating prosecutors, judges, lawyers should be substantially improved by regular and practical trainings. All involved experts in the pre-trial and trial proceedings must be educated properly in UNCRPD standards. More specifically, during the proceedings the right to access to justice (Art. 13 CRPD, Art. 6 ECHR) must be guaranteed through ensuring reasonable accommodation and procedural accommodation, which take into account the need of support of the person with disability.
- **A database with information about the facilities** where persons with intellectual and psychosocial disabilities can be accommodated for involuntary and compulsory treatment should be elaborated and maintained as well as some methodology for evaluating these places. They must be periodically monitored and assessed under clear criteria. The CRPD standards must be applied in the methodology. The monitoring must take into account how the CRPD standards are kept during the treatment.
- **Methodology/mechanism of what exactly should be done with the persons with IPD who are found guilty and serve a sentence in prison under a specific regime with medical measures should be elaborated.** Its purpose should be to attach meaningful content of the execution of the sentence and the medical care in prison so that the person is effectively treated and resocialised. More specifically, there must be stressed on the implementation of Art. 19 of the CRPD and all measures must achieve actual integration of the person in the society.

- **Flexible forms of compulsory treatment** – inpatient and day-care outpatient treatment (including the opportunity the person to be free during the day for community activities and to visit the hospital/service only to have dinner, sleep, take medication) should be largely available to allow for a smooth transition to community living. Currently there is a lot of resistance from psychiatric institutions because they do not have the purely organisational capacity (and funding scheme does not allow for it) for this. In terms to achieve this, the state and the municipalities must develop new forms of services, specifically aimed to support the community living of the persons with disability.
- **Day-care outpatient care and treatment should be developed and available evenly in the country.** Otherwise when released from compulsory treatment the persons concerned deteriorate very quickly and their quality of life outside the hospital is quite miserable.
- The main theme in relation to involuntary and compulsory treatments should be **how to stimulate life** in outpatient medical care through proper social services and health care.
- **The local monitoring commissions** that have the duty and the powers to take care of re-integration of released prisoners under the Execution of Punishments and Restraint Measures Act should be given life, because they could be relevant and useful, including for the convicts with IPD but are not functioning in practice.
- **Multidisciplinary approach in psychiatric assessments** - the Swedish National Board of Forensic Medicine, where forensic psychiatric examinations are carried out for the whole country by a multidisciplinary team composed of a forensic psychiatrist, a treating psychiatrist, a social worker and a psychologist. The social worker has a huge role in making a thorough social study about the person and his life situation.²⁷⁰ All of them must be educated and trained to apply properly the CRPD standards.
- **Multidisciplinary approach in case management by social workers/service providers, psychiatrists/psychologists, relatives/close persons and judges shows good results but is an exception in practice. Support services for persons concerned should be referred by the court. The view that the judge can and should refer to social services** and/or services for the purpose of providing support, tracking treatment outside of a hospital facility, and ensuring that no one is arbitrarily deprived of liberty (because of lack of housing) should be vigorously applied in practice. Currently in judicial circles in Bulgaria, this unpopular understanding is interpreted as overempowerment and is considered to usurp the role of the social worker. However, the judges must be aware of the CRPD principles and rights of the persons with disability and must collect evidence about the readiness and ability of the so-

²⁷⁰ <https://www.youtube.com/watch?v=EG2i3uRR4Ok>

cial workers and all other experts to apply these principles and standards on the practical level. In case, the judge or the prosecutor find there is no proper service in place or/and social workers and/or other experts are not prepared to apply properly the CRPD, the legal framework should allow them to recommend to the relevant authorities building such services or ensure capacity building of the social workers/other experts.

- **Social service providers and the Social Assistance Departments (which work with people with disabilities) should be involved in compulsory treatment proceedings and probation proceedings**, because they are competent under the Social Assistance Act and the Persons with Disabilities Act. This is not a working model yet because the law does not explicitly require the court to refer to them. And a mechanism similar to the one in the Child Protection Act can and should be created. All alternative (to detention and compulsory treatment) options should be available to the court for people who are of such a complicated social status to be explored. Some of the interviewed judges already use this opportunity and share that Social Assistance Departments provide poor quality reports and no assistance while some service providers (NGOs) collect and process essential information about the person and gradually start to work on case management successfully (but still on a pilot project basis). Within the periodic court review of the compulsory treatment (every six months, under Art. 432 of the Criminal Procedure Code), the court may direct information and counselling to the social services under the new Social Services Act, as long as such have been created. The provider of such a service can make an actual and adequate assessment of the person's needs. There are already some under a pilot project of the Global Initiative in Psychiatry (NGO). Usually the assessment provided by the Social Assistance Department is useless because it only contains information about the person's age, address, pension amount, social security and tax status and nothing about the actual challenges in his/her life situation. Judges need a connection to a person's support network in order to order release from inpatient compulsory treatment. But finding or building such a network takes months or years in the majority of the cases. The judicial authorities actively must seek for innovative practices based on CRPD application and when identify such, to take proactive actions to inform the judges and prosecutors for them.
- The judges mentioned that a good practice would be to develop **transitional services that function like** a small settlement where the person is prepared for life in freedom.
- When a forensic psychiatric assessment establishes an illness/condition, but not criminal irresponsibility, it should be sent together with the effective sentence to the prison, for **special health care measures** during the execution of the sentence.

6 ENHANCING THE RIGHTS OF DEFENDANTS AND DETAINEES WITH INTELLECTUAL AND/OR PSYCHOSOCIAL DISABILITIES: EU CROSS-BORDER TRANSFERS, DETENTION AND ALTERNATIVES – JUSTICE FOR ALL

Case study - Bulgaria

The promising practice identified in Bulgaria during the desk research and interviews was that of a **multidisciplinary approach in case management before, during and after court proceedings performed by social workers/ service providers, psychiatrists/psychologists (as expert witnesses), the person with a disability and his/her relatives/close persons and judges.** The approach was applied by two judges in two courts during court proceedings for involuntary/compulsory treatment and for placement in residential services/institutions. It was set up within a project and showed good results but is an exception in practice. The positive sides of this approach are that the judges receive valuable and reliable information about the person's actual situation, needs and potential and may decide the case in a way that respects the rights of the person with disabilities (with a focus on Art. 6 (fair trial) ECHR and Art. 12 and Art. 13 of the UNCRPD). The approach also helps the person to be ensured with support during the proceedings and afterwards.

Description of the project:

Name: Ex iure ad iusstatium (from rights to justice); principles for fair court proceedings for persons with disabilities, <http://equalrights.gip-sofia.org>.

Partners:

During the period 2020-2023, the Bulgarian Centre for Non-Profit Law (human rights NGO), the Global Initiative in Psychiatry - Sofia (service providing NGO, lead partner) and the Bulgarian Judges' Association (partner) had implemented a project "Ex iure ad iusstatium (from rights to justice); principles for fair court proceedings for people with disabilities", supported by the Active Citizens Fund - Bulgaria (www.activecitizensfund.bg) within the Financial Mechanism of the European Economic Area 2014-2021.

Aims:

The project aimed to unite the efforts of practicing judges, lawyers and NGOs (service providers and human rights NGOs) in **elaboration and testing of an innovative algorithm for applying procedures guaranteeing the respect of the rights of persons with disabilities in accordance with the most modern international human rights acts (mainly ECHR and UNCRPD) in court proceedings**. The model mainly affected proceedings for placement of persons with psycho-social and intellectual disabilities in specialised institutions under the Social Assistance Act, for compulsory treatment under the Health Act and for involuntary treatment under the Criminal Procedure Code.

The **main anticipated outcome** was the creation of tools to turn the court into a social centre integrating knowledge and support for the person in a vulnerable situation. During the project implementation new and specialised training materials, guaranteeing that the rights of people with psycho-social and intellectual disabilities are respected in court proceedings at every stage, were developed and discussed. A guidebook for assessment of the social functioning of the person with disability, a matrix for assessment of the need for support in court proceedings for persons with intellectual/psychosocial disabilities, an analysis of the case law of placement under guardianship, placement in residential institutions and placement for compulsory/involuntary treatment cases and an analysis of the opinions of stakeholders on the need of knowledge, training and mechanism for joint work have been elaborated and uploaded on the website of the project (in Bulgarian) <http://equalrights.gip-sofia.org>.

The elaborated model for multidisciplinary approach in case management in the abovementioned cases was tested in 40 court cases by the judges, expert witnesses and social service providers. The main **target groups** are judges, prosecutors, service providing NGOs, and persons with psycho-social and/or intellectual disabilities.

The **identified problems that led to this project** were: the poor out-patient healthcare services; the poverty and the lack of access to support and meaningful activities for persons with psycho-social and/or intellectual disabilities and the lack of coordination between police, court, psychiatric facilities and social services. All these problems lead to long unnecessary stays of patients who do not need active treatment in psychiatric hospitals or to lack of any care while treatment is needed. In the meantime, these persons with disabilities do not receive any support during the court proceedings either.

The **pilot project identified as a promising practice brings social service providers, judges, medical experts and the person with disability work together in assessment of the situation of the concerned persons and in provision of support before, during and after the court proceedings**. This is not explicitly provided for in legislation as an obligation but is an available option since 2020 when the Social Services Act was enforced. However, such appropriate social services are not provided in all court regions yet and the judges are not aware of them wherever they are available.

According to the interviewed judges and service providers (implementing the project) **support services for persons concerned should be referred by the court**. The view that the judge can and should refer to social services and/or services providing support, tracking out-patient treatment, and ensuring that no one is arbitrarily deprived of liberty (because of lack of housing) should be vigorously applied in practice. Currently, in judicial circles in Bulgaria, this unpopular understanding is interpreted as overempowerment and is considered to usurp the role of the social worker. However, the judges must be aware of the CRPD principles and rights of the persons with disability and must collect evidence about the readiness and ability of the social workers and all other experts to apply these principles and standards on the practical level. In case, the judge or the prosecutor finds there is no proper service in place or/and social workers and/or other experts are not prepared to apply properly the CRPD, the legal framework should allow them to recommend to the relevant authorities building such services or ensure capacity building of the social workers/other experts.

Social service providers and the Social Assistance Departments (which work with people with disabilities) should be involved in compulsory and involuntary treatment proceedings and probation proceedings, because they are competent under the Social Assistance Act and the People with Disabilities Act. This is not a working model yet because the **law does not explicitly require the court to refer to them**. All alternative (to detention and compulsory treatment) options should be available to the court for people who are in such a complicated social status to be explored.

Some of the interviewed judges already use the opportunity to ask Social Assistance Departments for an assessment of the person's situation and share that Social Assistance Departments provide poor quality reports and no assistance. Usually the assessment provided by the Social Assistance Department is useless because it only contains information about the person's age, address, pension amount, social security and tax status and nothing about the actual challenges in his/her life situation. However, **some social service providers (NGOs) collect and process essential information about the person and gradually start to work on case management successfully with the courts** (but still on a pilot project basis). Within the periodic court review of the compulsory treatment (every six months, under Art. 432 of the Criminal Procedure Code), the court may direct to information and counselling social services under the new (2020) Social Services Act, as long as such have been created. The provider of such a service can make an actual and adequate assessment of the person's needs. There are already some such assessments under the mentioned pilot project, elaborated by the Global Initiative in Psychiatry (NGO). Judges need a connection to a person's support network in order to allow release from inpatient compulsory/involuntary treatment. But finding or building such a network takes months or years in the majority of the cases. The judicial authorities actively must seek for innovative practices based on CRPD application and when identify such, to take proactive actions to inform the judges and prosecutors for them. In this regard **judges recommend a data base with service providers to be set up to enable them to refer accused, defendants and convicted persons with disabilities** to them and ask feedback from them about the person's condition for the purpose of regular court review of the treatment.

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