

INCLUSIVE JUSTICE AS AN EXPRESSION OF THE LEGAL EQUALITY GUARANTEED TO PERSONS WITH INTELLECTUAL AND PSYCHOSOCIAL DISABILITIES

Georgeta Bianca SPÎRCHEZ¹

Abstract: *People with intellectual and psychosocial disabilities have long faced problems of social exclusion and stigmatization. The principle of legal equality, which is essential for the exercise of other fundamental human rights, has led to the development of accessible public policies tailored to the specific needs of each individual in these vulnerable groups. This has led to a paradigm shift, with a change in attitude, restoring dignity to these individuals and eliminating discrimination against them. In this context, the study aims to identify the obligations of Member States to the UN Convention on the Rights of Persons with Disabilities, to ensure these persons' access to justice.*

Key words: *intellectual disability, discrimination, access to justice, human rights*

1. General Considerations regarding the Protection of the Rights of Persons with Disabilities

Equality and non-discrimination, interconnected with human dignity, are among the fundamental principles and rights of international law, representing the cornerstone of human rights treaties and conventions, as outlined in General Comment No. 6 (2018) of the Committee on the Rights of Persons with Disabilities. Thus, an international reference document promoting inclusive equality is the Convention on the Rights of Persons with Disabilities, adopted in New York on December 13th, 2006, and opened for signature on March 30th, 2007, ratified by Romania through Law No. 221/2010. In doctrine (Avram, 2022, p. 109), it is considered that this Convention marks a significant evolution from the formal model of equality to a substantial one in terms of measures to protect persons, making a transition from substitute decision-making to supported decision-making. This represents a paradigm shift from the medical model of disability to the social model, which implies a fundamental change in attitude, restoring the

¹ *Transilvania* University of Braşov, Faculty of Law: georgeta-bianca.spirchez@unitbv.ro, corresponding author

dignity of these persons (Donaldson, 2012, pp. 1-4) and eliminating discrimination based on disability.

Some terminological clarifications would be useful in the context of this study. In this regard, we note that, according to Article 1 of the New York Convention (cited above), “persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others”, and “discrimination on the basis of disability means any distinction, exclusion, or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment, or exercise, on an equal basis with others, of all fundamental human rights and freedoms in the political, economic, social, cultural, civil, or any other field. The term includes all forms of discrimination, including the refusal to provide reasonable accommodation”. Although, unfortunately, the Convention does not provide us with official interpretations of what is meant by a person with intellectual or psychosocial disabilities, we note, with reference to Romanian national legislation – Law No. 448/2006 on the protection and promotion of the rights of persons with disabilities, and Law No. 487/2002 on mental health and the protection of persons with mental disorders, that this refers to persons with psychological or mental impairments that totally prevent or limit their equal access to society, requiring protective measures to support their social integration and inclusion.

In implementing these public policies to eliminate discrimination on the grounds of disability, concrete measures have been adopted at both European Union and national levels, to rethink the regulatory situation of these categories of persons. Thus, the European Union ratified the Convention on the Rights of Persons with Disabilities (abbreviated as CRPD) by Council Decision 2010/48/EC of November 26, 2009, and the European Commission has committed itself to promoting a Union of equality, to which the Strategy on the Rights of Persons with Disabilities 2021-2030 makes an important contribution. At the domestic level, the Romanian reform in this area was achieved through the adoption of Law No. 140/2022 on certain measures to protect persons with intellectual and psychosocial disabilities. The main purpose of this legislative act was to diversify and ensure the proportionality of measures to protect individuals, including in terms of time, resulting in a more complex legal regime (Nicolae et al., 2025, p. 230). The new regulation comes, admittedly, as a delayed response, in the context in which, by Decision No. 601/July 16, 2020, of the Constitutional Court of Romania, the provisions of Article 164 of the Romanian Civil Code, concerning judicial interdiction, were declared unconstitutional, essentially because this norm did not provide for gradual measures of protection for individuals affected by mental disorders – Diaconescu and Vasilescu (2022, p.124).

As it has been highlighted in the literature (Ruškus, 2023, p.2), in the sphere of protecting the rights of persons with intellectual and psychosocial disabilities, access to justice stands out as one of the most problematic aspects, both in terms of the diversity of barriers encountered and its implications for the effective exercise of legal capacity. We also believe that the challenges lie in harmonizing procedural guarantees and support measures, in line with the principle of respecting the autonomy of these vulnerable groups. Article 13 of the CRPD specifically addresses the obligations of

signatory states with regard to access to justice for persons with disabilities, requiring authorities to ensure “effective access to justice for persons with disabilities, on an equal basis with others, including by providing procedural and age-appropriate adjustments to facilitate their active role as direct and indirect participants, including as witnesses, in all legal proceedings, including the investigation and other preliminary stages.” Especially when it comes to persons with such cognitive disabilities, access to justice is indivisible and interdependent with other rights and freedoms enshrined in the CRPD (Ruškus, 2023, p.5). Thus, this right must be interpreted in relation to equality and non-discrimination as provided for in Article 5 of the Convention, Article 12, which develops aspects related to equal recognition before the law, and Article 14 on liberty and security of the person. It is even considered (Ruškus, 2023, p.2) that Article 13 of the Convention on the Rights of Persons with Disabilities establishes a concept of access to justice that is significantly broader than that commonly associated with the guarantees of a fair trial. In line with this interpretation, the idea of transformative justice has been promoted as a principle of law, with the aim of clarifying positive actions and support measures, in order to ensure real access to justice for these categories of persons.

Undoubtedly, the case law of the European Court of Human Rights has also contributed to this new paradigm, which has made national authorities responsible for paying greater attention to cases involving such persons. Therefore, in the following, we propose to examine the specific case law of the European Court of Justice.

2. Integrating the Principles of Inclusive Justice, according to the Case Law of the European Court of Human Rights

According to the European Law Manual on Access to Justice, under Council of Europe and EU law, prohibitions on discrimination must be understood to mean that states must take positive measures to ensure that persons with disabilities have access to their rights in practice. The measures that Member States must take differ, depending on the circumstances. Therefore, we will refer below to several examples of interpretations provided by the European Court of Human Rights.

In the case of *Shtukaturov v. Russia*, the applicant, an adult diagnosed with mental disorders and classified as having a mental disability, was the subject of an application filed by his mother before a court, requesting his deprivation of legal capacity and the establishment of guardianship. The applicant before the E.C.H.R. was not officially informed of the national proceedings and was not present at the court hearing, following which he was declared incapable and his mother was appointed as his guardian with general powers of representation. The applicant subsequently attempted to lodge an appeal through a lawyer, who considered him capable of understanding complex legal issues; however, the appeal was dismissed as inadmissible on the grounds that, being legally incompetent, he could only act through his guardian. The guardian then decided to have the applicant admitted to a psychiatric hospital, where he was consistently denied the right to contact his lawyer. In examining this case, the Court emphasized that the procedure for determining legal capacity was of fundamental importance to the applicant, as it directly affected his personal autonomy and could lead to restrictions on his liberty. Thus, his presence was necessary both for the exercise of

his right of defence and for the direct assessment of his mental capacity by the judge. In such circumstances, assessing the case solely on the basis of documents, without hearing and without the presence of the applicant - who was relatively autonomous - was unjustified and contrary to the principle of adversarial proceedings. In addition, the claimant's inability to challenge the decision, as his appeal was dismissed without review, violated his right to an effective remedy.

In another case – *Stanev v. Bulgaria* – the applicant, at the request of two relatives, was partially deprived of his legal capacity on the grounds of a diagnosis of schizophrenia. Subsequently, against his will, he was placed under guardianship and admitted to a social centre for people with mental disorders. On several occasions, the applicant, assisted by a lawyer, requested that the guardianship be lifted, but his requests were rejected. The guardian, in turn, refused to take the necessary action, arguing that the applicant did not have the means to live independently and that it was appropriate for him to remain in the centre. At the lawyer's initiative, the claimant was assessed by an independent psychiatric expert, who considered that the diagnosis of schizophrenia was questionable, as the symptoms observed could also be associated with alcohol abuse. The expert concluded that the claimant was capable of reintegrating into society and that prolonged confinement in the centre was detrimental to him. The European Court, analysing the national legislative framework, found that it allowed the applicant to request the restoration of his legal capacity exclusively through the guardian, without distinguishing between situations of total and partial incapacity. At the same time, the domestic rules did not provide for any periodic review of the grounds for the measure, which, in the applicant's case, was indefinite in time. In this context, the Court indicated that, although the right of access to court may be subject to legitimate restrictions, these cannot affect the essence of the right of the person concerned to obtain judicial review of the decision limiting their legal capacity. Direct access to court to request a review of the measure is a fundamental guarantee for the person declared incapable, being compatible with the State's freedom to establish appropriate procedures. However, limitations such as preventing excessive requests can be achieved by means less restrictive than automatically excluding direct access for example, by limiting frequency or by preliminary admissibility checks. The Court emphasized in this case that the European trend, as well as international instruments relating to the protection of persons with mental disabilities, converge towards recognizing a greater degree of legal autonomy and the right of direct access to the courts to regain capacity.

In *Blokhin v. Russia*, the European Court emphasized the need for enhanced procedural safeguards in cases involving minors, particularly when they suffer from disabilities, given the best interests of the child and their heightened vulnerability. The case concerned the deprivation of liberty for a period of 30 days of a 12-year-old minor diagnosed with a mental and neurobehavioral disorder in a temporary detention centre for juvenile offenders. The applicant alleged a violation of the right to a fair trial, stating that he had been subjected to police questioning without the presence of a guardian or lawyer and that he had not been given the opportunity to question the two accused witnesses, whose statements had formed the basis for the detention measure. The Grand Chamber found a violation of Article 6 of the Convention, noting that the right to

defence had been seriously affected by the absence of legal assistance at the time of the interrogation and by the use of statements made by witnesses who had not been questioned by the defence as the basis for the deprivation of liberty.

The applicant did not benefit from effective participation in the proceedings concerning the declaration of his incapacity, being completely excluded from the court hearings in the case of *A.N. v. Lithuania*. Although medical documents were included in the case file, the Court ruled that the applicant should have been allowed to participate directly in the proceedings in order to give him the opportunity to present his case directly and to enable the court to make its own assessment of his mental capacity. This aspect was emphasized once again to highlight the extraordinary significance of the proceedings for the applicant, since what was being judged was his own autonomy in all aspects of life (Rizoiu, 2024).

An unjustified restriction of access to justice was also found by the European Court of Human Rights in the case of *Nikolyan v. Armenia*. In this case, the applicant initiated divorce and eviction proceedings, and his wife and son requested that he would be declared incapacitated. Following a psychiatric report indicating a delusional disorder, the courts declared him incapable, and his son, who was appointed guardian, withdrew the divorce and eviction requests. The courts ordered the termination of these proceedings, without conducting an effective assessment of the applicant's procedural interest. Thus, the applicant was deprived of any real possibility of continuing the proceedings, depending on a guardian who was in an obvious conflict of interest. The court did not order a hearing, did not assess the impartiality of the guardian, and did not adequately justify its decision to take note of the withdrawal of the applications by the guardian. It was also questionable that domestic law imposed an absolute ban on direct access to court for persons declared incapable and did not provide for periodic review of the measure, contrary to international standards. In the absence of a guardianship without conflicts of interest, the applicant had no effective means of challenging his incapacity, the conclusion being that the limitation of his capacity was disproportionate.

3. Final, Concluding Remarks

People with disabilities (including intellectual and psychosocial disabilities) differ in terms of their abilities, but they should not be treated differently in terms of their rights - this is the current standard required at the European level - Nicolae and Spîrchez (2025, p. 493). The principle of substantive equality is based on the recognition of differences between people, in which sense transformative justice must be promoted, implementing inclusive principles developed by the case law of the European Court of Human Rights, which are in the direction of procedural adaptation, as a mandatory requirement for a fair trial for these categories of persons.

References

Avram, M. (2022). *Drept civil. Familia*, ediția a 3-a revizuită și adăugită [Civil Law. Family law, the 3rd edition revised and amended]. București: Hamangiu.

- Committee on the Rights of Persons with Disabilities. *General comment No. 6 (2018) on equality and nondiscrimination*. Retrieved from: <https://docs.un.org/en/CRPD/C/GC/6>
- Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, Published in OJ L 23, 27.1.2010, pp. 35–36.
- Decision of the Constitutional Court of Romania no. 601/16 July 2020 published in the Official Gazette no.88/27.01.2021
- Diaconescu, Ş., Vasilescu, P. (2022). *Introduce în dreptul civil*. Vol. I [Introduction in Civil Law. Vol. I]. Bucureşti: Hamangiu
- Donaldson, H. (2012). Disability, Society and International Law. The UN Disability Convention as a Catalyst for Change. In *Stirling International Journal of postgraduate Research*, pp.1-21. Retrieved from: <https://spark.stir.ac.uk/wp-content/uploads/2017/01/45-105-1-PB.pdf>
- E.C.H.R., Blokhin v. Russia (Application no. 47152/06), *Judgment from 23.02.2006* Retrieved from: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-161822%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-161822%22]})
- E.C.H.R., Shtukatur v. Russia (Application no. 44009/05), *Judgment from 27.02.2008, final at 27.06.2008*. Retrieved from: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-97572%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-97572%22]})
- E.C.H.R., Stanev v. Bulgaria (Application no. 36760/06), *Judgment from 17.01.2012*. Retrieved from: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-108690%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-108690%22]})
- E.C.H.R., A.N. v. Lithuania (Application no. 17280/08), *Judgment from 31.05.2016, final at 31.08.2016*. Retrieved from [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-163344%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-163344%22]})
- E.C.H.R., Nikolyan v. Armenia (Application no. 74438/14), *Judgment from 03.10.2019, final at 03.01.2020*. Retrieved from [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-196149%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-196149%22]})
- Law no.140/2022 regarding some protection measures for people with intellectual and psychosocial disabilities and supplementing some normative acts, published in the Official Gazette, Part I no.500/20.05.2022
- Nicolae, I., Spîrchez, G.B. (2025). Încălcarea dreptului la viaţă privată şi de familie în cazul excluderii unui părinte cu dizabilităţi intelectuale din procesul de adopţie a copilului său [Violation of the right to private and family life in the case of excluding a parent with intellectual disabilities from the adoption process of their child]. *Revista de dreptul familiei*, no.1, 483.
- Nicolae, M., Ilie, G.A., Paziuc, C., Rizoiu, R. (2025). *Drept civil. Persoanele*, ediţia a II-a [Civil Law. The Persons, the 2nd edition]. Bucureşti: Solomon.
- Rizoiu, R. (2024). Când mai puţin de unu nu e neapărat zero. Capacitatea juridică a persoanei [When less than one is not necessarily zero. The legal capacity of the person]. *Revista Română de Jurisprudenţă*, no.1.
- Ruškus, J. (2023). Transformative Justice for Elimination of Barriers to Access to Justice for Persons with Psychosocial or Intellectual Disabilities. *Laws*, 12, 51. <https://doi.org/10.3390/laws12030051>
- United Nations. (2007). *Conventions on the rights of persons with disabilities*. Retrieved from: https://www.ohchr.org/sites/default/files/Ch_IV_15.pdf