The Barriers Persons with Disabilities face to Access Justice in the EU

Conclusions Report

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Readers are invited to follow the Just4All project at [www.just4all.eu](http://www.just4all.eu)

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# Abstract

There are more than 80 million persons with disabilities living in the EU. Given that access to justice is a very basic step to ensure the full access to any other rights and social justice: from protection from crime to access to inheritance, this right to access to justice must in one the first steps, be implemented. Barriers to access justice can affect their health, their housing, their income situation, their overall quality of life. There are still many barriers to ensure that justice is accessible to persons with disabilities in the EU and even more when concerning children with disabilities and women with disabilities.

The EU and all its Member States ratified the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and therefore must ensure that the article 13 on access to justice for persons with disabilities is implemented. At EU level, the article 26 of the European Charter on Fundamental Rights, states that “The Union recognizes and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community”.

In 2019, the European Charter of Fundamental Rights celebrates its 10 years of entry into force, but difficulties remain to achieve a full access to justice for persons with disabilities and therefore the implementation of article 26. The recognition of the legal capacity of persons with disabilities is an issue in several EU countries where, in consequence, they are often not recognized as “able” to act legally. The paradigm shift brought by the UNCRPD from substituted decision-making (guardianship and incapacity) to supported decision-making is therefore yet to be fully implemented.

Many socio-economic barriers remain for persons with disabilities, together with a lack of access to legal aid and accessible information. Most documents and communications within legal proceedings, are also not accessible and legal specificities and jargon hinders even more some persons with disabilities, specifically with intellectual or psychological disabilities, to understand their rights. To comply with the articles 9 and 13 of the UNCRPD, Member States need to assess their entire law processes for any lacunae for persons with disabilities, accessibility standards must be put in place together with free support.

Lastly, a crucial lack of training of legal practitioners on the rights of persons with disabilities, the stereotypes around them and how to deliver accessibility during the administrative or legal proceedings, is worsening the situation. Most legal practitioners in the EU have not learned about the UNCRPD and its provisions in their curricula nor in their continuous training. The JustforAll project aims at bridging this gap in training.

Indeed, the JustforAll project, co-funded by the European Union’s Justice Programme (2014-2020) aims at enhancing access to justice for persons with disabilities in Europe through awareness raising targeting legal professionals, as well as developing trainings and a MOOC for European them.

# Abbreviations

CFR or “Charter”: Charter of Fundamental Rights of the European Union

CSO: Civil Society Organisation

DPO: Disabled Persons’ Organisations

EU: European Union

MOOC: Massive Open Online Course

UNCRPD: United Nations Convention of the Rights of Persons with Disabilities

# Introduction

In March 2015, the Committee on the Rights of Persons with Disabilities (CRPD) made an individual communication about a case in Lithuania. The case concerned a car accident that resulted for one of the persons involved, Ms. Makarova, to suffer grave injuries and permanently acquiring disabilities[[2]](#footnote-2). The communication states that she “could not participate in the court hearings because of her disability and [...] she was not represented, despite her request for legal representation”. As a result, she was denied her right to pose questions to witnesses and give first-hand account of the accident which is, in this communication, condemned by the Committee as a violation of the Convention. As a report of the United Nations puts it, “access to justice is the ability of people, particularly from poor and disadvantaged groups, to seek and obtain a remedy through formal and informal justice systems, in accordance with human rights principles and standards.”[[3]](#footnote-3)

This report aims at assessing the barriers of access to justice for persons with disabilities with this focus: How are they still denied access to the State administration supposed to defend, judge them or grant the access to their rights? Although this report will focus mainly in their attempt to reach justice through trials, access to justice is more than this. It is also for example going to the notary to authenticate a document or access proper administrative and legal advice regarding one’s projects.

One of the main barriers in accessing justice are resulting from the lack of training of legal practitioners in interaction with persons with disabilities. The second report of the JustforAll project gives more insight on this topic: JustforAll, *Ensuring Access to Justice for Persons with Disabilities: Identifying the Gaps in Training of Legal Practitioners in the EU. Conclusions report*, Brussels, September 2019.

The report on barriers of access to justice and the report on gaps in training of legal practitioners are published in the context of the first phase of the JustforAll project that runs from October 2018 to March 2021. It is a co-funded project with the European Union’s Justice Programme (2014-2020). It aims at enhancing access to justice for persons with disabilities in Europe through awareness raising targeting legal professionals, as well as developing trainings and a MOOC for European legal professionals. The project is coordinated by Fundación Once and the partners are the European Disability Forum (EDF), the European Association of Service providers for Persons with Disabilities (EASPD), the University Carlos III of Madrid and Thomson Reuters Aranzadi.

The information found in this report are compiled from two seminars organised in Brussels and Madrid (see annex 1 for more information on the seminars) which where occasions of gathering data from Disabled Persons Organisations, organisations of bars and notaries, individual legal practitioners and EU policy-makers working on the topic. It also comprises desktop research on grey and legal literature.

# Context: Persons with disabilities and their rights in the EU

## Persons with disabilities

There are more than 80 million people with disabilities living in the EU. In the Victim’s Directive of the EU it is explained that they *“tend to experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation”* ([Victim’s Rights Directive 2012/29/EU](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/directive_2012_29_eu_1.pdf)). This failure in providing judicial repair and legal protection from abusers shows that full access to justice is still to come for persons with disabilities in the EU. Besides, access to justice is a very basic step to ensure the full access to any other rights and social justice: from protection from crime to access to inheritance. This can ultimately affect the person’s health, housing, income, in the end the impossibility to access legal and justice services can be both a result and a cause of poverty.

The socio-economic situation of persons with disabilities in the EU is significantly important to understand which barriers they can face whilst trying to access justice, as those factors weight for instance if one needs to pay a lawyer. There are significant differences across countries, yet in all of them people without activity limitation are on average less exposed to the risk of poverty and social exclusion than those with some activity limitation. Severe material deprivation is more frequent in Eastern European Member States. For instance, more than half of those with an activity limitation in Bulgaria (57 %) are severely materially deprived while the share is assessed to be 3 % in Luxembourg[[4]](#footnote-4).

International literature recognises that persons with disabilities are more at risk of violence and crime than persons without disabilities although it remains underreported. It is also important to focus on intersectional issues as they require to go further than an only mainstream approach: children with disabilities and women with disabilities are even more at risk violence and justice fails even more often to provide legal remedies.

Besides, persons with disabilities are too often referred in the literature as only “victims with disabilities”. Beyond this specific case, while assessing the conditions for a full access to justice, persons with disabilities should be also considered for every possible scenario while facing justice: persons with disabilities as defendants, testifying during a trial, prosecutors, jurors, legal practitioners themselves,….

## Legal framework

### UNCRPD

The Convention of United Nations on the Rights of Persons with Disabilities (UNCRPD) introduced a holistic and integrated Human Rights approach to address social and economic inequalities faced by persons with disabilities. It clearly acknowledges that societal barriers and prejudices are themselves disabling. Therefore, society is required to adapt to persons - and not the other way around - according to their specific individual needs and by putting in place structures and measures to facilitate access of persons with disabilities into society. Individualized support, personalized planning and empowerment of individuals are elements required to be part not only of the outcomes of policies but should be carefully built into all processes and policy instruments.

The 28 Member States of the European Union have ratified the UNCRPD. Following that, the EU itself acceded to the CRPD in December 2010, making it the first human rights treaty to ever have been ratified by a regional organisation. The EU is responsible for implementation of the Convention to the extent of its competences that are defined in [Council Decision 2010/48/EC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2010.023.01.0035.01.ENG) and the [Code of Conduct](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:340:0011:0015:EN:PDF)between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the European Union relating to the Convention. By concluding the UN Convention, the EU is committed to ensure and promote the full realization of all human rights for all persons with disabilities through the adoption of new legislation, policies and programmes and the review of existing measures.

In regard with access to justice for persons with disabilities, The United Nations Convention of the Rights of Persons with Disabilities (UNCRPD) clearly stipulates that actual access to justice is a Human Right and that the States must “ensure effective access to justice for persons with disabilities on an equal basis with others” (article 13). This article is quite intertwined with article 12 that guarantees the right to legal capacity and equal recognition before the law (see the part II of this report on Legal capacity). Other articles of the UNCRPD are also linked to access to justice services: for instance, the article 9 states that persons with disabilities must have access on an equal basis with others, to the physical environment, information and communications, and to other facilities and services open to the public.

### European legal framework

The Council of Europe and the European Union in their legal framework on access to justice for persons with disabilities draw their principles from the UNCRPD. Following the adoption of the UNCRPD by the European Union, the [Council Decision 2010/48/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2010_023_R_0035_01&from=EN) stated accordingly that:

*“States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.”*

Although the EU does not have a competence on the justice system in the Member States, access to justice is considered a Human Right and everyone shall be considered equal before the law (article 20 of the EU Charter of Fundamental Rights (2012/C 326/02)). In that sense, several legal documents have specified areas where the Member States must ensure equality of the population. First, the article 10 of the Treaty on the Functioning of the European Union and article 21 of the European Union Charter of Fundamental Rights defines disability as one of the grounds on which Member States and individuals shall not be discriminated against, ensuring the very basis of equality of persons with disabilities before the law and the justice services. The article 26 of the Charter of Fundamental Rights of the European Union also reiterates that “The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community”.

Following EU Directives give a more in-depth look into the obligations for Member States which are not only prohibiting discrimination but insuring that positive actions are taken for persons with disabilities. Importantly, the [Victim’s Rights Directive](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/directive_2012_29_eu_1.pdf) (2012/29/EU) explicitly guarantees specific rights for which many have been infringed for persons with disabilities in the past and unfortunately still nowadays. As an example, the right to understand and be understood in tribunals: this provision obligates Member States to provide interpretation or intermediaries to persons with specific needs in terms of communication, which is still not guaranteed throughout the EU.

The European Union Agency for Fundamental Rights in their *Handbook European Law relating to access to justice,* provided the table below[[5]](#footnote-5). It gives an overview of the most important European legal content on access to justice and legal capacity for persons with disabilities:

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| --- | --- | --- |
| Issues covered | European Union | Council of Europe |
| Access to justice | **Charter of Fundamental Rights**   * Article 6 on the right to liberty and security, * Article 20 on equality before the law, * Article 21 on non-discrimination, * Article 47 on the right to an effective remedy.   **Victims’ Rights Directive** (2012/29/EU)  **Directive on interpretation and translation** (2010/64/EU)  **Directive on right to information in criminal proceedings** (2012/13/EU)  **Directive on access to a lawyer** (2013/48/EU) | **European Convention on Human Rights (ECHR)**   * Article 5 on the right to lib­erty and security, * Article 6 on the right to a fair trial, * Article 14 on prohibition of discrimination – *this article does not mention directly discrimination but the CoE interpretation includes it in “others”*   **ECtHR, *A.K. and L. v. Croatia*, No. 37956/11, 2013** |
| Legal capacity |  | **ECtHR, *Shtukaturov v. Russia*, No. 44009/05, 2008** |
| © European Union Agency for Fundamental Rights, 2016 | | |

A list of relevant international and European legal regulations can also be found on the website just4all.eu

Legal capacity, as can be seen in the table above, does not have a specific legal protection at EU level although it is a core topic to ensure full access to justice for persons with disabilities.

# Legal capacity of persons with disabilities at the core of access to justice

When considering access to justice for persons with intellectual the denial of their legal capacity deprives their right to act legally for themselves and be recognised as bearer of rights. In that case they often have a legal guardian who takes some or all decisions for them. People with intellectual disabilities have legal capacity like all people do and discriminatory labels as “unsoundness of mind” should not deny their legal capacity. It is possible, however, like all people, that their decision-making ability varies depending on social, environmental and personal factors. For this a shift in paradigms is necessary. In 2013, the General Comment on article 12 of the UNCRPD (Equal recognition before the law) denounces a “general failure to understand that the human rights-based model of disability implies a shift from the substitute decision-making paradigm to one that is based on supported decision-making”[[6]](#footnote-6).

Indeed, according to Human Rights standards, the needs for persons with intellectual disabilities should be addressed by using supported decision-making, which leaves the individual autonomy of the mentally disabled person unchanged and ensures the person retains control over his own life. Supported decision making primarily differs from substitute decision making in that the decision is made by the concerned person himself or herself, with support of others, which is voluntary and is based on trust. It is the supported person's intentions and aspirations that matter in the course of supporting, and not his or her "objective” interest.

Restrictions on legal capacity are typically achieved by the legal instruments of substituted decision-making. Under different national laws, legal instruments for substituted decision-making take different forms and are called by various names (e.g. guardianship, conservatorship, trusteeship etc.). Substituted decision-making may be plenary or partial, whether it covers all the legal affairs of the person or only a part of them. Legal capacity may be denied, for example if the substitute decision-maker makes the decisions on behalf of the person on his/her own; or may be restricted, if the guardian and the person have joint decision-making rights. Common features of substituted decision-making are as follows:

* legal capacity is removed from a person, even if this is just in respect of a single decision
* a substitute decision-maker can be appointed by someone other than the person concerned, and this can be done against his/her will
* any decision made by a substitute decision-maker is based on what is believed to be in the ‘objective best interests’ of the person concerned, the supported person, as opposed to being based on the person’s own will and preferences.

Supported decision-making can be defined as follows:

* It does not affect legal capacity: the individual makes his/her decisions and legal statements on his/her own
* the supporter is appointed by the supported person, or at least with his/her consent
* the supported person can follow his/her own will or preferences, even if the outcome is unreasonable, risky or in conflict with his/her objective ‘best interest’.

In Bulgaria for instance it is estimated that three quarter of persons with disabilities are under guardianship. Their legal capacity is not recognised which means that they cannot perform any legal act themselves and must get their guardian to consent and perform it for them. This creates a situation of crucial conflict of interest for instance on financial and family related legal acts. The will and preferences of the person with disabilities that should be protected under international Human Rights standards are in fact not heard in a lot of cases.

Models of good practices for supported decision-making have been compiled by the AJuPID project and can be found [online](https://www.easpd.eu/sites/default/files/sites/default/files/guide_of_promising_practices_en_2015_bv.pdf).

# Barriers of access to justice: from pre-litigation to legal proceedings

## Accessing the system

The access to the justice system is in the first place an issue. First, the confidence needed to affirm one’s rights or go file a complaint to the police requires a sure knowledge on one’s own rights. The knowledge of basic Human Rights provided by the UNCRPD are not common knowledge that is for example thought in schools. Informing persons with disabilities about their right is a crucial first key to ensure that they are empowered to seek and therefore access justice. Most contributors to the seminars organised by the JustforAll project highlighted an underreporting of unlawful acts perpetrated against persons with disabilities.

Not knowing one’s rights is a part of the issue. The orientation towards legal remedy provided by professional or informal carers can also be part of the solution or the issue. If a person with severe disabilities is firstly not empowered on their rights and does not have a support system that can provide orientation towards seeking reparation or legal solutions, the situation is worsened. To follow the UN Convention principles, legal remedy should be initiated only following the informed consent of a person with disabilities. Informing on possibilities to act legally is different from initiating proceedings oneself, especially when the national law puts the person with disabilities under a carer’s guardianship.

Even when persons with disabilities do not have their legal capacity infringed (e.g. under guardianship), the fact that they are not believed creates a situation where a sensible majority of claims stop at pre-litigation phase, especially for children with disabilities. This is linked to the need of training the law enforcement staff. On this topic, please consult the JustforAll report: JustforAll, *Ensuring Access to Justice for Persons with Disabilities: Identifying the Gaps in Training of Legal Practitioners in the EU. Conclusions report,* Brussels, September 2019.

The bureaucratic and financial complexity of the pre-litigation phases are also an issue. For instance, if there is a lack of support provided, some key steps with deadlines to introduce a judicial procedure can remain unfulfilled.

Besides, the balance of access to information and legal remedy between persons with disabilities and a potential defendant is also an issue. In Finland, Municipalities, who are in general in charge of persons with disabilities and their services, are sometimes making decisions that are against the law (e.g. deciding on their home location without consulting the persons with disabilities). However, the persons involved do not necessarily have the needed support, resources or knowledge on how to complain and start legal processes. To remedy to this situation, not-for-profit organisations are organising resources for persons with disabilities to access easy reading material on legal information or even provide free legal counselling[[7]](#footnote-7). However, a more efficient public service support to access legal information in an accessible format should be mainstreamed throughout the EU.

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| ***In focus – access to justice for women with disabilities***  In the attempt to access justice, women with disabilities face specific issues due to the combination of gender and disability related discrimination and/or violence:   * Stereotypes that lead people to think they would be less credible for a judicial case than women without disabilities or men with disabilities. * Women with disabilities access less information on one’s rights due to double discrimination in front of education and more isolation in society. * Women with disabilities are more at risk of sexual and physical violence than women without disabilities and men with disabilities. Most of the case the violence comes from the kin. * Women with disabilities are more at dependence towards kin and therefore risk more to be exposed to repeated offense from potential perpetrators. * They are at risk of being subjected to gynaecological violence due to stereotypes, notably stereotype that they would be unfit to be mothers (e.g. forced contraception, forced sterilization). * Legal remedies on the account of double discrimination are difficult to pursue. Courts in the EU rarely accept cases on the basis of double or intersectional discrimination (gender and disability-related hate crimes for example). |

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| ***In focus – abuse against children with disabilities***  For children with disabilities there is also more risk to be subjected to violence and abuse. In Spain, as a report from the Mental Disability Advocacy Centre (now called the Validity Foundation) states that in 2011 23.08% of children with disabilities between the age of 8 and 15 were affected by domestic abuse, while among their peers without disability the equivalent figure was 3.87%.  More information on the access to justice of children with disabilities can be found in the second JustforAll report: JustforAll, *Ensuring Access to Justice for Persons with Disabilities: Identifying the Gaps in Training of Legal Practitioners in the EU. Conclusions report*, Brussels, September 2019. |

## Legal proceedings

The European Charter of Fundamental Rights (CFR) establishes the entitlement to ‘*a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.*’

As described above, there are several barriers for persons with disabilities before entering a legal proceeding. Not being able to make a claim, many people with disabilities put up with discrimination and ill-treatment. Those that do manage to proceed, whether it is in court or in an alternative resolution setting, still face plenty of obstacles. The ideal of ‘fairness’ laid down by the CFR, is not achieved.

### Accessible representation

To help persons with disabilities understand their rights *- especially seen the lack of accessible information on existing case law -*, as well as helping them navigate through the complexity of legal proceedings, appropriate and accessible legal aid is crucial. Without representation, cases are considerably more dismissed.

* Navigating through the justice system is hard on everyone, let alone for people with intellectual disabilities, who need much help and support in this area.

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| Types of representation:   * Lawyer * NGOs * Trade Unions * State equality body | Extra support:   * Communicative, cognitive, etc. * Emotional * Financial |

The most obvious choice for legal representation, are lawyers. The cost for this type of aid, is, however, a great barrier. Although the European Charter of Fundamental Rights (CFR) declares that legal aid should be made available to those who lack sufficient resources (art. 47), there is still no equality of arms. While people with disabilities mostly file as an individual, their counter party (a company or institution) has more means.

* People who need extra support when communicating, are even in a more adverse position:

1. This will demand more time of the legal counsel, which (beside the cost of the support) results in a steep bill;
2. Most legal advisers have limited human- and time resources. They cannot always listen adequately to clients with special needs.

Some countries allow NGOs to represent persons with disabilities. Although it might be helpful in some (high-profile) cases, most applicants don’t receive the support they need. Nearly all NGOs focus on landmark cases, or indirect discrimination through class actions.

Alternatively, representation is possible by trade unions and state equality bodies. They have, however, not reached their full potential. Whereas the first usually lacks knowledge about disability and can only provide support for work contexts, equality bodies seem the more appropriate choice. Being tasked with combatting discrimination, they are more sensitive to the needs of people with disabilities.

* Equality bodies have, however, their own limitations:
* They cannot function as personal legal aid. Equality bodies can’t be partial and must remain neutral;
* There are insufficient resources available. The institutions can’t always provide the necessary accommodation and will only decide to proceed in face of blatant discrimination.

No matter which type of legal aid they receive, there is also a considerable need for a broader support system. People who face discrimination or violence, generally feel isolated. This increases when their situation isn’t recognised by family, friends, or colleagues. To stick with the case, professional emotional support is often necessary. This is, however, not always accessible.

To conclude, representation (and a broader support system) are very important, but not always accessible for persons with disabilities.

### Discrimination during procedure

Persons with disabilities are often discriminated against by professionals in the justice system, due to prejudices and a lack of adequate training.

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| Main areas of discrimination:   * Rejecting disability status * Not properly listened to * Not granted right to speak * No shift burden of proof * Denial procedural accommodations | Main targets:   * Deaf-blindness * Intellectual disabilities * Psychosocial disabilities |

It has been recognised by the UN that professionals in the justice system have little knowledge about the impact of disabilities and the resulting requirements. The strengths of the people concerned aren’t always grasped, either, especially when it comes to intellectual and psychosocial disabilities. This reliance on stereotypes does not only happen within the professional sphere, but also affects jurors.

* *Claimants with disabilities often complain that they are not properly listened to in court when telling their story. Although their right to be heard is formally upheld, they are not involved in the proceedings.*

On top, definitions and provisions in equal treatment legislation are very complex, which gives room for interpretations according to stereotypes.

* *There are even cases where one’s disability is rejected. Well-recognised schizophrenia, for example, is not always interpreted as a disability in court. Therefore, disability rights cannot be invoked by the person concerned.*

Besides not properly listened to, persons with disabilities are often not even granted the right to speak.

* *There are, for example, cases where mothers with mild intellectual disabilities are not heard in decisions about their parental rights.*
* *A well-known problem consists of laws that permit to reject claims without a full hearing. These rejections happen regularly in cases from persons with intellectual and psychosocial disabilities, where listening to arguments is deemed unnecessary or inefficient.*
* *The European Court of Human Rights (ECHR) condemns these practices. Persons with disabilities should be involved in their proceedings. Accessibility measures and/or procedural accommodations must be taken (see below), so they can be fully heard and informed.*

According to European law (*laid down in the anti-discrimination Directives and recognised by the European Court of Justice (ECJ)*), there is a shift in the burden of proof for discrimination cases. This is favourable for the claimant, as it means they do not have to prove they were discriminated against. It is up to the defendant to prove there was no discrimination. This principle is, however, inadequately applied by judges. There is still an expectancy for the person with a disability to provide proof. This diminishes their chances to win the case drastically.

To counter discrimination during the procedure, appropriate and accessible legal aid is crucial (*see above*).

### Underrepresentation in the legal profession

For better understanding and a more inclusive society, disability must be mainstreamed. This starts within the justice system. There is a clear underrepresentation of persons with disabilities in the legal profession. Those that do work in this field, face lots of prejudice and are often deemed unfit.

To remedy this underrepresentation, several measures, including vocational training, reasonable accommodations and individual support at the workplace, must be taken.

***In focus - What are reasonable accommodations?***

A reasonable accommodation is an individual modification or adjustment to a certain environment (trough conditions, equipment, support or the physical environment) to make it fair and accessible for a proven need. Reasonable accommodations arise from the moment that a person with a disability requires access to a non-accessible situation or wants to exercise their rights.

Disability cannot constitute an excuse for non-employment if the person with disability in question is qualified for the relevant job and can effectively perform it with reasonable accommodation.

The accommodations must be negotiated with the applicant(s) and be ‘necessary’ and ‘appropriate’ to enjoy their human rights. The additional requirement of “reasonableness” is understood as the result of an objective test that involves an analysis of the availability of resources, as well as the relevance of the accommodation, and the expected goal of countering discrimination.

### Accessibility barriers

People with disabilities face several - physical and communicative - accessibility problems when accessing justice.

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| Main barriers:   * Lack of universal design in buildings * Setting and pace * Inaccessible information * Inaccessible communication * Different cognitive functioning | Main examples:   * Deaf-blindness * Intellectual disabilities * Cognitive fatigue * Psychosocial disabilities |

Universal design is necessary, not only when it comes to the physical environment. For now, few measures are adopted for persons with hearing, visual, intellectual or psychosocial disabilities. This is detrimental for their access to justice.

* *Without signage and/or accessible information, communication and support services, orientation and movement in and through (court)buildings is impossible for many persons with disabilities, especially those experiencing cognitive fatigue.*

There is a great need for alternative modes of communication. Most documents and communications within legal proceedings, are not accessible.

* *E.g.: people with visual impairments, need a text in braille, out-loud reading, and/or video magnification. Those with hearing impairments, need real-time captioning, induction loops for hearing aids, and/or sign language interpretation. Easy-to-read versions should also be widely available.*

Accessibility barriers do, however, not end there. People with intellectual or psychosocial disabilities cannot be expected to simply enter into a court proceeding. They often communicate in a different way. People with intellectual or psychosocial disabilities might not understand what is going on, or their views might not be understood from an ableist perspective.

* *There is a need for an intermediate to ‘translate’ between different cognitive functioning.*

Another problem arises from the setting and pace of a proceeding. For some people, this gives rise to undue pressure and anxiety. For their wellbeing and participation in the proceeding, adaptations must be made.

* *E.g. a change of venue, or the presence of a support person, might be necessary. A different timeline, or a more informal communication style, can also be appropriate. Other possibilities are speaking more slowly, framing questions differently, and allowing pauses.*
* *In the case of persons with intellectual, cognitive or psychosocial disabilities, a facilitator that has no direct interest with the individual, the case and the persons involved should be appointed to “translate” and explain the procedures. Advices from a professional from disability support services can be useful as per how this facilitating role should be taking shape.*

### Accessibility standards & procedural accommodation

To comply with the UN CRPD (art. 9 and art. 13), governments need to assess their entire (process) law for any lacunae for persons with disabilities.

* *This results in accessibility standards for legal proceedings, with free or affordable support.*

***In focus - What are accessibility standards?***

Accessibility is the inclusive practice of designing products, services, devices and environments, in order that persons with disabilities can access them without barriers. It is not limited to the physical environment, but also comprises cognitive, visual, emotional, communicative, and other barriers.

To ensure accessibility, certain standards must be set. Accessibility requirements have clearly defined indicators which are built into systems and processes, to systematically ensure access for people with disabilities to spaces, services, and products provided to the public. These standards are evidence-based and set to make modifications **for a general population** with disabilities, **without regard** to the need of **particular persons**.

The UN calls for a minimum quality of services, especially for the relatively new types of services, such as personal assistance, sign language interpretation and tactile signing, aiming at their standardization.

Dissuasive penalties for non-compliance must be incorporated into the legal framework, together with a thought-out monitoring system.

Whereas accessibility standards don’t have to take the needs of particular persons into account, there remains a right to procedural accommodation. In case people with disabilities - despite the accessibility standards in place - encounter barriers in accessing justice, they can demand individual adaptations to the procedure.

***In focus - What are procedural accommodations?***

Procedural accommodations are individually requested remedies to assert access to justice for persons with disabilities, taking into account their specific requirements, for example, through the provision of additional information, sign language interpretation, breaks, and video link testimony. It can be demanded at all stages of criminal, civil, labor and administrative procedures, and in prison.

These adaptations must be based on the ‘free choice and preference’ of the person concerned, and be gender- and age-appropriate. The determination of the need for procedural accommodations cannot be subject to any disability assessment. The demands do need to be **‘necessary’ and ‘appropriate’** to ensure access to justice, otherwise they will be denied. If the requirements of the person concerned change over time, procedural accommodations must be modified or replaced, as appropriate.

Unlike ‘reasonable accommodations’, which can be demanded in school, at work, etc., procedural accommodations don’t need to be reasonable. This means they are not subject to a proportionality test. There is no way-off between the rights of the individual and the burden for the provider. If the demands are necessary and appropriate for access to justice, they must be fulfilled.

To ensure the right to procedural accommodations, accessible complaint mechanisms and investigation bodies are in order.

When there are gaps in the design of an inclusive justice system because of the specific individual needs of certain people with disabilities, this system should respond by reviewing its practice:

1. Is an *ad hoc* procedural accommodation sufficient; or
2. Should it be addressed systematically, trough better accessibility standards?

# Key messages

* Member States and the EU should carry out, whether during the UN country reviews or in ad hoc work, a review of their judicial processes to identify the barriers to access justice for persons with disabilities of various support needs. Including the specific needs for children and women with disabilities following a twin track approach.
* There are many accounts of discriminatory behaviour towards persons with disabilities during judicial proceedings. This is especially the case for pre-litigation phases and trial phases and concerns more persons with intellectual and/or psychosocial disabilities. Trainings are crucially needed for a diversity of staff but accountability on rights guaranteed for access to justice at international and EU level should be sought so that the same infringements are not repeated.
* A legal mention of accessibility of justice for persons with disabilities is a necessary but not sufficient condition for the effectiveness of the rights. It is important to take into account the diversity of the persons with disability and the fact that this diversity requires to be provide with a diversity of answers to guarantee the access to justice. Individualised support should be easy and the financial responsibility should not be on the individual with disabilities.
* The person with disabilities should be heard first and in compliance with the UNCRPD, the will and preferences and supported decision-making should be the approach to any legal proceeding concerning them.
* The network around the person with disabilities whilst trying to access justice is key to provide the necessary support. The multidisciplinary nature of staff of a prison for instance it is crucial to ensure that the support needs are covered in the diverse areas of life.

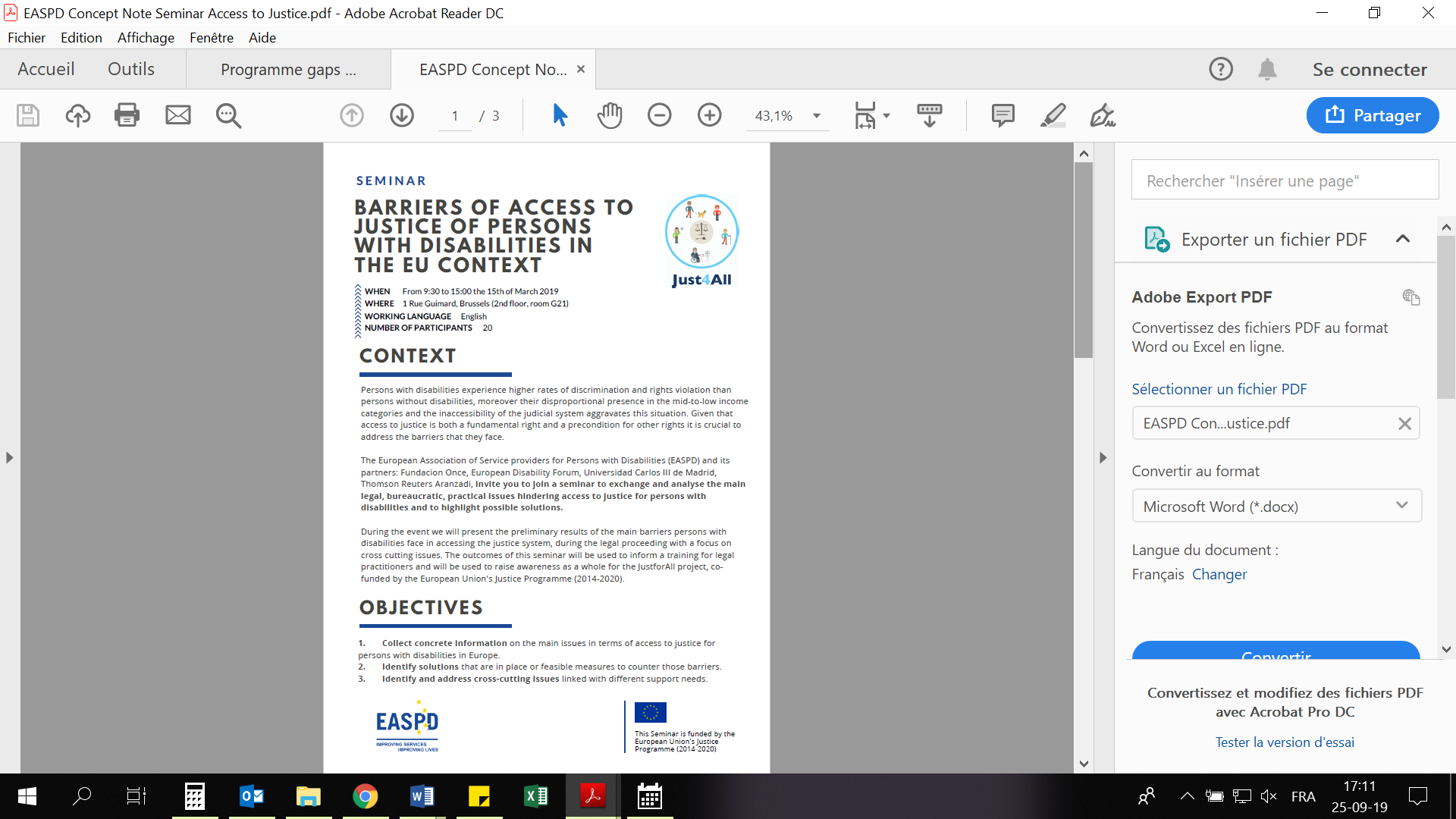
# Annex

## Annex 1 – Information on the Just4All Seminars for collection of data

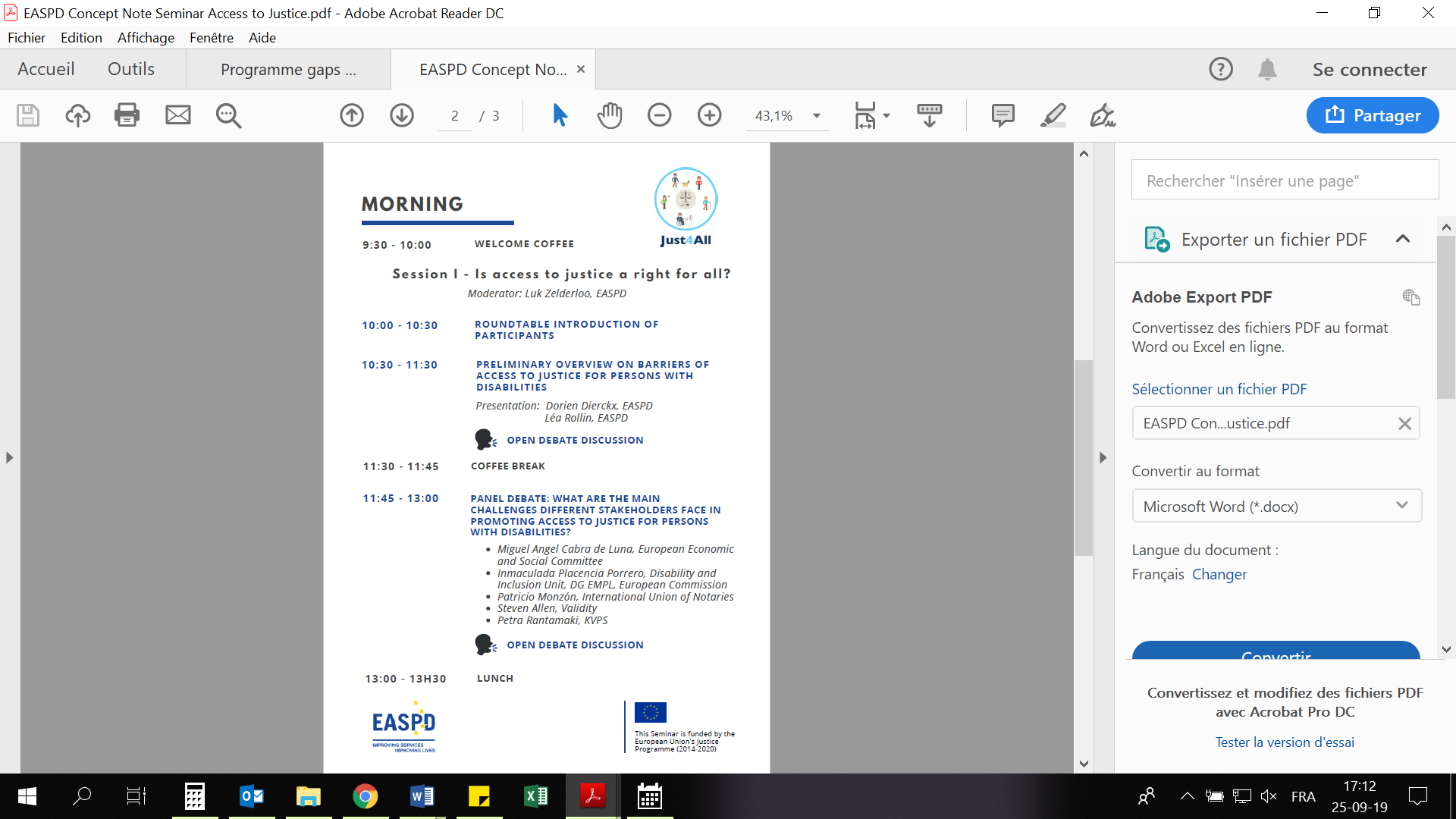
The information present in this report was collected thanks to two seminars organised on this specific topic, one in Brussels gathering specialists from different EU Member States, and one in Madrid, gathering specialists and practitioners from Spain.

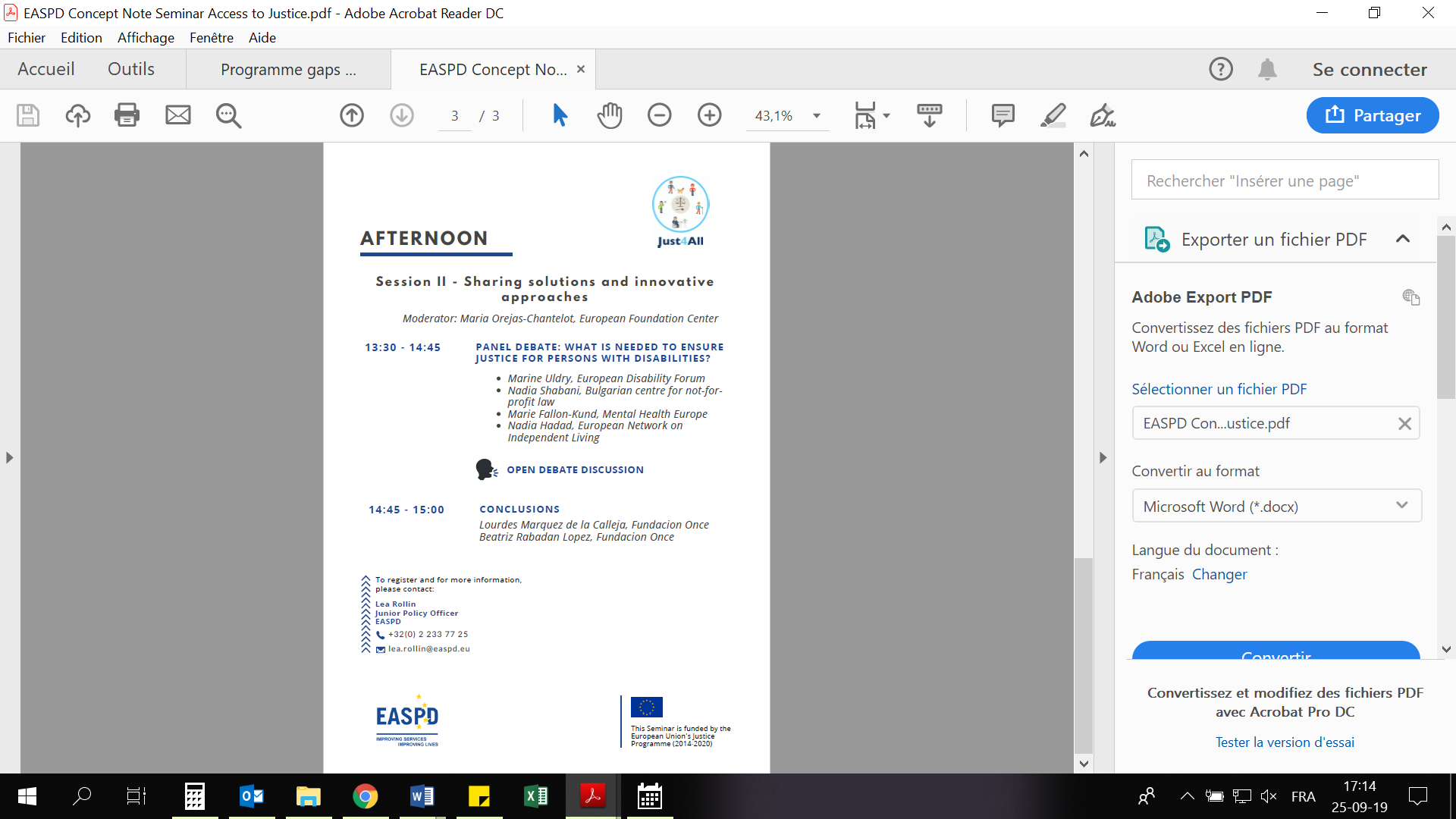
Hereafter are the programmes and speakers present at both events.

### Programme Seminar Brussels, 15 March 2019:

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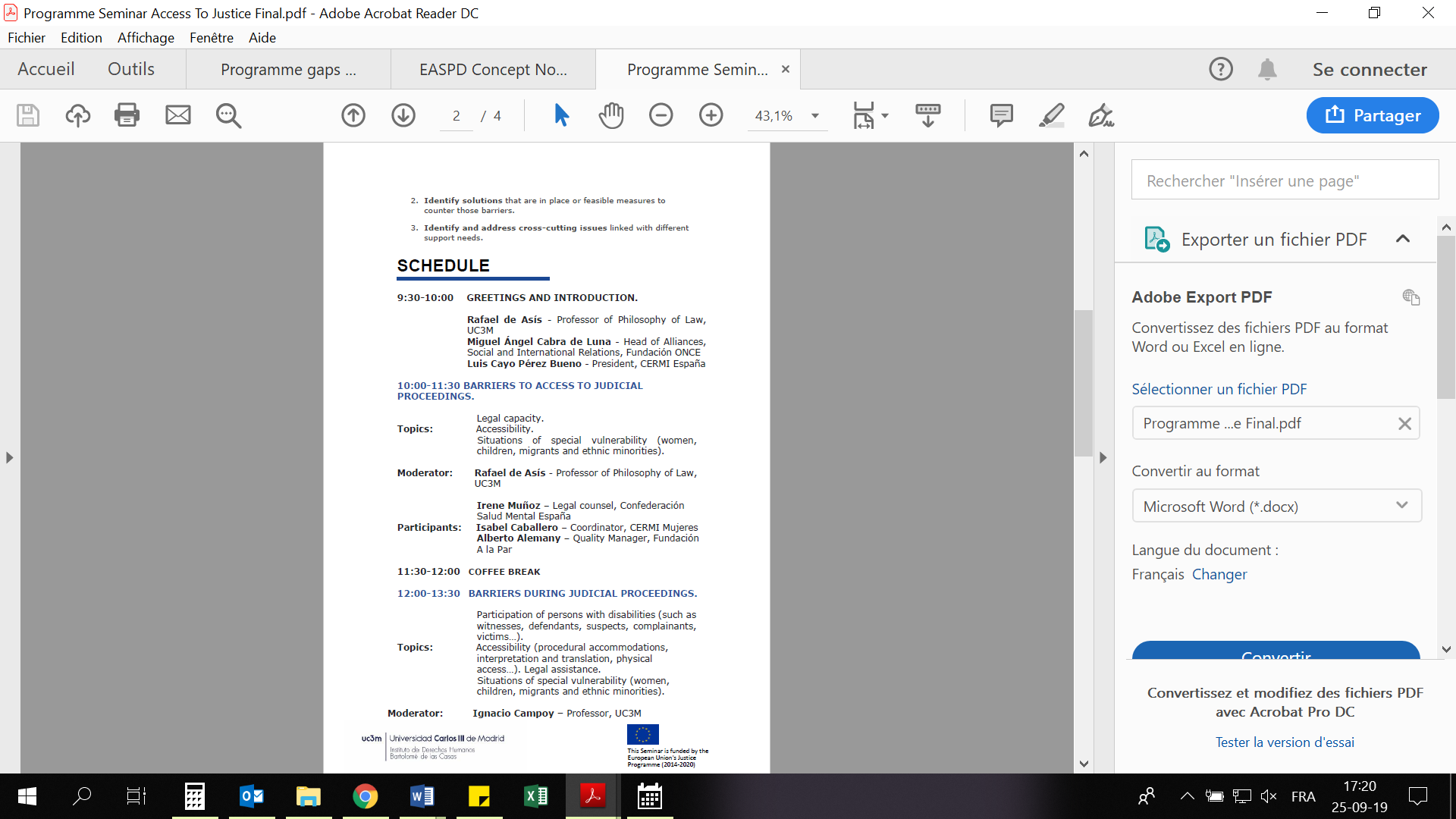


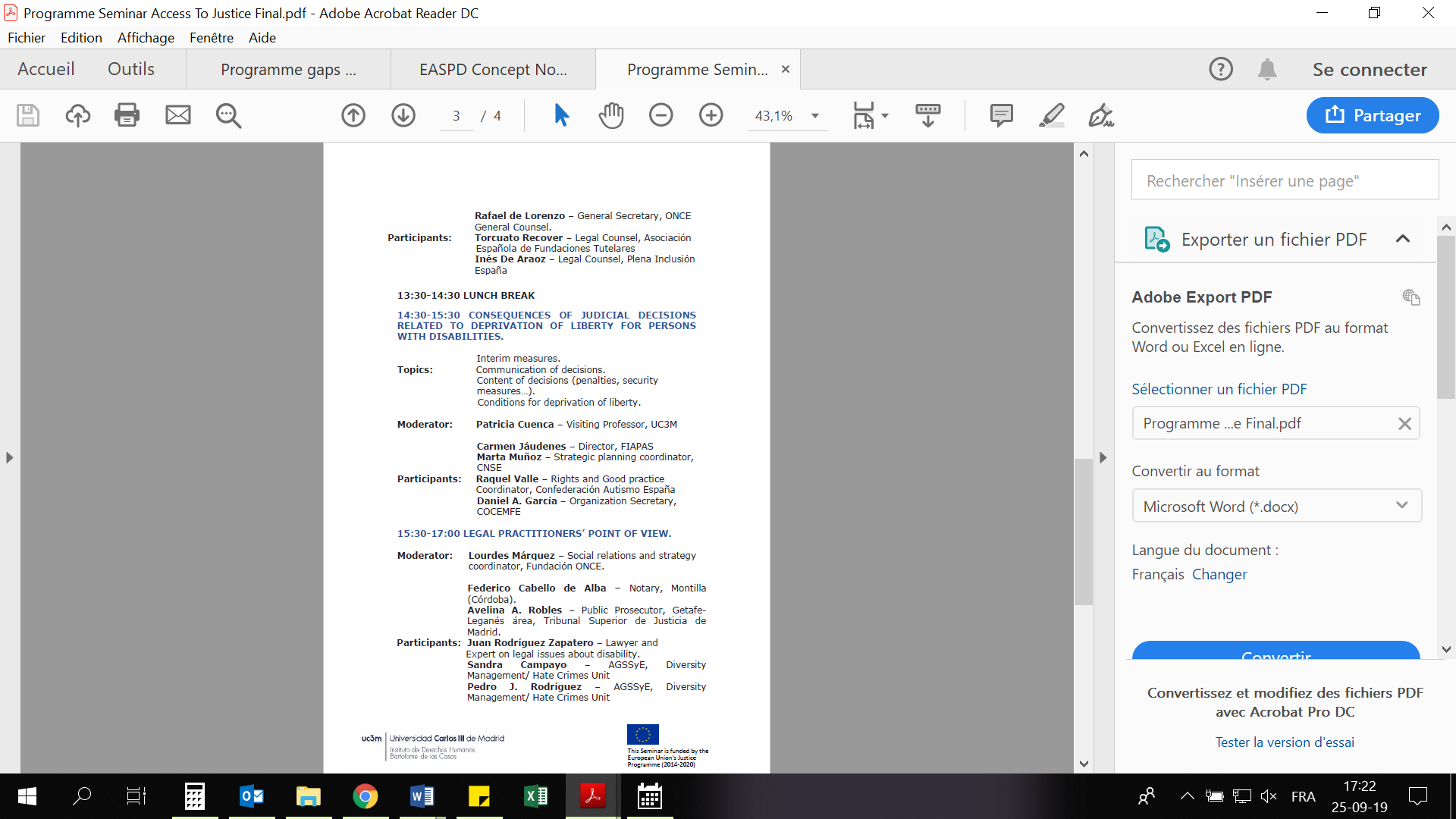
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### Programme Seminar Madrid, 11 April 2019

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# Just4All project

[The Just4all project](https://www.just4all.eu/) aims to promote access to justice for persons with disabilities by raising awareness among legal practitioners on the needs of people with disabilities and develop a training for legal practitioners on that topic. JustforAll seeks to promote the effective implementation of the European Charter of Fundamental Rights, the UN Convention on the Rights of Persons with Disabilities and EU legislation on disability. The project is also looking at cross-cutting issues of gender and children with disabilities and consider the variety of legal domains that the justice system entails.

**Partners**

* [Fundacion Once](https://www.fundaciononce.es/) (project coordinator)
* [European Disability Forum](http://www.edf-feph.org/) (EDF)
* [Thomson Reuters Aranzadi](https://www.thomsonreuters.es/es/productos-servicios/aranzadi-fusion.html)
* [Universidad Carlos III de Madrid](https://www.uc3m.es/Home)
* [European Association of Service providers for Persons with Disabilities (EASPD)](https://www.easpd.eu/en/content/ajupid-european-project-collection-promising-practices-access-justice-persons-disabilities)

**Duration**

30 months, from October 2018 to March 2021

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1. Details on the events organised for gathering information can be found in Annex 1 of this report [↑](#footnote-ref-1)
2. CRPD/C/18/D/30/2015 [↑](#footnote-ref-2)
3. UNDP, Sharing Experience in Access to Justice, October 2010, page 3. [↑](#footnote-ref-3)
4. [Eurostat, Disability statistics - poverty and income inequalities (August 2015)](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Disability_statistics_-_poverty_and_income_inequalities) [↑](#footnote-ref-4)
5. FRA – European Union Agency for Fundamental Rights, Handbook on European law

   relating to access to justice, Luxembourg: Publications Office of the European Union, 2016, page 149. [↑](#footnote-ref-5)
6. Committee on the Rights of Persons with Disabilities, General comment on Article 12: Equal recognition before the law, CRPD/C/11/4, page 2. [↑](#footnote-ref-6)
7. For instance in Finland, [Tukiliitto](https://www.tukiliitto.fi/tuki-ja-neuvot/lakineuvonta/) is a Finnish organisation that provides accessible legal information and personal legal advices to persons with disabilities [↑](#footnote-ref-7)