

Case 1

On the first day of a trial before a civil court, Mr Sage, the claimant, who is not legally represented and intends to present his own case, declares that he has a mental impairment that will make it very difficult for him to participate effectively in the procedure without reasonable accommodation being made for him. He asks whether his mental impairment can be taken into account for the proceedings in order to be able to participate in the trial.

1. What right, protected by the UNCRPD, is in question?
2. If the claimant is declared disabled, how would you determine what, if any, of reasonable accommodations should be provided? What is the test to determine what should be included?
3. If the case is adjourned, how would you deal with the (legal) costs for the defendant?
4. Would your answer to any of the above questions be different if he was not a party or a witness? What if he was a representative / advocate who had the mental impairment?

Case 2

Mr White was abandoned at birth and lived all his life in social care institutions. He suffered from a severe intellectual disability and carried the HIV virus (most likely from birth). When he turned 18, the social care home transferred him to a psychiatric hospital where he died after seven days. An NGO which happened to visit the hospital on the day of his death found him alone in a cold room, wearing only a pyjama top and lying in a bed without bedding. Although he was incapable of using the toilet or feeding himself, the hospital staff refused to touch him for fear of being infected with HIV. He had also no legal guardian.

The official investigation into the circumstances of Mr White's death resulted in a decision of non-indictment. The investigation was limited in scope, superficial and overly deferential towards medical opinion.

1. What rights, protected by the UNCRPD, are in question?
2. Which rights, protected by the ECHR, can the aforementioned rights help to interpret? Which factor will have to be taken into consideration?
3. What should the State have done and/or do in order to comply with the UNCRPD and the ECHR?
4. What is the broader issue relating to the case under examination?