



**BRIEFING PAPER ON BARRIERS
FACED BY DEFENDANTS WITH
INTELLECTUAL AND/OR
PSYCHOSOCIAL DISABILITIES IN
THE CRIMINAL JUSTICE SYSTEM
IN THE CZECH REPUBLIC**

This briefing paper was developed by the Forum for Human Rights within the project “Enabling inclusion and access to justice for defendants with intellectual and psychosocial disabilities” (ENABLE - 101056701 - JUST-2021-JACC).

The project seeks to promote access to justice and fairer criminal proceedings for defendants with intellectual and psychosocial disabilities in 8 EU countries (Romania, Bulgaria, Czechia, Slovenia, Slovakia, Spain, Portugal and Lithuania), and it is implemented by the following consortium of 9 experienced NGOs:

- Validity Foundation – Project coordinator, Hungary
- Centrul de Resurse Juridice, Romania
- Fenacerci – Federação Nacional de Cooperativas de Solidariedade Social, Portugal
- Fórum pro lidská práva, Czechia
- The International Commission of Jurists – European Institutions
- KERA Foundation, Bulgaria
- PIC – Pravni center za varstvo človekovih pravic in okolja, Slovenia
- Confederación Plena Inclusión España, Spain
- Mental Health Perspectives, Lithuania



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EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

“While access to justice is fundamental for the enjoyment and fulfilment of all human rights, many barriers prevent persons with disabilities from accessing justice on an equal basis with others. Such barriers include restrictions on the exercise of legal capacity; lack of physical access to justice facilities, such as courts and police stations; lack of accessible transportation to and from these facilities; obstacles in accessing legal assistance and representation; lack of information in accessible formats; paternalistic or negative attitudes questioning the abilities of persons with disabilities to participate during all phases of the administration of justice; and lack of training for professionals working in the field of justice. In the justice system, persons with disabilities are often considered to be unworthy of, unable to benefit from or even likely to be harmed by due process protection provided to all other citizens. Even fundamental rights, such as the right to remain silent and the presumption of innocence, may be denied either directly in law or policy or indirectly in custom and practice. The risks are extreme – e.g. false confessions, erroneous verdicts and unlawful deprivation of liberty.”[1]

The aim of this national briefing paper is to allow an assessment in the Czech Republic of:



How and what barriers defendants with intellectual and psychosocial disabilities face in the criminal justice system in accessing information, support and procedural accommodations that prevent them from participating, and



To what extent and what ways is there law, policy and/or practice (including promising practices) that enable defendants with intellectual and/or psychosocial disabilities to overcome these barriers, particularly through provision of procedural accommodations?

This report will inform reform and development of a disability bench book and protocol to improve accessibility of criminal proceedings.

1 2020, International Principles and Guidelines on Access to Justice for Persons with Disabilities, p. 6, available at:

https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf

EXECUTIVE SUMMARY

Main findings regarding barriers, challenges and best practices

- The Czech legal framework makes no mention of **any procedural accommodations for people with disabilities**, nor of accused or defendants with intellectual and/or psychosocial disabilities in particular. Because law enforcement officers are trained to strictly enforce the Criminal Procedure Code, there is no room for individual accommodations.
- **The law does not guarantee the possibility of an intermediary or facilitator** in cases involving persons with intellectual and/or psychosocial disabilities. This can have an impact on **the right to participation** of defendants with disabilities.
- In fact, the Czech (criminal) justice system neither accused or defendants with or without intellectual and/or psychosocial disabilities tend to receive communication support. The only exception is the right to an interpreter and the use of deaf and deaf-blind people's communication systems. Except that the Czech law makes no provision for the technical means of communication proposed by the United Nations in the document "International principles and guidelines on access to justice for persons with disabilities" in 2020.
- The justice system in the Czech Republic **does not ensure due process of law to defendants found not criminally responsible due to their mental health condition**. The extent to which the defendant with disability is actively involved in the criminal proceedings is therefore dependent on the expert's opinion stated in the report. If a person is found to be criminally irresponsible, the law enforcement authorities are then no longer interested in his/her opinion, nor are they so thoroughly investigating what actually happened. The system is set up in such a way that everything is hidden under the argument that a person has a disability under the influence of which he or she committed a crime.

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- Access to justice for defendants with disabilities is limited by the fact that **not all persons with disabilities are automatically entitled to free legal aid** and that there is no **mandatory legal representation** specifically for all persons with disabilities.
- Effective access to justice in practise depends on **the approach of individual lawyers**, who are not always sufficiently supportive. It is important that the **lawyer of the defendant with disabilities does his work as professionally as with other clients**, because he/she is often the only person in the Czech system who can help the defendant during the criminal proceeding.
- Czech public attitude towards perpetrators in general is still based on the **need to punish perpetrators** as severely as possible. The attitude towards persons with disabilities is based on a **high level of stigma and prejudice**, which as a result constitutes a significant barrier to access to justice for defendants with disabilities.
- There is lack **of training programs regarding disability issues** based on the human rights model of disability. The stakeholders generally do not understand the importance of a human rights approach. The issues faced by defendants with disabilities and awareness of the importance of CRPD is not widespread among law enforcement authorities, let alone other professionals, supporters and the general public. Thus the development and investment in training are seen as one way to promote a more accessible justice system for persons with disabilities.
- Best practices identified included **the involvement of psychologists, social workers and NGOs or the Probation and Mediation Service**. However, these supportive services should be involved from the beginning of the criminal proceedings and not only at the end in the context of the execution of the sentence.

EXECUTIVE SUMMARY

Main recommendations

- To incorporate into legislation **the possibility of using procedural accommodations** including the possibility of **an intermediary or facilitator**.
- To **introduce legislation and regulatory framework for providing communication support** to persons with disabilities in the criminal proceedings in line with the “International principles and guidelines on access to justice for persons with disabilities” published by United Nations in 2020.
- To **provide regulatory framework for law enforcement authorities regarding the use of simple, easy-to-understand and accessible language**. Written information should also be available in alternative formats.
- To ensure that **defendants found not criminally responsible due to their mental health condition** and offenderdefendants who are found by an expert to have a disability could enjoy all their rights, including the right to participate actively in criminal proceedings.
- To provide **free legal aid and mandatory legal representation specifically for all persons with disabilities automatically**.
- To ensure **the quality of lawyers' work and create a controlling mechanism** by the Czech Bar Association. Emphasis should be put on lawyers' supportive role, being sufficiently proactive, also maintaining personal and sufficiently frequent contact with clients, and treating defendants with disabilities the same as any other clients.
- To allow the **accompaniment of relatives/trustees in all actions** of criminal proceedings, starting from their beginning.
- To **involve persons with disabilities and their representative organisations** in the debate on their access to justice.

EXECUTIVE SUMMARY

- To **provide training for judges, police officers and other stakeholders** with a focus on the human rights model of disability, procedural accommodations and on communication with persons with intellectual and/or psychosocial disabilities.
- To **involve psychologists, social workers and NGOs or the Probation and Mediation Service** in criminal proceedings **from the beginning** and not only at the end in the context of the execution of the sentence. To provide these services automatically to defendants with disabilities and to entitle defendants to request them at any time.

IT IS SOCIETY THAT
"DISABLES" PERSONS
WITH DISABILITIES
FROM EXERCISING
THEIR HUMAN RIGHTS
AS CITIZENS.

UNITED NATIONS, 2008

01

INTRODUCTION

INTRODUCTION

Access to justice for persons with disabilities is recognised on Article 13 of the Convention on the Rights of Persons with Disabilities (CRPD) which establishes 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, to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages”, and “in order to help to ensure effective access to justice for persons with disabilities, States Parties shall **promote appropriate training for those working in the field of administration of justice**, including police and prison staff “.

According the *United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020)* **procedural accommodations** include: “all necessary and appropriate modifications and adjustments in the context of access to justice, where needed in a particular case, to ensure the participation of persons with disabilities on an equal basis with others. Unlike reasonable accommodations[2], procedural accommodations are not limited by the concept of “disproportionate or undue burden”. (p. 9)

The practical implementation of Article 13, and specifically the access to justice of defendants with intellectual and or psychosocial disabilities is an issue which has not been much investigated, at least in some European countries. This project aims at filling this gap by analysing the barriers (and best practices) to participation in the criminal justice process, focusing specifically on persons with intellectual and/ or psychosocial disabilities).

2 “Necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms” (Article 2, United Nations, 2006)

INTRODUCTION

According to the CRPD, disability is an evolving concept and “*results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others*”. In other words, the CRPD adopts a social and human rights model which proposes a new conceptualisation of disability: “it is society that “disables” persons with disabilities from exercising their human rights as citizens” (United Nations, 2008) if the necessary adaptations to the social participations of these persons are not provided.

The general purpose of this briefing is to present the results of research on the barriers defendants with intellectual and psychosocial disabilities face in the criminal justice system in accessing information, support and procedural accommodations that prevent them from participating. The briefing will also assess to what extent is there law, policy and/or practice (including promising practices) that enable defendants with intellectual and/or psychosocial disabilities to overcome these barriers, particularly through provision of procedural accommodations.

The research guidelines are based on the international normative framework as set out in the relevant and intersecting articles of the **CRPD: article 12** (Equal recognition before the law) and article 13 (Access to justice); the ***International Principles on Access to Justice for Persons with Disabilities*** (UN, 2020): **Principle 1** (All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability); **Principle 3** (Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations); **Principle 4** (Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others); **Principle 5** (Persons with disabilities are entitled to all substantive and procedural safeguards recognised in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process); **Principle 6** (Persons with disabilities have the right to free or affordable legal assistance); **Principle 10** (All those working in the

INTRODUCTION

justice system must be provided with awareness-raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice); **European Convention on Human Rights**: Article 5 (Right to liberty and security), 6 (Right to a fair trial), 13 (Right to an effective remedy) and 14 (Prohibition of discrimination); and EU acquis on procedural rights: **right to interpretation and translation in criminal proceedings**[3]; **right to information in criminal proceedings**[4]; right of access to a lawyer in criminal proceedings[5]; strengthening of certain aspects of the **presumption of innocence** and on **the right to be present at the trial** in criminal proceedings[6]; **legal aid** for suspects and accused persons in criminal proceedings[7]; and **procedural safeguards for vulnerable persons suspected or accused in criminal proceedings**[8].

In what follows, we present the goals and methodology of the study, then we summarise the main findings of the field work - desk research and semi-structured interviews - and we end up with the main conclusions and recommendations regarding the access to justice for defendants with intellectual and/ or psychosocial disabilities in the Czech Republic.

3 Directive 2010/64/EU of the European Parliament and of the Council – Articles 1, 2, 4 and 5;

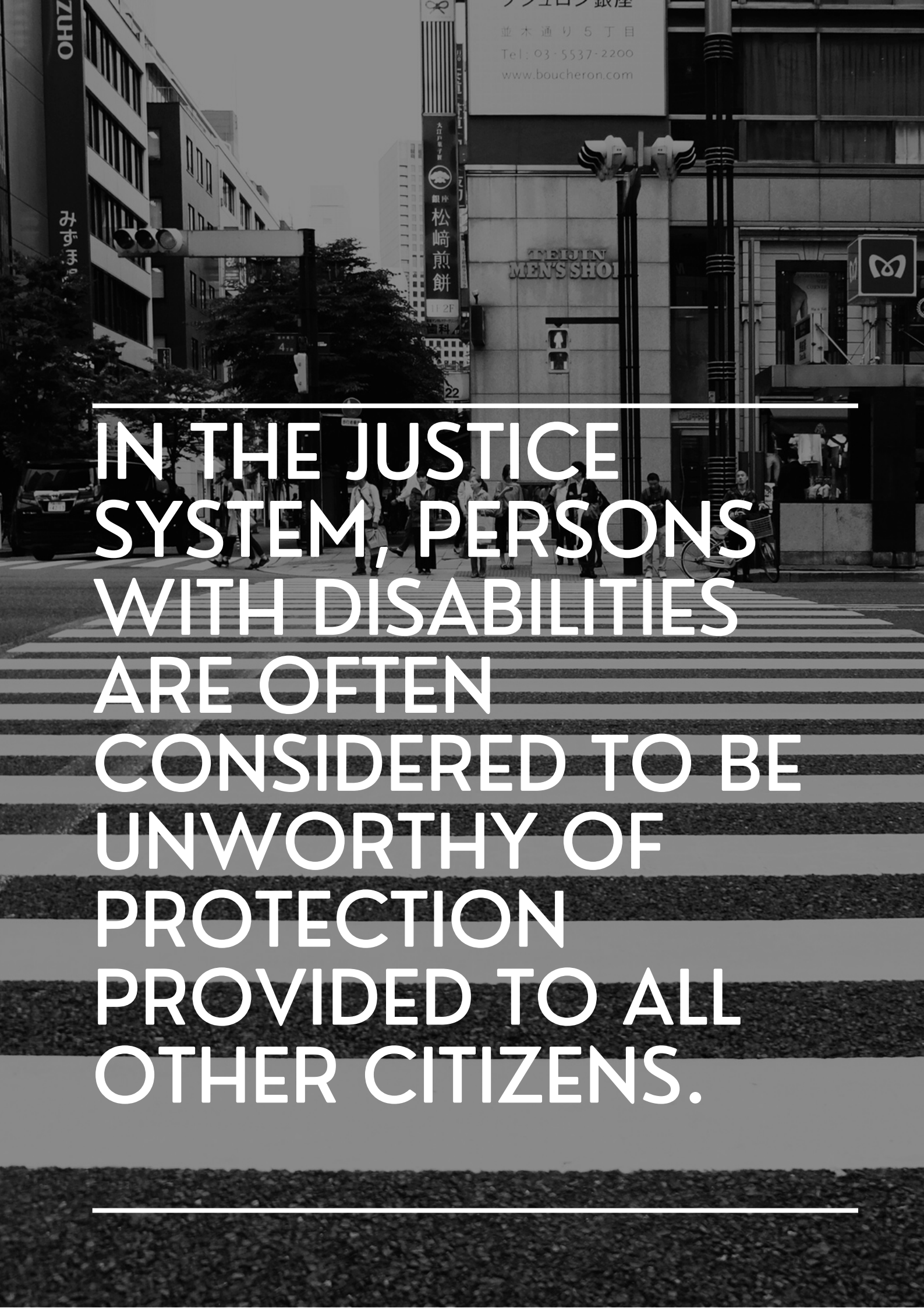
4 Directive 2012/13/EU of the European Parliament and of the Council– On the right to information in criminal proceedings – Articles 3, 4, 6 and 7;

5 Directive 2013/48/EU of the European Parliament and of the Council – On right to access to a lawyer in criminal proceedings, including EAW and on the right to have a third party informed about deprivation of liberty and communicate with third persons – Articles 3, 4, 11 and 13

6 Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings – Article 6 – 8 and Recital 42;

7 Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings – Article 4 and 9;

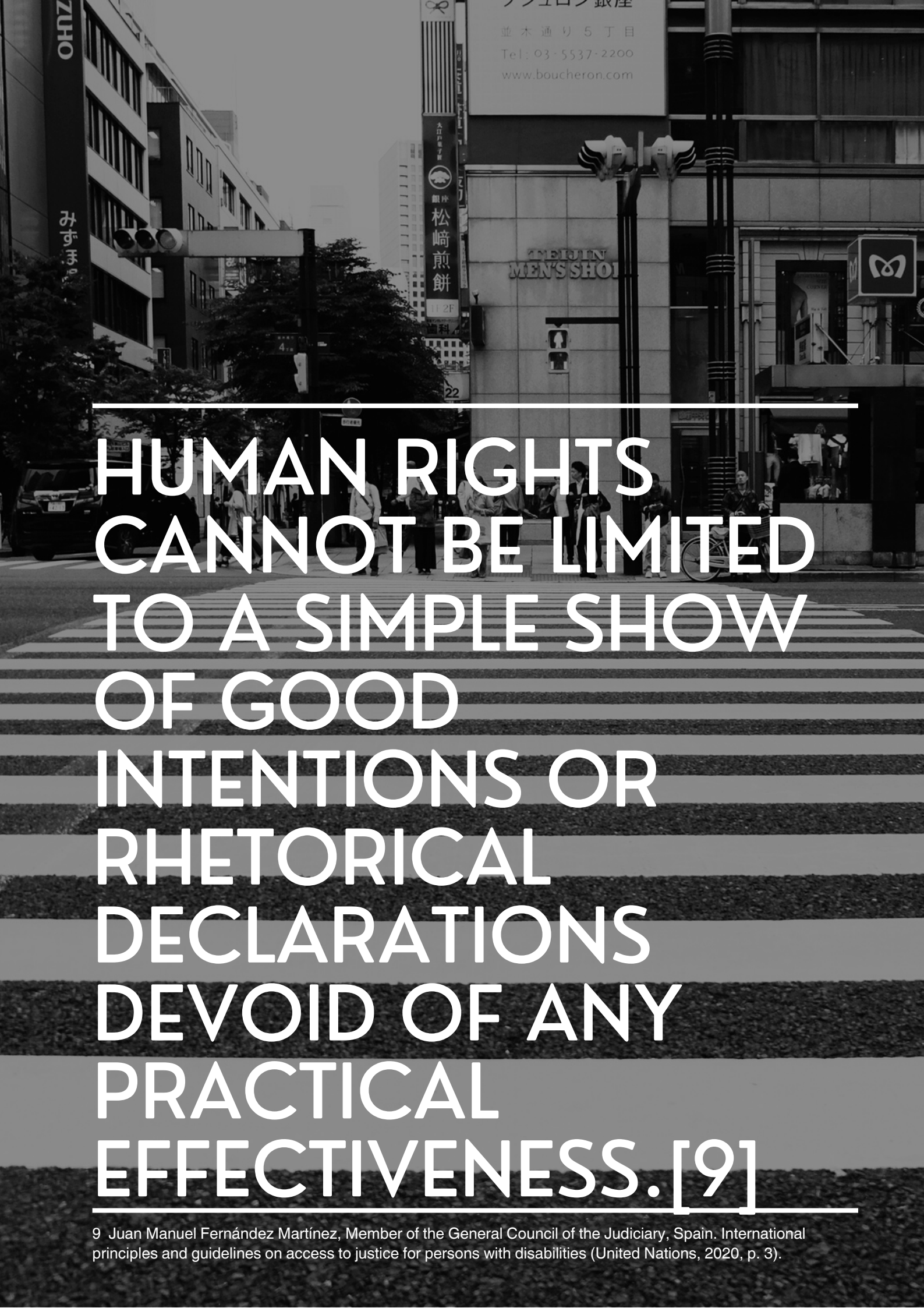
8 Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings – Section 2 and 3.



IN THE JUSTICE
SYSTEM, PERSONS
WITH DISABILITIES
ARE OFTEN
CONSIDERED TO BE
UNWORTHY OF
PROTECTION
PROVIDED TO ALL
OTHER CITIZENS.

02

GOALS AND
METHODOLOGY



HUMAN RIGHTS
CANNOT BE LIMITED
TO A SIMPLE SHOW
OF GOOD
INTENTIONS OR
RHETORICAL
DECLARATIONS
DEVOID OF ANY
PRACTICAL
EFFECTIVENESS. [9]

9 Juan Manuel Fernández Martínez, Member of the General Council of the Judiciary, Spain. International principles and guidelines on access to justice for persons with disabilities (United Nations, 2020, p. 3).

GOALS AND METHODOLOGY

To improve knowledge on experiences and participation barriers faced by defendants and accused with intellectual and/or psychosocial disabilities in the criminal justice system (pre-trial and trial phase, i.e., from investigation/ arrest to sentence).

The specific goals of this project phase were:



Map the national legal and political framework

(laws, policies, strategies, orientations, or others) about access to justice to defendants with disabilities, mainly focusing on the provision of reasonable and procedural accommodations.



Examine the experience of different stakeholders

- defendants with intellectual and psychosocial disabilities, criminal justice professionals, support services professionals, Non- Governmental Organisations and Human Rights Institutions – about the access to justice of defendants with disabilities, **identifying barriers, challenges and areas of improvement** they envision in it.



To collect recommendations

- from the different stakeholders - on how to promote the inclusion and access to justice for defendants with intellectual and psychosocial disabilities, specifically **identifying the main support and procedural accommodations needed**.

GOALS AND METHODOLOGY

To achieve these goals the methodological approach combined **desk research** and field work. The desk research involved the identification and analysis of relevant policy documentation (e.g., national legislation, policy, strategies, reports, statistics) regarding the provision of reasonable and procedural accommodations in the justice system for persons with disabilities.

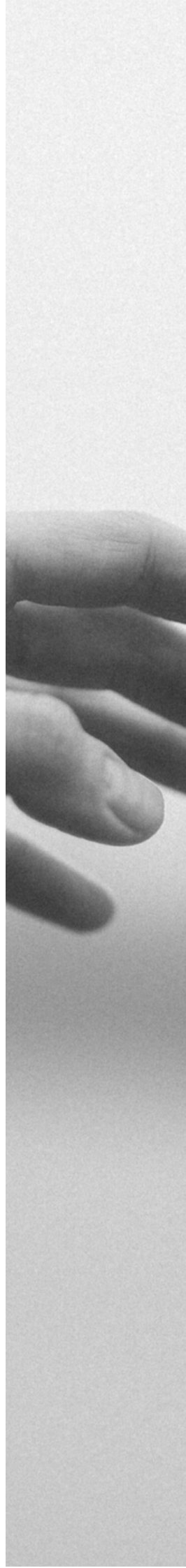
Additionally, for **the field work, semi-structured interviews** (N= 13) were carried out with key stakeholders: Defendants with intellectual and /or psychosocial disabilities (N=4); Criminal justice professionals (N=5); Support services professionals (N=2); Non-Governmental Organisations (N=1), and Human Rights Institutions (N=01). The interviews were conducted from November 2022 to March 2023. It was given priority to interviewees who have had experience/contact with the criminal justice system in the last three years. A non-probability purposeful sampling technique was used to identify and recruit the participants of this project. The identification of the interviewees was possible with the help of the national partners of the project. The data was analysed using content analysis. In the next section we summarise the main key finds of the desk research and interviews.

03

DEFENDANTS WITH
DISABILITIES ACCESS
TO JUSTICE

POLITICAL AND LEGAL FRAMEWORK

- 01** Transposition of the international legal framework
- 02** Overview of the national legal framework regarding access to justice
- 03** Training and awareness for criminal justice professionals
- 04** Statistics and data on access to justice
- 05** Main findings



DEFENDANTS WITH DISABILITIES ACCESS TO JUSTICE

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JUSTICE SYSTEMS
REFLECT THE VALUES
OF THE SOCIETIES IN
WHICH THEY ARE
EMBEDDED.

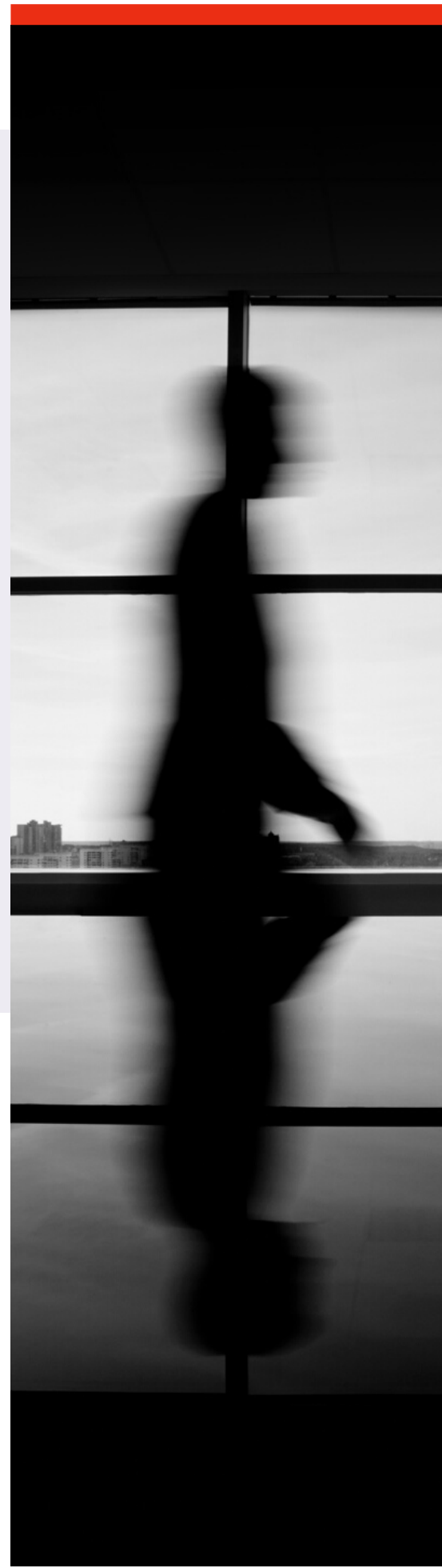
ACCESS TO JUSTICE

The main goal of the desk research was to shed light into the legal and political framework about access to justice to defendants with disabilities.

POLITICAL AND LEGAL FRAMEWORK

The results of this analysis are presented in four sub-sections:

- a) identification of the main international legal policies and orientations regarding access to justice adopted in the Czech Republic;
- b) brief overview of most relevant domestic laws, policies or strategies which regulate the access to justice of persons with disabilities;
- c) how training and awareness raising for those working in the field of administration of justice is being promoted, and finally,
- d) we will present available official data related to the access to justice for persons with disabilities.



01 Transposition of the international legal framework

A. Applicable UN regulation

The Czech Republic ratified the **United Nations Convention on the Rights of Persons with Disabilities** in 2009 without any reservations.[10]

Regarding article 12 (Equal recognition before the law) and article 13 (Access to justice), the concluding observations made by the UN Committee on the rights of persons with disabilities mentioned that blind persons and persons with mental and psychosocial disabilities do not have access to judicial and administrative proceedings.[11]

The Czech Republic was further called upon to ensure that documents are available in formats accessible to all persons with disabilities who need them and that all justice professionals are properly trained on the rights under the Convention. The UN Committee in 2015 furthermore noted with concern that *“the new Civil Code still provides for the possibility of limiting a person’s legal capacity and placing a person with a disability under partial guardianship”*. [12]

10 But the Optional Protocol to the CRPD was not ratified by the Czech Republic until August 2021.

11 Committee on the Rights of Person with Disabilities. Concluding observations on the initial report of the Czech Republic [online]. ohchr.org, 15 May 2015 [cited 16 February 2023]. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRPD%2fC%2fCZE%2fCO%2f1&Lang=en.

12 Ibid.

POLITICAL AND LEGAL FRAMEWORK

01 Transposition of the international legal framework

In its replies to the Committee's questions in 2015,[13] the Czech Republic indicated that the amendment of the procedural rules for civil proceedings had strengthened the procedural rights of persons with disabilities. This cannot be agreed with (please see details in section 3.1.2. Overview of the national legal framework regarding access to justice).

In the Report of the Office of the United Nations High Commissioner for Human Rights,[14] the Czech Republic was criticised for the persistent lack of access to judicial and administrative proceedings for blind persons and persons with mental and psychosocial disabilities.

The **United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (hereinafter referred to as "UN CAT") was ratified by the Czech Republic in 1993[15]. In relation to the UN CAT, the procedural accommodation has not yet been recognised as a problem, however, the UN CAT took note of an absence of a free-legal aid scheme. In its latest Concluding Observations, the Committee noted that the procedural guarantees enshrined in domestic legislation provides for the right of access to a lawyer only at the concerned person's own expense, and that free legal aid is not available from the very outset of deprivation of liberty.[16]

It is also concerned that, in practice, police officers do not always respect detainees' right to be informed of their rights and to be notified of their detention by a relative. As a result, the Committee recommended that effective measures be taken to ensure, and monitor, that all detained persons have access to all fundamental legal safeguards from the start

13 Replies of the Czech Republic to the list of issues [online]. ohchr.org, 30 January 2015 [cited 16 February 2023]. Available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsptzG4Xu%2FHsX6HwedSMgeQoe3Ub5%2FhHfxBRgmFfWRXhgavSfh4n0CaXqzHRkXhhL%2BSVHZwzv9Uq1%2BBu50uuMJUHdlezf%2F02xOkzhztEx%2BeIF%2FwqSnAiDVS3Lr09PHINqz0A%3D%3D>.

14 Human Rights Council. Compilation on Czechia: Report of the Office of the United Nations High Commissioner for Human Rights [online]. ohchr.org, 4 September 2017 [cited 16 February 2023]. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/257/14/PDF/G1725714.pdf?OpenElement>.

15 Previously ratified by Czechoslovakia in 1988.

16 Committee against Torture (CAT): Concluding observations on the sixth periodic report of Czechia [online]. www.undocs.org, 6 June 2018 [cited 4 May 2023]. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/171/17/PDF/G1817117.pdf?OpenElement>. See paras. 10-11.

POLITICAL AND LEGAL FRAMEWORK

01 Transposition of the international legal framework

of their deprivation of liberty, both in law and in practice. This should include the right to be properly informed, the right to contact family or anyone else, the right to a lawyer or free legal aid, and the right to a detention register and reports.[17] Although the CAT applied these conclusions generally to all persons, they will be even more applicable to people with disabilities.

European Committee for the Prevention of Torture

In its 2018 Report to the Czech Republic,[18] the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter "CPT Committee") did not mention anything specifically related to access to justice for persons with disabilities. However, it did, in general terms, address certain problematic aspects, which have an impact on persons with disabilities as well.

For example, the CPT pointed out the fact that the right to free legal aid only became a right from the moment of the statement of charges, which could, however, be preceded by questioning by the police. Access to lawyer is routinely provided, although sometimes not immediately. The CPT Committee also found out that instruction by the police of the rights of persons deprived of their liberty is not always properly carried out (e. g. persons are not always allowed to keep a written copy of the leaflet or there are often no written instructions in different languages for foreigners). It's equally problematic that an expert report on the detainee's state of health is drawn up by an expert from the medical institution where he is placed during protective treatment drawn up by an expert from the medical institution involved or that patients did not in fact have the possibility to refuse treatment.[19]

17 Committee against Torture (CAT): Concluding observations on the sixth periodic report of Czechia [online]. www.undocs.org, 6 June 2018 [cited 4 May 2023]. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/171/17/PDF/G1817117.pdf?OpenElement>. See paras. 10-11.

18 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): Report to the Government of the Czech Republic on the visitation of the Czech Republic by the European Committee for the Prevention of torture and inhuman or destructive treatment or punishment (CPT) during 2. to 11 October 2018 [online]. www.coe.int, Strasbourg, 4 July 2019 [cited 27 February 2023]. Available at: <https://rm.coe.int/168095aeb2>.

19 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): Report to the Government of the Czech Republic on the visitation of the Czech Republic by the European Committee for the Prevention of torture and inhuman or destructive treatment or punishment (CPT) during 2. to 11 October 2018 [online]. www.coe.int, Strasbourg, 4 July 2019 [cited 27 February 2023]. Available at: <https://rm.coe.int/168095aeb2>.

POLITICAL AND LEGAL FRAMEWORK

01 Transposition of the international legal framework

Regarding the **EU Directives on rights of defendants/accused, in connection to the articles listed in the Introduction**, the following directives were analyzed:

- Right to **interpretation and translation** (Directive 2010/64/EU)
- **Right to information** in criminal proceedings (Directive 2012/13/EU)
- Right of **access to a lawyer** in criminal proceedings (Directive 2013/48/EU)
- Strengthening of certain aspects of the **presumption of innocence** and on the **right to be present at the trial** in criminal proceedings (Directive (EU) 2016/343)
- Legal aid (Directive 2016/1919)
- **Procedural safeguards for vulnerable persons suspected or accused** (Commission Recommendation of 27 November 2013)

There has not been explicitly transposed into national laws any explicit disability friendly provisions transposed into national laws in relation to implementation of EU directives implementation, neither for example in relation to Directive (EU) 2016/1919 on legal aid, or Directive (EU) 2016/800 on procedural rights for children. In general, there are no disability friendly provisions in relation to defendants and only general rules apply.

Regarding the right to legal representation, the Criminal Procedure Code establishes four types of circumstances when of necessary defence for persons with disabilities, in which they will be mandatorily representation ed by a lawyer is mandatory from the pre-trial stage:

- Firstly, there is the necessary defence by operation of law under Section 36(1)(a) of the Criminal Procedure Code, which applies to persons deprived of their liberty and therefore also to defendants placed under protective measures or observed in a health institution under Section 116 of the Criminal Procedure Code.
 - The second case is also a necessary defence by operation of law under Section 36(1) (b) of the Criminal Procedure Code, and this applies to all persons of diminished capacity. In such cases, it is mandatory for the accused to have a defence lawyer already in the pre-trial proceedings and there are no exceptions to the said rule.
-

POLITICAL AND LEGAL FRAMEWORK

01 Transposition of the international legal framework

- Thirdly, if the court and the public prosecutor consider it necessary in the pre-trial proceedings because *"in view of the physical or mental defects of the accused, they have doubts as to his capacity to defend himself adequately."* In practice, this is very problematic, as there is no certainty that a person with a disability will always have access to legal aid.
- Fourthly, *"in proceedings in which it is decided to impose or modify preventive detention or to impose or modify protective treatment, with the exception of Forensic treatment for abuse of alcohol."*[20]

Otherwise, all defendants have the right to choose their own lawyer. If the accused fails to do so, his guardian, *"a relative in the direct line of descent, his sibling, adoptive parent, spouse, partner, companion, as well as an interested person"* may do so for him. In the case of persons whose legal capacity has been limited, the lawyer may be chosen even against his/her will.[21] In cases when defence is necessary, the accused is given a period of time to choose a lawyer. If this does not happen, an lawyer will be automatically appointed by the court.[22]

With regard to the costs of legal aid, Czech law does not grant any special regulation of free legal representation for persons with disabilities. The following general conditions must be met for the accused to be entitled to free legal aid:

1. the accused (/persons specified above) must apply for it (in the pre-trial proceedings through the public prosecutor and in the trial proceedings via the judge),
2. the accused must prove that he or she lacks sufficient financial means, and
3. the court must decide on the entitlement to free legal aid.[23]

If the evidence indicates that the accused does not have sufficient means to secure legal representation, a judge may decide on free legal aid even without an application by the accused.[24]

20 Section 36(4) b) of the Criminal Procedure Code.

21 Section 37(1) of the Criminal Procedure Code.

22 Section 38(1) of the Criminal Procedure Code.

23 Section 33(3) of the Criminal Procedure Code.

24 Section 33(3) of the Criminal Procedure Code.

02 Overview of the national legal framework regarding access to justice

General Disability and Mental Health legislation

Right to participation / Recognition of legal capacity

Issues relating to the substantive part of a person's legal capacity are regulated by the Civil Code. Person's legal capacity can be limited against the will of the person concerned, but only under the certain conditions.[25] The law also provides for less severe measures such as preliminary declarations, assistance in decision-making and representation by a member of the household. However, the difference between these measures and the restriction of legal capacity is that they are carried out with the person's consent.[26] It is permissible to restrict a person's legal capacity only to the extent *"that the person is incapable of legal action because of a mental disorder which is not merely temporary."*



25 Conditions for limitation of legal capacity: 1. only in the interests of the person concerned; 2. after having seen him; 3. with full recognition of his rights and his personal uniqueness; 4. the extent and degree of the person's inability to take care of his or her own affairs must be thoroughly taken into account; 5. only if he would otherwise be at risk of serious harm and if less restrictive and less restrictive measures would not suffice in the light of his interests; 6. only on the basis of a court decision. See section 38 – 56 of Civil Code.

26 See section 38 – 56 of Civil Code.

POLITICAL AND LEGAL FRAMEWORK

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The maximum duration of the restriction is 3 years, or up to 5 years, if claimed that the health condition cannot be expected to improve.

According to Section 20(1) of the Civil Procedure Code, *'everyone may act as a party before the court in his or her own right (have legal standing) to the extent that he or she has legal capacity'*. If a person is limited in his/her legal capacity also for the purpose of acting before the court, he/she may be a party to the proceedings, but he/she cannot act independently in civil proceedings, needing a legal representative or a guardian appointed by the court to act on his/her behalf. In addition, Section 23 of the Civil Procedure Code allows the president of the chamber to decide that *"a person who lacks full legal capacity must be represented in the proceedings by his legal representative or guardian, even if the matter is one in which he could otherwise act independently."*

Insanity defense/ Incapacity to stand a trial (a complete exclusion from the criminal proceedings)

A defendant can be found not criminally responsible due to his/her mental health condition - "insanity". The Criminal Code does not define "sanity", but the grounds that exclude it. An offender is deemed to be found criminally responsible if *"because of a mental disorder at the time of the commission of the act, he could not recognize its wrongfulness or control his actions"*. In such a case, the defendant is found not criminally liable,[27] and his act is therefore properly referred to as an 'other criminal act' instead of a 'crime'. [28]

The expert opinion of the defendant "insanity" must be given only by an expert in psychiatry.[29] The expert for the purposes of "insanity" will be called in whenever the law enforcement authorities have doubts about the mental state of the defendant. The appointed expert may be objected to by the defendant or his lawyer on the grounds of bias, the expert's expertise or the wording of the questions put to the expert. The conclusions reached by the expert in his examination are very important for the further development of the criminal proceedings.

27 Section 26 of Criminal Code.

28 Note: Wherever in this document the term crime is used simplistically for an insane defendant, it means an defendant of an insanity offence.

29 Section 116 of Criminal Procedure Code.

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If during the pre-trial proceedings it emerges that the accused was not criminally responsible due to their mental health condition at the time of offence, the prosecutor shall discontinue the prosecution.[30] If the conclusion that the defendant is not criminally responsible due to “insanity” is not proven until the main trial, the court shall acquit the defendant.[31] If the “insanity” of the perpetrator had been established by an expert opinion before the criminal proceedings were initiated, the case would have been dismissed because no crime had been committed.[32] However, even if the case is adjourned, only the suspect could be ordered to undergo forensic treatment,[33] just as in the case of a discontinuance of prosecution or acquittal.

In its opinion, the Supreme State Prosecutor's Office concluded that for the purposes of assessing if the defendant can be held criminally responsible, it is possible to appoint an expert already at the stage of investigation.[34] In practice, this is problematic: in the case when the person that is being assessed has not yet been the accused, the necessary defence guarantees do not apply to him or her[35], which may affect, for example, the exercise of the right to object to the expert [36].

Compulsory treatment, institutionalisation, alternatives of incarceration

Section 38 of the Health Services Act[37] sets out when it is possible to hospitalise a patient in the Czech Republic and provide health services to them without their consent. Among other things, it concerns a patient who should undergo forensic treatment or who has been ordered to undergo a medical examination under the Criminal Procedure Code. This is therefore a category of patients for whom compulsory treatment has been ordered by a public law decision. There are other reasons for involuntary hospitalisation that are not as relevant to the topic at hand.

30 Section 172(1) e) of Criminal Procedure Code.

31 Section 226 d) of Criminal Procedure Code.

32 See section 159a of Criminal Procedure Code.

33 The Statement of the Supreme State Prosecutor's Office of 30 June 2014, No. 1 SL 708/2014.

34 The Statement of the Supreme State Prosecutor's Office of 30 June 2014, No. 1 SL 708/2014.

35 See section 36 of Criminal Procedure Code.

36 Section 33(6) of Criminal Procedure Code.

37 Act No. 372/2011 Coll., on Health Services and Conditions of their Provision (hereinafter referred to as the "Health Services Act").

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- **Patient, who should undergo forensic treatment**

The first case in which a person must submit to compulsory treatment is the imposition of forensic treatment on an defendant or perpetrator of an otherwise criminal offence.[38] It is one of the protective measures, which may be in outpatient or inpatient form. Forensic treatment is close to protective detention, which also involves restrictions on personal liberty for defendants with intellectual or/and psychosocial disabilities. The difference between these protective measures and traditional punishments is that protective measures can also be imposed on criminally irresponsible persons and that their purpose is prevention rather than punishment. A protective measure may supplement or replace a sentence after going through all stages of the criminal proceedings, so that it may, for example, be imposed together with a prison sentence.[39]

Forensic treatment is obligatorily imposed for a criminal offence committed in a state of "reduced sanity" or in a state induced by a mental illness, or for the commission of an otherwise criminal offence by a person found not criminally responsible due to their mental health condition. Forensic treatment is divided into psychiatric, sexological, addiction and possibly mixed treatment. There are 14 psychiatric hospitals in the Czech Republic providing protective treatment, 13 of which provide psychiatric Forensic treatment and 6 of which provide sexological treatment.[40]

Forensic treatment can only be ordered if the defendant's stay at liberty is considered to be dangerous. Its purpose consists in therapeutic action on the defendant, which should lead to his rehabilitation and the elimination of his social dangerousness. Forensic treatment is not imposed for a predetermined period of time but lasts as long as its purpose requires. It may also be imposed complementary to a sentence or in the event of a waiver of punishment. Forensic treatment may be imposed before the prosecution is initiated if the defendant is found not responsible for his actions due to a mental health condition at that stage.[41]

38 imposition of forensic treatment on an offender or perpetrator of an otherwise criminal offence.[1] At the outset, it is useful to define that Czech criminal law knows two types of criminal sanctions, distinguishing between punishment and protective measures. See section 36 of Act No. 40/2009 Coll., the Criminal Code (hereinafter referred to as the "Criminal Code").

39 Section 98 et seq. of Criminal Code.

40 Ombudsman. Report from systematic visits: Forensic treatment, restraints and other topics [online]. ochrance.cz, Brno, 2019. p. 20. Available at: https://www.ochrance.cz/uploads-import/ESO/FORENSIC_TREATMENT_final.pdf.

41 Section 99 of Criminal Code.

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The relationship between a patient placed in Forensic treatment and health service providers is regulated by the Specific Health Services Act^[42]. The regulation is particularly problematic in practice because it effectively leads to the provision of treatment without the patient's free and informed consent. Moreover, Section 99(5) of the Criminal Code allows for the additional transformation of Forensic treatment into protective detention if the patient repeatedly refuses examination or treatment.^[43]

- **Patient, who has been ordered to undergo a medical examination**

A person may be compulsorily ordered to be examined in a health care facility in criminal proceedings. This is an examination of the mental state for the purposes of proving evidence, which is carried out by an expert psychiatrist. The examination may take place at liberty, but it may also be involuntarily imposed for observation in a medical institution. The accused may defend himself against such a decision by lodging a complaint. The observation of the mental state is not to last more than two months. At the end of the examination, the expert must provide a report.^[44]

National Disability strategy

In the Czech Republic was presented the "National Plan for the Promotion of Equal Opportunities for Persons with Disabilities for the Period 2021-2025"^[45] (hereinafter referred to as the "National Plan"). It is a basic strategic document "*setting the direction of the government policy of the Czech Republic in the field of creating equal opportunities for persons with disabilities*".

Unfortunately, the National Plan is very general and does not result in any specific measures that should lead to more effective access to justice for persons with disabilities.

42 Act No. 373/2011 Coll., on specific health services.

43 Ombudsman. Report from systematic visits: Forensic treatment, restraints and other topics [online]. ochrance.cz, Brno, 2019. p. 28 Available at: https://www.ochrance.cz/uploads-import/ESO/FORENSIC_TREATMENT_final.pdf.

44 Section 116 – 118 of Criminal Procedure Code

45 National Plan for the Promotion of Equal Opportunities for Persons with Disabilities for the period 2021-2025: approved by Government Resolution No. 761 of 20 July 2020. Prague: Office of the Government of the Czech Republic, 2020. ISBN 978-80-7440-255-5. Available at: https://www.vlada.cz/assets/ppov/vvozp/dokumenty/National-Plan-for-the-Promotion-of-Equal-Opportunities-for-Persons-with-Disabilities-2021_2025.pdf.

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The objectives set out in the plan are, by way of example, "Ensure that persons with disabilities are supported in their legal action." However, no steps are set out to achieve the stated objectives. Furthermore, the National Plan very often refers to standards/procedures that have been in place/used for several years, so it does not show what legislative and systemic changes have taken place. This will be demonstrated by the examples below.

In the context of legal capacity of persons, the National Plan mentions the Civil Code in force since 2014, which introduced the possibility of using so-called support measures (representation by a guardian, a representative of a household member or a supporter under an assistance contract) instead of limiting legal capacity. However, according to the National Plan, these supportive measures are not used in court practice. In order to ensure equal access to justice, the National Plan notes that technical measures are necessary. However, it specifically refers only to the means of communication of persons with hearing impairment and deafblind persons, which were established by the 1998 Act.

The last topic addressed in the National Plan in relation to Articles 12 and 13 of the Convention is the issue of guardianship. Firstly, there is the need to resolve the dispute over the competence to supervise public guardians, as no ministry has come forward to do so. Secondly, the need to educate guardians is highlighted, through the distribution of information materials and the organisation of training events for judges, prosecutors and others in the justice system.[46] Other procedural adaptations are not addressed in the National Plan.

46 National Plan for the Promotion of Equal Opportunities for Persons with Disabilities for the period 2021-2025: approved by Government Resolution No. 761 of 20 July 2020. Prague: Office of the Government of the Czech Republic, 2020. ISBN 978-80-7440-255-5. Available at: https://www.vlada.cz/assets/ppov/vvozp/dokumenty/National-Plan-for-the-Promotion-of-Equal-Opportunities-for-Persons-with-Disabilities-2021_2025.pdf.

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Procedural accommodations

Principle 3 of the International Principles on Access to Justice for Persons with Disabilities establishes that persons with disabilities, including children with disabilities, **have the right to appropriate procedural accommodations**, which should a) facilitate effective communication to ensure understanding of their rights, case materials and participation in proceedings (e.g., guarantee of interpretation in Sign language, the use of augmentative and alternative modes of communication, transport and communication, the use of intermediaries); b) provide full access to the physical environment (including access to judicial building, adjustments to the physical layout of the room); c) Adjustment to procedural rules (e.g., may include use of audio-video records, video-links, adjustments on questioning); e) Appropriate to Gender and whether person is deprived of liberty. As already mentioned, these are necessary modifications in the context of access to justice to ensure the participation of persons with disabilities on an equal basis with others.

Next, we will describe briefly situation regarding the provision of **procedural accommodations** In the Czech Republic:

Right to information

The Criminal Procedure Code, in its Section 2(13), relies only in general terms on the principle that *"the person against whom criminal proceedings are brought must be informed in an appropriate and comprehensible manner at every stage of the proceedings of the rights enabling him to exercise his defence fully and that he may also choose his own lawyer; all criminal proceedings authorities are obliged to enable him to exercise his rights."* However, this principle is not specifically expanded upon. Furthermore, Section 33(5) of the Criminal Procedure Code stipulates that all criminal law enforcement authorities are obliged to inform the accused of his or her rights at all times. Pursuant to section 33(6) of the Criminal Procedure Code, the accused must be given a written notice of his rights, which he can keep with him throughout the period of restriction or deprivation of liberty.

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Thus, the same rights apply to defendants with disabilities as to any others. However, there is no rule requiring that the indictment must have an easy-to-read version or that other forms accommodation must be provided. Thus, no particular accommodation is provided for defendants with disabilities. Although an extensive recodification of the Criminal Procedure Code is currently under preparation, the aforementioned topic is not addressed in the planned amendment.[47]

In contrast, the situation for victims of crime is slightly more favourable, as a victim with a disability will usually fall into the "especially vulnerable" category. The Act on Victims of Crime[48] grants special rights to specially vulnerable victims (for example in pre-trial proceedings, the right to be questioned or given an explanation by a person of the same or opposite sex (§ 19(1))).

Independent intermediaries and/or facilitators (Right to participation)

The Czech legislation does not provide for the possibility of using an independent intermediary or facilitator and does not regulate this in any way. The institutes that can practically ensure support for an defendant with a disability in criminal proceedings consist mainly of the right to a lawyer (free of charge under certain conditions), the right to a necessary defence in certain cases and the right to an interpreter. However, these institutions are general and do not resemble the role of an independent intermediaries.

As a promising practice, it is important to note the project "Improving access to justice for vulnerable groups", which is implemented by the Judicial Academy (which is responsible, among other things, for training judges and other judicial staff), a pilot testing of forensic social workers is currently underway. The aim of this project is, among other things, to identify the obstacles on the part of judges and courts that prevent vulnerable groups of people from having effective access to justice. The testing of these forensic social workers is currently taking place in ten district courts (OS Chrudim, OS Jeseník, OS Kladno,

47 Background and principles of the new Criminal Procedure Code. [online]. Available at: https://eudeska.justice.cz/Lists/EUD/Attachments/442/MSP-927_2016-OSV-OSV%20-%20př%C3%ADloha.pdf.

48 Act No. 45/2013 Coll., on Victims of Crimes and on Amendments to Certain Acts (Act on Victims of Crimes).

49 Improving access to justice for vulnerable categories of people. In: Justice Academy: Projects [online]. [cit. 2023-02-27]. Available at:

https://www.jacz.cz/images/Projekt_Zlepseni_pristupu_zranitelnych_skupin_osob_ke_spravedlnosti/Zlepseni_pristupu_zranitelnych_skupin_osob_ke_spravedlnosti.pdf.

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Kroměříž, OS Most, OS Nový Jičín, OS Prague 8, OS Šumperk, OS Vsetín, OS Tachov), [49]. These persons currently work as court clerks, so they are officers with a high school education.[50] Their task will be to assist the courts in communicating with vulnerable persons, including persons with disabilities. In addition, their job description is to mediate court-recommended or court-ordered assistance, to be involved in the enforcement of court orders, to be involved in assessing a person's legal capacity and to provide information to affected persons and their guardians.[51]

Allowing persons with disabilities to be accompanied by family, friends or others to provide emotional and moral support

The law does not foresee such a right for defendants (with disabilities), which is different from victims of crime, who are able to choose their confidant.[52] The Criminal Procedure Code directly allows an interpreter,[53] a defence lawyer and,[54] in the case of a defendant with limited capacity, a guardian[55] to participate in all stages and acts of criminal proceedings.

However, it is implicit in section 201(2) of the Criminal Procedure Code that the accused has the right to choose a confidant. According to that provision, the confidant may remain with the accused at the main trial even if the public has been excluded. Only the victim has the right to choose a proxy.

Requests for and offers of accommodations

There is notable absence of laws, rules, or official procedures on requesting specific procedural accommodations for persons with disabilities.

50 National Occupational Classification System: the Secretary of Court [online]. Ministry of Labour and Social Welfare [cited 2023-02-27]. Available at: <https://nsp.cz/jednotka-prace/soudni-tajemnik>.

51 Improving access to justice for vulnerable categories of people. In: Justice Academy: Projects [online]. [cit. 2023-02-27]. Available at:

https://www.jacz.cz/images/Projekt_Zlepseni_pristupu_zranitelnych_skupin_osob_ke_spravedlnosti/Zlepseni_pristupu_zranitelnych_skupin_osob_ke_spravedlnosti.pdf.

52 Section 21 of Act on Victims of Crimes.

53 Section 28 of the Criminal Procedure Code.

54 Section 41 of the Criminal Procedure Code.

55 The guardian "shall be entitled to represent the accused, in particular to choose a defence attorney, to make applications on behalf of the accused and to lodge applications and appeals; he shall also be entitled to take part in those acts which the accused may take part in under the law. The guardian may exercise these rights on behalf of the accused even against the will of the accused." See section 34 of the Criminal Procedure Code.

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Right to interpretation and communication support

Section 28 of the Criminal Procedure Code provides for an interpreter in the following cases: 1. to a person who can be communicated with only through one of the communication systems of deaf and deaf-blind persons, 2. if it is necessary to translate the content of a document, a statement or another procedural act, and 3. if the accused declares that he does not know the language in which the proceedings are conducted.

Apart from the possibility of carrying out criminal proceedings by means of videoconferencing^[56] and the use of an interpreter,^[57] no other communication support is available.

Unfortunately, the communication issues and needs of people with disabilities in criminal proceedings are largely left out of the legislation. Only in civil court proceedings the law guarantee the use of one of the communication systems for deaf and deafblind persons.^[58]

At the time, during the COVID-19 pandemic, the Czech Bar Association initiated the "Defence via Skype" project, which allows a client deprived of his/her personal liberty to meet with his/her lawyer via Skype.^[59] But there is no legislation establishing easy-read, sign language, braille, or other accessible forms of communication, and there is no evidence of established nationwide practice in this regard.

In the context of communication support for defendants with disabilities, it is worth mentioning a case that illustrates the reality of the Czech environment. According to a staff member from the Ombudsman's Office, this case only confirms that *"despite the work of the Czech Union of the Deaf and other actors, deeper education about the fact that people with hearing and visual impairments communicate in other ways escapes the attention of some courts"*.^[60]

56 Section 52a of the Criminal Procedure Code.

57 Section 28 of the Criminal Procedure Code.

58 Section 18(2) of the Criminal Procedure Code.

59 See <https://www.cak.cz/scripts/detail.php?id=22485>.

60 MOCKOVÁ, Eliška. OMBUDSMAN. Access to justice under Article 13 of the Convention on the Rights of Persons with Disabilities. Can't get any better than that? [online]. Brno, 2021 [cited 2023-02-16]. ISBN 978-80-7631-050-6. Available at:

https://www.ochrance.cz/dokument/lide_s_postizenim_jako_nova_mensina_pravni_vyzvy_a_souvislosti/lide_s_postizenim_jako_nova_mensina.pdf.

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Indeed, in this case, a man who communicates with the world only by reading lips and has never learned sign language refused a sign language interpreter in a criminal case. The man was raised by a hearing mother and could communicate directly with millions of Czech language users through reading lips. *"In contrast, sign language would have allowed him to communicate primarily with tens of thousands of users in the Czech Republic. However, echoing has its well-described pitfalls, first of all, it requires frequent breaks, appropriate lighting and distance between the speaker and the echoer, eyes at the same level, etc. Otherwise, several hours of court hearings gradually become incomprehensible to the speaker."* The court, instead of providing the man with proper communication support during the reading, contented itself with refusing to provide a sign language interpreter, since he understands.[61] The man was convicted and the Constitutional Court did not rule in his favour.

Adopting procedures for hearings

Neither the Criminal Procedure Code nor other provisions of criminal law specialize in defendants with disabilities, nor in procedural accommodations for persons with disabilities in general. One of the few accommodations that the Criminal Procedure Code provides for in section 52a, is to allow the use of videoconferencing equipment for the performance of a criminal proceedings.[62]

In contrast, as specified above, the situation of victims with disabilities is slightly more favourable, as they will usually fall into the category of especially vulnerable victims. This provides additional guarantees, such as the right to free legal representation, and protection measures from revictimisation (prevent contact with the person they have identified as the perpetrator, etc).

61 MOCKOVÁ, Eliška. OMBUDSMAN. Access to justice under Article 13 of the Convention on the Rights of Persons with Disabilities. Can't get any better than that? [online]. Brno, 2021 [cited 2023-02-16]. ISBN 978-80-7631-050-6. Available at: https://www.ochrance.cz/dokument/lide_s_postizenim_jako_nova_mensina_pravni_vyzvy_a_souvislosti/lide_s_postizenim_jako_nova_mensina.pdf.

62 "If it is necessary for the protection of the rights of persons, in particular with regard to their age or state of health."

63 Act No. 45/2013 Coll., on Victims of Crimes and on Amendments to Certain Acts (Act on Victims of Crimes).

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As well none of the key regulations for civil proceedings address the issue of persons with disabilities in specific detail. These regulations only contain legal standards that apply equally to all. For example, Section 18(2) of the Civil Procedure Code guarantees the right to an interpreter to a party *"whose mother tongue is a language other than Czech"* and to a party *"who cannot be communicated with otherwise than through one of the communication systems of deaf and deafblind persons"*. For specific types of civil proceedings in which persons with disabilities are involved by the nature of the case, only different rules from the ordinary course of proceedings are laid down in the Act on Special Court Proceedings.[64]

Right to be present at trial

In 2019, the Czech Ombudsperson reported for the CRPD Committee that organisations advocating the rights of people with disabilities have pointed out the shortcomings in accessibility, criticising the fact that even though there are certain minimum legislative requirements on accessibility standards for new buildings, they are often disregarded in practice. The organisations further noted that the State is not effectively supervising that buildings approved for occupation maintain their barrier-free status.[65] According to the Ombudsman, it is doubtful that all courts are accessible, as stated by the Ministry of Justice in its analysis. *"Barrier access is only one aspect of accessibility; others include, for example, a lift or barrier-free toilets and appropriate width of doors in the building, as well as adaptations for the orientation of people with hearing or visual impairments (suitably placed signs in Braille or induction loops)."* Moreover, the Police Station should also be kept in mind as having the same types of barriers.[66]

64 Act No. 292/2013 Coll., on Special Court Proceedings.

65 See https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1304&Lang=en.

66 MOCKOVÁ, Eliška. OMBUDSMAN. Access to justice under Article 13 of the Convention on the Rights of Persons with Disabilities. Can't get any better than that? [online]. Brno, 2021 [cited 2023-02-16]. ISBN 978-80-7631-050-6. Available at: https://www.ochrance.cz/dokument/lide_s_postizenim_jako_nova_mensina_pravni_vyzvy_a_souvislosti/lide_s_postizenim_jako_nova_mensina.pdf.

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Remote hearings

In general, e-justice measures concern dominantly remote hearings that are available in the Czech Republic. Under Section § 52a of the Criminal Procedure Code videoconferencing equipment^[67] may be used in the performance of criminal proceedings, if it is necessary for the protection of the rights of persons, in particular with regard to their age or state of health, or if security or other compelling reasons so require. The applicability of this provision is not limited to court sessions but can be extended to pre-trial proceedings.

Rights Monitoring

Independent mechanism

The Public Defender of Rights became the monitoring body for the exercise of the rights enshrined in the Convention on the Rights of Persons with Disabilities on January 1, 2018. According to the Ombudsman, a number of factors limit people with disabilities' access to justice under Article 13 of the CRPD. At a conference on the rights of people with disabilities, the Ombudsman highlighted these major barriers. The first is the limitation of legal capacity, which is common among people with disabilities. Second, there are physical barriers, such as barrier-free access to courts and other buildings. Third, information and communication barriers or prejudices exist.^[68]

The Ombudsman also mentions in its reports points out other obstacles people with disabilities faced in accessing courts, including lack of information (inaccessibility and complexity), lack of pro bono legal advice, as well as fears of the high cost and the outcome of a lawsuit.^[69] The Ombudsman further highlighted the fact that most people with disabilities

67 The law precisely says “the technical equipment for the transmission of images and sound”.

68 MOCKOVÁ, Eliška. OMBUDSMAN. Access to justice under Article 13 of the Convention on the Rights of Persons with Disabilities. Can't get any better than that? [online]. Brno, 2021 [cited 2023-02-16]. ISBN 978-80-7631-050-6. Available at:

https://www.ochrance.cz/dokument/lide_s_postizenim_jako_nova_mensina_pravni_vyzvy_a_souvislosti/lide_s_postizenim_jako_nova_mensina.pdf.

69 Ombudsman. Report of the Public Defender of Rights on Activities in the 2nd Quarter of 2020. [online]. ochrance.cz, Brno, 2020. Available at: https://www.ochrance.cz/en/dokument/annual_report_2020/2020-2-Q_EN.pdf.

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do not have the opportunity to lead an independent life.[70] In 2021, the Public Defender of Rights office started working on the initial working document on indicators for monitoring the implementation of the Convention on the Rights of Persons with Disabilities. The preparation of the indicators is in progress.

70 Ombudsman. Ombudsman's advisory body points out that many people with disabilities are still unable to lead independent lives [online]. Brno, 2023 [cited 2023-02-16]. Available in Czech language at: <https://www.ochrance.cz/aktualne/2023-01-19-poradni-organ-ombudsmana-upozornuje-na-to-ze-rada-lidi-s-postizenim-stale-nema-moznost-vest-n-ezavisly-zpusob-zivota/>.

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03 Training and awareness for criminal justice professionals

Disability rights awareness/equality issues are part of the undergraduate and postgraduate programmes for future legal professionals provided by higher education institutions. Disability-related seminars and training programmes for prosecutors, judges and other court workers are mainly delivered by the Justice Academy under the Ministry of Justice. Training for lawyers is provided by the Czech Bar Association. For police officers and prison staff, training is provided by the Ministry of the Interior (Czech Police Presidium) or by the Ministry of Justice (Prison Service of the Czech Republic). Psychologists, psychiatrists and social workers are trained by their professional associations.

In National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2015–2020[71] were set objectives to be achieved in the field of training of professionals on the topic of disability. The education should be focused on the principles of communication with selected groups of persons with disabilities, on the rights arising from the CRPD or on ban on non discrimination on the ground of disability.

Currently, the Czech Republic Police Department offers training programs in the area of communication with people with disabilities, and they have also established an emergency SMS line for people with hearing impairments. At the moment, Police of the Czech Republic provides training programs in the area of communication with persons with disabilities and they have also set up an emergency SMS line for people with hearing impairments.[72] The Judicial Academy has organised a number of disability training sessions, but they were all about the civil process. Subjects focusing on the execution of custody and imprisonment for specific groups of accused and convicted people were included in the Prison Service Academy's training programs (juveniles, persons with disabilities, women, foreigners, etc.).

71 Government Board for People with Disabilities. National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2015–2020 [online]. Prague, 2015 [cited 2023-04-12]. Available at: https://www.vlada.cz/assets/urad-vlady/vydavatelstvi/vydane-publikace/National-Plan-for-the-Promotion-of-Equal-Opportunities-for-Persons-with-Disabilities-2015_2021.pdf.

72 Report on Implementation of the National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2015-2020 [online]. Available in Czech language at: <https://www.vlada.cz/assets/ppov/vvozp/dokumenty/Zprava-o-plneni-NPPRP-v-roce-2019.pdf>.

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Sadly, despite these advances, sophisticated and systematic training for professionals in the field of the rights of people with disabilities remains non-existent, let alone training programmes focusing on the issue of defendants with disabilities and the human rights approach.



04 Statistics and data on access to justice

There are no official statistics on defendants with disabilities in the Czech Republic. Similarly, unofficial data is not very traceable. The Czech Statistical Office has not yet published any data concerning defendants with disabilities or people with disabilities in general.

However, a sample survey will be conducted in 2023 which should provide important statistical data on the lives of people with disabilities in the Czech Republic (especially in the areas of work, health and everyday life). The Ombudsman is providing assistance and cooperation in this survey.

There are only official statistics available at the Ministry of Justice concerning the defendants who have found not criminally responsible due to their mental health condition. [73] The statistics are based on information from the courts, so they only contain information on the number of cases brought to court, the number of cases disposed of, the number of discontinued proceedings and the number of appeals filed.

In addition, data on criminality are collected by the Police of the Czech Republic and on persons deprived of their liberty in criminal proceedings by the Prison Service. The data analysed is disaggregated on gender, age, education, family status, place of residence and nationality. Disability is not a criteria in the data analyses.

Forensic hospitalisation

The forensic hospitalisation takes place in 14 psychiatric hospitals throughout the Czech Republic.[74]

73 The data are available here: <https://cslav.justice.cz/InfoData/uvod.html>.

74 Ombudsman. Report from systematic visits: Forensic treatment, restraints and other topics [online]. ochrance.cz, Brno, 2019. p. 20. Available at: https://www.ochrance.cz/uploads-import/ESO/FORENSIC_TREATMENT_final.pdf.

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04 Statistics and data on access to justice

According to the research carried out as part of the Deinstitutionalisation of Mental Health Services project, *“the number of forensic patients at the end of 2020 was 839 (82 women and 757 men). The national average length of inpatient forensic treatment is 2.6 years, but there are variations between hospitals and the length of treatment ranges from a few months to six years.”*[75] The Ombudsman also collected data on forensic hospitalisation. In her report, she stated that *“it is unknown how many people are required to undergo forensic treatment in the Czech Republic at a certain point in time”*, because there are no centralised records of imposed forensic treatment.).[76]

75 Páv, Marek & Vnukova, Martina & Papežová, Simona & Toman, Jiří. (2022). Ústavní ochranná léčení v ČR 2018-2020. Inpatient forensic treatment in the Czech Republic 2018-2020.. Česká a slovenská psychiatrie / Česká lékařská společnost J.E. Purkyne. 118. 577–583. Available at: https://www.researchgate.net/publication/358239271_Ustavni_ochranna_leceni_v_CR_2018-2020_Inpatient_forensic_treatment_in_the_Czech_Republic_2018-2020.

76 Ombudsman. Report from systematic visits: Forensic treatment, restraints and other topics [online]. ochrance.cz, Brno, 2019. p. 20 - 21. Available at: https://www.ochrance.cz/uploads-import/ESO/FORENSIC_TREATMENT_final.pdf.

POLITICAL AND LEGAL FRAMEWORK

05 Main findings

On the one hand, Czech Republic has generally had few problems with the ratification of key human rights instruments. The Criminal Procedure Code expressly allows for criminal proceedings to be conducted using videoconferencing equipment or an interpreter. It also requires the authorities in charge of criminal proceedings to ensure that the accused is properly and clearly informed of his or her rights. Every criminal proceeding must be documented.

Protective treatment and precautionary detention are alternatives to imprisonment in Czech law that take the defendant's mental state into account. It is correct that the law requires the appointment of a lawyer when deciding whether to place people in protective treatment or precautionary detention, or when the person's legal capacity is limited.

However, not all requirements arising from international Conventions have been adequately translated into legislation. With a few exceptions, there are no legislatively mandated procedural accommodations in the Czech Republic that specifically target defendants with disabilities. Not to mention that these people are unable to request such modifications. As a result, criminal laws give perpetrators with disabilities the same opportunities as perpetrators without disabilities. Moreover, despite dealing with a specific person's disability, the expert reports do not provide information on what individual procedural accommodations should be made.

At the legislative level, there is a need to provide more communication support for defendants with disabilities. Except for the possibility of involving an interpreter or an expert in criminal proceedings, the law makes no provision for any other technical support or communication means. Unfortunately, our legislation does not provide for the use of easy-to-read formats for official documents. We lack independent experts to facilitate communication between law enforcement and defendants with disabilities. While law enforcement officials are required to inform the person in a manner appropriate to his or her personality, this is merely a formality. It is not always the case that instructions are

POLITICAL AND LEGAL FRAMEWORK

05 Main findings

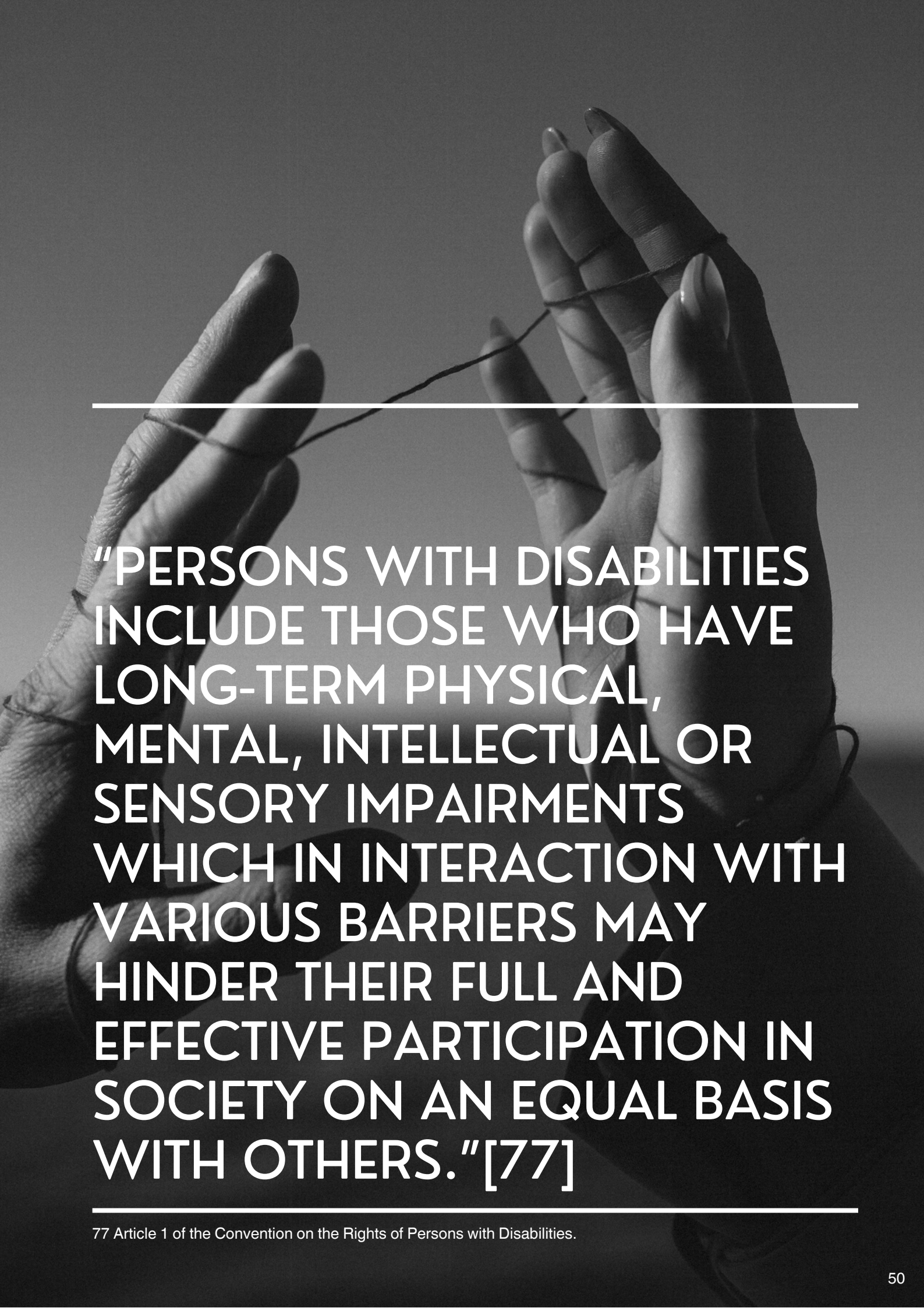
given right away. It is not universal that people are given a written version of their rights. Not to mention accessible and easy-to-read formats. Multilingual versions are also not common.

The same can be said for psychological support and general assistance. Aside from the possibility of having a lawyer, a guardian, or a confidant during criminal proceedings, there is no legally guaranteed circle of persons who can participate in all acts of criminal proceedings, or even acts at the stage of suspicion of a crime. Except in cases of limited legal capacity and deprivation of liberty, there is no automatic entitlement of persons with disabilities to free legal aid, which is at the discretion of the court. Furthermore, such legal aid guarantees do not exist from the first contact with the criminal justice system, but only after the official start of the proceeding.

While alternatives to incarceration exist, both protective treatment and pre-trial detention have a number of systemic flaws. People are medicated involuntarily, even against their will, because refusal of treatment is a legal basis for converting protective treatment into protective detention. As a result, even people who have not committed a serious crime are placed in protective detention, which is counterproductive to the purpose of these safeguards.

Professional education and awareness about defendants with disabilities should be improved. The lack of official data on persons with disabilities as perpetrators demonstrates the lack of attention paid to this phenomenon.





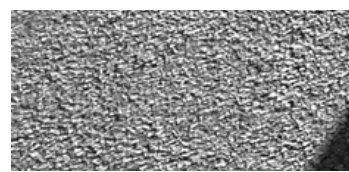
"PERSONS WITH DISABILITIES INCLUDE THOSE WHO HAVE LONG-TERM PHYSICAL, MENTAL, INTELLECTUAL OR SENSORY IMPAIRMENTS WHICH IN INTERACTION WITH VARIOUS BARRIERS MAY HINDER THEIR FULL AND EFFECTIVE PARTICIPATION IN SOCIETY ON AN EQUAL BASIS WITH OTHERS." [77]

77 Article 1 of the Convention on the Rights of Persons with Disabilities.

DEFENDANTS WITH DISABILITIES
ACCESS TO JUSTICE



EXPERIENCES
ABOUT THE ACCESS
TO JUSTICE OF
DEFENDANTS WITH
DISABILITIES





**DEFENDANTS WITH DISABILITIES
ACCESS TO JUSTICE**

- 01** Defendants' with disabilities experiences
 - 02** Criminal justice professionals' experiences
 - 03** NGOs, human rights institutions, and support service professionals' experiences
 - 04** Brief analysis of patterns
- 

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

In order to examine, in the Czech Republic, the experience of different stakeholders about the access to justice of defendants with intellectual and/ or psychosocial disabilities - identifying barriers, challenges and areas of improvement they envision in it - 13 semi-structures interviews were conducted (for detailed information see Annex 1) with

- persons with intellectual and/or psychosocial disabilities (N=4, including 1 woman),
- lawyers (N=2),
- judges (N=2),
- prosecutors (N=0),
- police (N=1),
- support service professionals (N=2),
- National Human Rights Institution (N=1),
- NGO (N=1).

Next, we will present the main findings of these semi-structures interviews.



EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences



Man with psychosocial disability said: “I have been abused by women in my life, whether it was my mother or my teacher, so I have trouble in communicating with women. I committed a crime against a female official who raised her voice at me when I went to solve my unemployment. She was disrespectful to me. It reminded me of my abusive mother, so I threatened the officer.

She then filed a criminal complaint against me. Then the police came for me. They pointed a gun at me and asked me if it was going to be for better or worse. Then I put my hands behind my back and said for good. Because I didn't realize I'd committed a crime. I didn't feel like anyone wanted to help me. It felt more like they were trying to find as much evidence as they could to send me to prison. That's how I felt about it, and I felt it was a kind of bullying. I confessed to everything, since I have nothing to hide. I told it like it was. In the end, it became a crime of threatening a public authority with the use of a weapon. I told them that my mother had died, that I had mental problems because my mother abused me.

But they didn't even consider that that was the reason I threatened the officer. I was fined and sentenced to community service. That period was very difficult for me, my mental condition deteriorated, so I resigned from everything. I didn't answer the phone to the woman from the Probation and Mediation Service and I wasn't able to carry out the community service sentence, so I was at risk of going to prison.

Fortunately, the Probation and Mediation Service put me in touch with a social worker who helped me put everything together. He found me a new psychiatrist, sorted out my social support and is helping me with my sentence.”

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

Experiences, challenges and areas of improvement identified

Legal aid and provision of procedural accommodations

» Right to information

The police staff generally informed all interviewees of their rights to a basic extent. Interviewees did not know exactly their content, but they often recalled being told about the right to remain silent and the right to choose a lawyer. One interviewee claimed that he had not been advised of the right to choose a lawyer, nor had he been appointed one. He said that he did not have a lawyer because he did not have the finances. No one had advised him of the possibility of free legal representation.

The interviewees stated that they understood most of the information. No measures for accommodation have been taken. The persons did not have anyone with them to provide support, nor were they offered to do so. Most of those interviewed did not know which accommodation could help them, because they had no idea what procedural accommodations they're entitled to. If interviewees were placed in detention, they were informed of their rights by detention staff.

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NOBODY HELPS YOU
IN SUCH SITUATIONS,
EVEN YOUR RELATIVES
RUN AWAY

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

» **Person of trust and / or intermediary or facilitator**

One interviewee stated that he had not been able to call a lawyer or contact anyone. Another interviewee alleges that she was not allowed to contact anyone for 14 days after being placed in protective treatment and that they refused a call to her mother. Others were able to contact family and an advocate. One respondent said that he lacked the support of someone who could explain things better.

» **Legal aid and right to access to a lawyer**

One of the interviewees claimed that he did not have a lawyer and that no one had offered him the appointment of a lawyer. Most of the interviewees had a lawyer appointed *ex officio*, so they did not pay for it. One interviewee said that he had only paid for a lawyer since the trial because he could not afford it before. The interviews revealed that people with disabilities think that they may not be entitled to free legal aid, even if they are. It can be assumed that this is due to insufficient or incomprehensible information about their rights.

Their relationship with lawyer was mostly good, he/she always treated them well. But they complained about the frequency of contact with him/her and his/her passivity. They were mostly in contact with them by phone and sometimes in person. They would certainly have preferred more personal contact. The lawyer was mostly helpful in understanding their situation and giving them advice. One interviewee said that her lawyer was useless because of her passivity and the lack of effort and interest to help her.

» **Requests for and offers of accommodations**

None of the interviewees had asked for any procedural accommodations, nor did they know what they could ask for, but at the same time they mostly did not need them. Only one interviewee said she wanted to drink during the trial and could not. However, in all cases, all law enforcement authorities were aware of the persons' disabilities, as in all

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

cases an expert report had already been prepared in the pre-trial proceedings and was usually part of the case file. Even so, no accommodations were offered to them. One of the interviewees disagreed with the expert's conclusions about her psychosocial disability, because she denies that she suffers from any disability. Two of the interviewees expressed that they would not want to tell anyone about their disability because they did not think it was an advantage. Their perception is that if expert states a disability, no one takes you seriously and you are overlooked. Interviewees mostly did not know what would make them feel better. Certainly, the advocate and his help is the most important thing for them.

One of the interviewees confirmed that his social worker, who has started going to court with him and dealing with all the issues, helps him a lot. He feels safer this way. Although the cooperation with the social worker came after his conviction, it is helping him now. An important conclusion can be made from this. It is always good, therefore, for people with disabilities to have a person they can trust with them, who guides them through the whole process and for whom they are not just a client they only contact before court because they have been assigned to them ex officio.

» **Right to interpretation and communication support**

Contact with police

In general, it can be summarised that the first contact of the respondents with the police was good. The police treated them well, they did not feel discriminated against. Women's experiences were no different from the others. They treated the police politely, so they were also treated politely. However, one of the interviewees stated that they felt psychological pressure. He felt that the police wanted them to have as much evidence against him as possible so they could put him in jail.

During the first contact with the police, the interviewees only received explanations from the police once they were detained. There was no one else who could explain anything to them at that moment. Although the police treat interviewees well, they feel fear and

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

apprehension about what will happen to them in these situations. From the interviews it feel that the contact with the police is very formal and there is a lack of someone who can provide a sense of security and safety. Interviewees often feel that even if they have the space to express themselves and explain things in their own terms, no one takes them seriously when they are found to have a "mental disability".

In prison

One of the interviewees was placed in a pre-trial detention cell. This was the worst thing for him because he was afraid that he would not be able to get out of detention. He was afraid that he would go to custody and then to prison. In this case it would certainly have been useful if he had been given support and been better informed about what was going to happen to him. In addition, he claimed that he was interrogated for two days and that it seemed like bullying.

Another interviewee was arrested, placed in custody and transferred from solitary confinement to a psychiatric hospital for protective treatment after 3 months, because it was waiting for an expert report to be completed to determine whether the interviewee suffered from a psychological disability. He was finally assessed to be insanely not responsible for the crime due to his mental health condition, so he was transferred to protective treatment. The professionals from the custody (psychologists and social workers) helped him the most because they helped him understand what had happened. He had a lawyer appointed, but complained that his lawyer didn't contact him right away, which, since he was deprived of his liberty, he expected. The women's experiences were no different from the others.

Psychiatric hospital/institution

Two of the interviewees had been placed in a psychiatric hospital – one woman and one man. The women's experiences were no different from the others. Both of them were placed there for the compulsory treatment, because the expert's report declared that they committed the crime due to their mental health condition, so they're found not criminally

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

responsible. What seems to be problematic is informing about person's rights and their situation, as well the circumstances in which they are placed in the psychiatric hospital. Both interviewees did not even know where and why they were being taken to the psychiatric hospital before arriving. The man was escorted from custody to the court to testify as a witness in another court case, and he was surprisingly taken straight from the court to a psychiatric hospital. Nobody explained to him what was going on. The woman was involuntarily hospitalised because the law enforcement authorities needed an expert opinion on her medical condition, which she was unwilling to voluntarily undergo. On the basis of the opinion, she was ordered to undergo protective treatment. After she refused medication and escaped from the hospital, the conversion from protective treatment to protective custody took place.

The interviewees also complained that after their placement in the psychiatric hospital they were isolated from contact with their relatives and that the appointed lawyer only contacted them after several days, and only by phoning. The psychologists and social workers of the hospital were very helpful, because they refer people to the Office of the Ombudsman, NGOs, and help them cope with this life situation.

Contact with prosecutors

If the prosecutor did meet with the interviewees, it was only in court. He/she did not even ask them too many questions in court and they usually understand them. One of the interviewees stated that he found the prosecutor's approach inhuman and inhumane. Particularly, he^[77] stated, "I found it inhumane in that she was unaware of what I was going through^[78] and she didn't put any emphasis on it at all and just treated me like some criminal who was a write-off." The women's experiences were no different from the others.

77 Interviewee profile: defendant with psychosocial disability, male.

78 His mother abused him as a child, so he has trouble communicating with women. He committed a crime against a female official who raised her voice at him when he went to solve his unemployment. It reminded him of his abusive mother, so he threatened the officer. She then filed a criminal complaint against him. The interviewee was in a very difficult situation in his life from which only a social worker helped him, for example by arranging another psychiatrist. And the judge took all this into account when imposing the sentence, yet the prosecutor not.

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

During the trial/contact with judges

Respondents had the experience of being physically present in court. The women's experiences were no different from the others. One interviewee was in court without a lawyer because no one had advised him of the possibility of requesting free legal representation. It was very chaotic for him because he did not know what to do and what not to do and what was going to happen. He was pleasantly surprised by the judge who gave him a chance and gave him a less severe sentence. He took into account his situation.[78] The interviewee understood everything the judge asked him. The judge spoke to him normally and must have known about his disability from the file as there was an expert report. On the other hand, he did not have a positive experience with the prosecutor, who, according to his feelings, only saw him as a criminal and did not respect how difficult his situation was.

The respondent was further uncomfortable when the expert report was read aloud in the courtroom. Other interviewees said that their lawyer helped them the most in court. Although the lawyer did nothing out of the ordinary, they were grateful that the lawyer was in court with them and communicated everything with the court. They did not have anyone else close to them there, but judging by the responses, they would have appreciated it. The judge mostly treated them well. One interviewee was bothered that she could not drink in court.

» **Adopting procedures for hearings**

The interrogations were always conducted in person. The interviewees were mostly neutral in their assessment of the room; for example, they said that the room reminded them of an office. One interviewee appreciated how the courtroom looked because it reminded him of the seriousness of the situation.

78 His mother abused him as a child, so he has trouble communicating with women. He committed a crime against a female official who raised her voice at him when he went to solve his unemployment. It reminded him of his abusive mother, so he threatened the officer. She then filed a criminal complaint against him. The interviewee was in a very difficult situation in his life from which only a social worker helped him, for example by arranging another psychiatrist. And the judge took all this into account when imposing the sentence, yet the prosecutor not.

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

» Right to be present at trial

Yes, respondents had the experience of being physically present in court. The same questions were asked in the section "During the trial/ contact with judges", where they have already been answered. No remote hearings.

» Remote hearing (if applicable)

Respondents had the experience of being physically present in court.

Voices heard and positive and / or negative experiences

The interviewees were always given the opportunity and space to explain and express themselves. Yet they felt that their testimony was not taken into account by the law enforcement authorities. One interviewee felt that they did not take enough into consideration his situation. He said *"I told them that my mother had died, that I had mental problems because my mother abused me. But they didn't even consider that that was the reason I threatened the clerk. She raised her voice at me and it reminded me of how my mother abused me."*[79] Only one respondent felt his voice would be heard, because he was given the opportunity to express himself. But it can be assumed that law enforcement treated him like everyone else. Rather, it was to his advantage that he had a psychologist who helped him a lot and dealt with his situation.

However, most of them felt that the police did not take them seriously because of their disability. For example, woman with a psychosocial disability stated: *"The Police treated me well. I did not feel discriminated against because of my mental disability or gender. But I think that the fact that I suffer according to the expert from mental disability is not an advantage, because no one believed me. Because the police only take into account what the expert wrote in the report."* So they only followed the conclusions of the expert's report, which suggested nothing about procedural accommodations. Therefore,

79 Interviewee profile: defendant with psychosocial disability, male.

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

everyone tended to feel that the fact that law enforcement knew about your disability was not an advantage.

No one felt directly discriminated against because of their disability or gender. The women's experiences were no different from the others. Sometimes it seems as if law enforcement authorities are unaware of the vulnerability of defendants with disabilities. For example, they transport them from custody to a psychiatric hospital and do not explain the situation sufficiently. According to the interviews, the interviewees were mainly afraid that if the police arrested them they would go to jail and that they did not know what would happen to them.

Interviewees were not always satisfied with the work of the lawyers. Some were too passive and for some, clients had doubts about their expertise. However, none of the interviewees had received any other support apart from the provision of a lawyer. Although the interviewees themselves did not know what could have helped them, it would certainly have been the support of a confidant or psychologist. During the criminal proceedings, they are faced with the fear of what will happen to them. They do not understand the criminal proceedings or what is happening to them. It is therefore advisable to have someone to guide them through the process.

Some of the interviewees were offered the help of a psychologist or social worker, but mostly only after the end of the criminal proceedings - i.e. at the time of placement in detention or execution of the sentence. If this had happened earlier, the whole process would undoubtedly have been more pleasant for the interviewees. Social workers and psychologists always treated interviewees well and helped them a lot. In most cases, the interviewees did not have a positive feeling about the expert making an expert report on their mental state. Only one of the respondents was informed about the possibility of contacting human rights or NGOs. However, she appreciated their activities very much because they helped her.

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

Intersectionality

No one felt discriminated against because of gender. We didn't notice any differences between men and women, yet we only interviewed one woman and three men. Defendants seem to be treated equally harshly, regardless of gender.

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

Main Recommendations / lessons learned

It is important to listen properly and to take into account all the facts presented by persons with disabilities. Their voice is not sufficiently heard in the proceedings because nothing else is considered unless the expert proves the existence of a disability. No one now takes their opinion seriously. As a result, they are afraid to tell law enforcement about their disability because they are afraid of being judged. It was important to them that we interviewed them and listened to their story. We found no differences between men and women despite only interviewing one woman and three men.

People with disabilities should be automatically assigned a lawyer for free from the first contact with the justice system. Similarly, a certain discrimination can be found in the approach of many appointed lawyers who generally handle ex officio cases differently in the Czech environment. It would help if people with disabilities were automatically assigned a lawyer who should be more proactive and maintain regular contact with the client. In addition, the lawyer should be sufficiently specialised in the area concerned. One respondent stated that he was bothered by the annual rotation of appointed lawyers. He would like to have the same lawyer all the time.



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I FEEL THAT MY OPINION WAS NOT TAKEN INTO ACCOUNT. BECAUSE THE POLICE ONLY TAKE INTO ACCOUNT WHAT THE EXPERT WROTE IN THE REPORT.

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

Last but not least, it is necessary to inform people with disabilities more properly about their rights and situation. It is a discrimination to transport them to/from a facility where personal liberty is restricted without any explanation. In any case, it would help if persons had a person to accompany them throughout the procedure.

Similarly, it would have been useful if the person had been offered the help of a social worker or psychologist from the first contact with the justice system.

People with disabilities often find themselves in a generally vulnerable situation when they commit a crime. In addition to criminal prosecution, they face unemployment, financial or family problems. Thus, they need a lot of support to cope with such a difficult life situation. Without the help and understanding of each person in the criminal justice system from psychologist to judge, this can be very difficult.

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

02 Criminal justice professionals' experiences



Lawyer experienced with people with disabilities said: „I think that in all other areas of law and official procedures, people with disabilities basically do not understand what is supposed to be happening. And nobody even tries to explain it to them. All instruction is so brief and formal, just like towards people who don't have disabilities. So people with disabilities are all the more disadvantaged.

I once had a client who was already in a psychiatric hospital for an assessment, so she had definitely already started proceedings for involuntary hospitalization, and she had a guardian lawyer appointed as well. And I'm sure he didn't contact her at all. Which is usual in these cases. And then there's the problem of communicating with people with disabilities. Because they give a lot of information without regard to what can hurt them or what is to their benefit. People with disabilities often give a lot of information because they don't know what is relevant to the criminal proceedings, so it can be difficult to navigate. And law enforcement doesn't really try very hard to do that. At the same time, I perceive a kind of prejudice or distrust of what people with disabilities say, just because they have a disability. In my cases, there was an expert report that said they had some kind of disability, so it was all blamed on that.

On the one hand, it helps the person with a disability because they're not criminally liable. On the other hand, by the time it comes out about their disability, those law enforcement authorities are less concerned about whether the crime was committed at all. I feel that the attitude is that the proceedings will be discontinued anyway, or it will be dismissed. And the protective treatment is not really seen as something that would harm or cause any harm to these people. It's just protecting society, partly protecting them, and it's actually something that's not considered a serious punishment.“

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

02 Criminal justice professionals' experiences

Experiences, challenges and areas of improvement identified

Main challenges identified

According to the criminal justice professionals interviewed, the following are the main challenges that people with psychosocial and intellectual disabilities face in the criminal justice system: 1) insufficient communication support; 2) difficulties in facilitating comprehension of persons with disabilities (particularly those with intellectual disabilities); 3) lack of any individual procedural accommodation; 4) ensuring adequate quality of legal assistance by appointed ex officio lawyers; and 5) insufficient training on disability issues and human rights approach.

Judges and police officers frequently saw no barriers to access to justice. They only expressed concern about a lack of experts and outdated legislation. Their perspective was that they were following the law and thus acting correctly. Speaking with them gave me the impression that they felt compelled to demonstrate how everything works. Lawyers who represent people with disabilities, on the other hand, were able to identify gaps in practice.

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THE CRIMINAL JUSTICE SYSTEM TREATS DEFENDANTS WITH DISABILITIES THE SAME AS OTHERS AND THIS IS ACTUALLY DISCRIMINATION FOR THEM, BECAUSE THEY NEED SPECIAL APPROACH.

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

02 Criminal justice professionals' experiences

Process of identification of disability

According to these interviewees, the process of identifying disability is not difficult in practice because the disability is usually detected by the police. This is due to the fact that it is designed in such a way that if a suspicion about a person's disability arises, an expert is automatically appointed to assess the disability and the person's criminal liability. The police, according to interviewees, have enough experience to detect this. Although police officers are not specifically trained to identify disabilities, they are trained to assess specific situations. Furthermore, there are no other systems in place in this country for identifying disability. During the interviews, however, there were no instances of disability assessments being overlooked or incorrectly detected. Furthermore, it is a matter of some experience and human instinct, according to the interviewees.

Contestation of the assessment

A defendant may formally challenge an expert's assessment, usually through the use of another expert's opinion. If this is done and there is a discrepancy, a third evaluation can be performed, or the authorities must abide by the most recent evaluation. It happened to one of the interviewees that the perpetrator objected in court to the expert opinion's conclusion that he was a paedophile. As a result, the court considered his objection that he was not a paedophile, but imposed a harsher sentence because this deprived the defendant of a mitigating circumstance.

However, one of the lawyers interviewed stated that in practice, the possibility to effectively challenge an expert's report is practically non-existent. According to him, *„if you bring your own expert report that says different conclusions than the state body's report, the judge will not deal with it on the grounds that he does not want to dispute the expert opinion.“*^[80]

Consequences of assessments

In practice it is usually the case that if an expert opinion concludes that a person is

80 Interviewee profile: lawyer experienced with defendants with disabilities, male.

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

02 Criminal justice professionals' experiences

experiencing a mental health disorder, proceedings for the appointment of a guardian are initiated. If the expert concludes that the perpetrator has a severe mental health condition, he may be then declared not criminally liable. If there is concern about the dangerousness of the person, protective treatment may be ordered. The further development of the proceedings will depend on this assessment. According to the professionals interviewed, this happens very often.

Information about accommodations

Everything is documented by the police in a legal record that is accessible to the prosecutor. In turn, he/she makes certain that the information reaches the court. The police and law enforcement agencies use a digital information system to gather information about citizens. It is known as 'Electronic Criminal Procedure,' and it is accessible to the public prosecutor's office. The accused have the right to inspect the record, but they cannot access these systems because they are only for law enforcement. However, no procedural accommodations are documented in this system because they are not used in the Czech system and there is no special technical facility for sharing information. Otherwise, it is the defendant's and/or lawyer's responsibility to share the information and request accommodations.

Use of force or coercion

According to some interviewees, they had not witnessed the use of force or coercion based on disability. It would be a waste of time. The goal of the police is not to force someone to confess to something they did not do when the true perpetrator is still at large. Furthermore, as previously stated, if a police officer violated the rules during an interrogation, for example, the results of that investigation could not be used as evidence. Lawyers, on the other hand, claim that when defendants with disabilities refuse to cooperate or are in a state of crisis, police use mechanical restraints and, in some cases, taser weapons.

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

02 Criminal justice professionals' experiences

Provision of procedural accommodations

In practice, the most frequently mentioned procedural accommodation is the simplification of communication with disabled defendants. Lawyers adjust their communication to accommodate people with disabilities by allowing them more time and space to express themselves. According to one lawyer, the authorities do not make a concerted effort to provide accommodation. He said, *"It seemed to me that they just follow the standard procedure and it's more about how receptive that particular police officer or judge is, how they approach those people and tailor the way they ask questions to that particular situation."*[81]

According to the police officer interviewed, when communication is difficult, they enlist the assistance of family members or caregivers. This happens all the time. If necessary, the police could employ the services of an expert or a psychologist to mediate communication. But he said that *"The psychologist/psychiatrist is an expert, but he/she does not live with the person, so he/she does not know any communication specifics of the particular person."* They are also used to conducting interrogations via video conferencing technology. In terms of procedural accommodations, one of the judges interviewed stated that he relies on the fact that the person has an appointed lawyer to arrange and mediate everything. Thus, he follows the standard procedure because, in his opinion, the profession of judge is not one of assistance, but rather one of repression. Another judge, on the other hand, routinely makes a series of accommodations based on the individual. Perhaps he seats the person closest to him in a chair, makes the proceedings less formal, allots more time for it, or limits the number of people in the courtroom.

» Right to information

Before the interrogation, the defendant is always informed of his or her rights. It must be documented that he/she was instructed and understood the instruction. A member of the police/prison service always provides information about rights and does so verbally - orally. This is true for both people with disabilities and people without disabilities. The

81 Interviewee profile: lawyer experienced with defendants with disabilities, male.

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information provided should always be tailored to the individual. This is a formal procedure that is not well suited to defendants with disabilities. So, in a formal sense, everyone is informed. The question is whether it is done in an understandable manner. That, according to the lawyers interviewed, is no longer the case.

One of the lawyers said: *“Formal information exists, but today it takes the form of about three or two pages of small-written information about everything you have the right to.... And nobody knows about that, even if they don't have a disability, so in those cases you would really need to go through the instructions in more detail and highlight the rights and opportunities that specifically apply to people with disabilities in a particular situation. For example, very often there will be a problem with finances, so instruct them that they have a right to free legal aid.... Rights information is generally a major problem in the practices of Czech state authorities. And there are no special steps being taken here for people with disabilities to be better informed and understand what is going on.”*

» **Right to interpretation and communication support**

One of the key issues, according to interviewees, is ensuring communication with people with disabilities. There is no unified system for providing communication support. Professionals complained about a lack of training on how to communicate with people with disabilities. It usually depends on the approach of a specific professional. Authorities frequently rely on the fact that if a person is represented by a lawyer, that lawyer will ensure communication. Because there are no facilitators or intermediaries, the only available assistance is the hiring of a lawyer. Communication is sometimes aided by a family member or caregiver. Except for the possibility of interrogation via videoconferencing equipment, no technologies or communication systems are used. The questions should always be tailored to the individual. In other words, communication with a child, a university student, and a person with a disability will always be different. Those who do not speak the language or who cannot communicate in any other way than through one of the communication systems for deaf and deafblind people have the right to an interpreter.

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According to the interviewed police officer, they have the option of bringing in an expert to mediate the communication, but this is less effective than conducting the interrogation with the assistance of a close person. *“The psychologist/psychiatrist is an expert, but he/she does not live with the person, so he/she does not know any communication specifics of the particular person. Usually only people close to the person or caregivers who know the meaning of the “sounds” that a person with poor communication uses can do that. It's because if you don't live with the person, you haven't experienced their way of expressing themselves.”*[82]

» Requests for and offers of accommodations

In practice, no accommodations are usually made, and no thought is given to whether defendants with disabilities can request them. Nobody is responsible for a person's understanding of everything. In practice, the appointed lawyer is the only one who arranges any accommodations for a person. One of the lawyers commented on the possibility of requesting a procedural accommodation, saying: *“I've never heard of anyone specifically offering it, of the police or the courts mentioning it.”*

Insanity defence

The main issues with the "insanity defence" were: 1) insufficient capacity in psychiatric hospitals, 2) a lack of experts to assess criminal liability, and 3) a lax approach to "criminally irresponsible" defendants. According to the lawyer interviewed, "law enforcement officials have frequently failed to provide access to justice for persons who are found criminally irresponsible due to their disability." It is possible that in such cases, the authorities are unconcerned because the proceedings will be terminated anyway, and they do not regard protective treatment as a severe punishment."

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Compulsory treatment

The main challenges identified regarding compulsory treatment were: 1) insufficient capacity in psychiatric hospitals, 2) the possibility of providing treatment without the patient's consent and 3) the possibility of converting protective treatment into protective custody in case of refusal of treatment. A psychologist at the protective detention said: *„The Penal Code should be amended so that it is not so easy to change protective treatment into protective detention. It is enough for a patient in protective treatment to have a negative attitude towards treatment and they are already being transferred to us. I believe that as a result of this, protective detention centres are overstretched in terms of capacity and do not fulfil their purpose, which is to protect against defendants with mental illness who have committed particularly serious crimes.“*

Attitudes and training / awareness

Some interviewees (judges and police officer) stated that they felt that the justice system is accessible enough to persons with disabilities because you have to treat persons with disabilities like other perpetrators of crime. According to the interviewed police officer, *„the justice system is accessible enough to persons with disabilities because you have to treat persons with disabilities like other perpetrators of crime. In fact, you have to follow the limits given by the Penal Code and the Criminal Procedure Code, which apply equally to everyone.“*

However, human rights lawyers think that people with disabilities are perceived as strangers or dangerous persons. Sometimes as in need of paternalistic intervention. According to the lawyer, *„it is true that one identifies the diagnosis with what fits the system. When it's a criminal proceeding, for example, „insanity“ is a plus; when it's a guardianship proceeding, it tends to be a limitation. When it's a disability pension, the problems aren't so great.“*

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In terms of awareness and education, law enforcement officials have a different perspective than lawyers. Lawyers believe that there is little understanding of human rights and the CRPD. They believe that professional education in this field could help defendants with disabilities. The system and training, according to judges and police officers, are adequate.

Best practices

The professionals' best practices are as follows: 1) involve people close to the person with disabilities in facilitating communication, 2) involve psychologists in the process, 3) offer and inform about the Probation and Mediation Service's services, and 4) give persons with disabilities adequate time and space in informing them of their rights and in other communications.

Main Recommendations

The professionals have the following recommendations:

- **To guarantee communication support.** Professionals themselves often do not know how to communicate with defendants with disabilities. They say that it needs to be taken into account that the person has specific needs, e.g. that they need more time. And this is something that is a problem in such a formal criminal justice system.

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- **To facilitate the comprehension of the persons with disabilities** (specifically those with intellectual disabilities).
- **To make any individual procedural accommodation** as the system of criminal proceeding is too formal.
- **To ensure sufficient quality of legal assistance by appointed ex officio lawyers.** Lawyers said that not all their colleagues properly represent clients with disabilities. They are passive, have no experience with clients with disabilities and do not try to explain everything to them.
- **To eliminate the lax approach to criminally irresponsible defendants.** According to the lawyers interviewed, law enforcement authorities have often failed to provide access to justice for persons who are found not criminally responsible due to their mental health condition. It can be encountered that in such cases the authorities do not care much because the proceedings will be closed anyway and they do not see protective treatment as a great punishment.
- **To improve training regarding disability issues and human rights approach.**

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03 NGOs, human rights institutions, and support service professionals' experiences



The social worker working at NGO said: "I think it would be good for a person with a disability to have the possibility of some assistance and support, but the question is, if that person has never worked with anyone, who would be able to put them in touch with such a service. Not to mention the fact that there are not quite enough of these services in our country to be sufficient in terms of capacity.

The way I see it, when I accompany any client, the authorities just treat them differently and it doesn't matter whether they have a disability or not. It's just the behavior is completely different, suddenly there's space to talk, space to listen. Maybe they feel that some inappropriate behavior could be dealt with somewhere because it's not so anonymous anymore. I think that defendant with a disability should be linked to a supporter, not just only during the hearing.

To make it work so that he's entitled to have someone there with him and facilitate the communication. But it must be someone who has been working with him for a long time and has an established relationship with him and some trust has already been built up.

So, for me it's very much about that assistance, but not one-off assistance, but that each person has a certain guide with whom the relationship is just on a deeper level, I would say on a friendly level. The social sphere is about always balancing on the edge of some personal and professional relationship."

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Experiences, challenges and areas of improvement identified

Equality Perception's

A psychologist working in the detention centre stated that persons with disabilities are treated the same as others. According to social workers, there is a need to take into account the disability of these people, their vulnerable situation and to work with them more sensitively. So if we treat them the same as others, it is actually discrimination for them because they need better treatment. In practice, it depends on the people. One social worker said: „*when the police don't know how to approach such a person, they are more harsh, because those people with disabilities are sometimes more challenging in their behaviour and they have to be dealt with.*“

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„I HAVE A COLLEAGUE WHO IS A PUBLIC GUARDIAN AND JUST THE WAY SHE TALKS ABOUT HER CLIENTS WITH DISABILITIES IS ALARMING TO ME AND I OFTEN THINK THAT SOME PEOPLE REALLY SHOULDN'T BE WORKING AS SUPPORTERS OF PEOPLE WITH DISABILITIES.“

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Complaints

According to the interviews, it is very common to receive complaints from defendants who do not accept their disability. However, because they committed an otherwise criminal act as a result of their mental health condition, the crime is viewed as being committed by someone else. Furthermore, it was discovered that many defendants with disabilities were in situations where communication was a problem. For example, there was insufficient communication with many misunderstandings, and the authorities refused to deal with it; however, when the defendant approached the social worker, a different course of action was taken.

Procedural accommodations

» Accessible information

The majority of interviewees were skeptical of how people are informed or understand it. This is due to the information being delivered in complex language that a person without disabilities would find difficult to understand. They stated that it is primarily dependent on the person issuing the instruction. It all depends on how each professional approaches the situation. The difficulty of the profession, as well as gender, have an impact. According to one social worker, the situation is better in offices where there are more women than, say, the police. Women, she claims, are more empathetic, making them better suited to work with people with disabilities.

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» Support services

In general, there are few experts and no system that provides automatic assistance in criminal proceedings. The issue is that the services of a psychologist, social worker, or Probation and Mediation Service are frequently unavailable until the criminal proceedings have concluded and the sentence has begun to be served. These supportive services should be involved from the start of the criminal proceedings, not just at the end when the sentence is carried out.

One social worker's experience demonstrates the significance of these services. His client was abused by his mother as a child, so he has difficulty communicating with women. When he went to solve his unemployment, he committed a crime against a female official who raised her voice at him. He threatened the officer because it reminded him of his abusive mother. She then proceeded to file a criminal complaint against him. The interviewee was in a very difficult situation in his life, and only a social worker could help him, such as by arranging for another psychiatrist. He would not have had contact with a social worker if not for the Probation and Mediation Service.

Identification of disability

According to interviewees, disability and inappropriate behaviour can be confused. According to one interviewee, this is the most common occurrence. However, in criminal proceedings, this is avoided by preparing an expert report if the police have any suspicions. And this method works.

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Awareness and attitudes

The majority of respondents agreed that the topic of defendants with disabilities is not widely discussed in society. Let alone anyone addressing any aspect of human rights. Because the country has only recently begun to consider the rights of minorities, it will take some time to emphasize the importance of the rights of people with disabilities. *"There is a need to work with law enforcement to be sensitive to those people," a social worker says. So that they understand that someone is telling them that they don't understand, and that it's possible that the person isn't making fun of them, but that the person truly doesn't understand.*"^[83] It is also important to understand that even if someone has a disability, they can become a victim of a crime.

⁸³ Interviewee profile: social worker experienced with defendants with disabilities, female.

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Best practices

Best practices for stakeholders in support services include: 1) Involve psychologists, social workers, and the Probation and Mediation Service; 2) Treat people with disabilities with understanding, sensitivity, and consideration for their situation; 3) Develop a good relationship with people with disabilities; and 4) Involve NGOs as much as possible, because their work is very beneficial.

Main recommendations

The stakeholders in support services recommended the following improvements: 1) involving psychologists, social workers, and the Probation and Mediation Service from the first contact with the justice system, 2) improving training for professionals regarding awareness of the CRPD and human rights approach, 3) creating a manual/information videos on communication with persons with disabilities, and 4) learning how to treat people with disabilities with understanding, sensitivity, and dignity.

Social worker stated: *„there is a main need to understand defendants with disabilities and take their difficult situation into account and to achieve that, we need to think about society as a whole and be more sensitive to the needs of others.“*

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

04 Brief analysis of patterns

There are several main patterns that the interviews with stakeholders have shown:

- The Czech legal framework does not mention **any procedural accommodations applicable for persons with disabilities**, nor specifically for accused or defendants with intellectual and/or psychosocial disabilities. Law enforcement authorities are used to follow strictly the Criminal Procedure Code, so there is no margin for individual accommodations.
- **The law does not guarantee the possibility of an intermediary or facilitator** in cases involving persons with intellectual and/or psychosocial disabilities. This can have an impact on the right to participation of defendants with disabilities.
- The Czech (criminal) justice system in fact provides **no communication support specifically for persons with disabilities**, nor for accused or defendants with intellectual and/or psychosocial disabilities. The only exception is the right to an interpreter and the possibility of using one of the communication systems of deaf and deaf-blind persons. Except that no technical means for facilitating communication presented in 2020 by United Nations in the document “International principles and guidelines on access to justice for persons with disabilities” are foreseen by the Czech law.
- The justice system in the Czech Republic significantly **exclude access to justice for those defendants whom the expert concludes have committed the offence in a "state of insanity"**. The extent to which the defendant with disability is actively involved in the criminal proceedings is therefore dependent on the expert's opinion stated in the report. If a person is found to be criminally irresponsible, no one takes him/her seriously. The law enforcement authorities are then no longer interested in his/her opinion, nor are they so thoroughly investigating what actually happened. The

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

04 Brief analysis of patterns

- system is set up in such a way that everything is hidden under the argument that a person has a disability under the influence of which he or she committed a crime.
- Access to justice for defendants with disabilities is limited by the fact that **not all persons with disabilities are automatically entitled to free legal aid** and that there is no **mandatory legal representation** specifically for all persons with disabilities.
- Effective access to justice in practise depends on **the approach of individual lawyers**, who are not always sufficiently supportive. It is important that the **disabled defendant's lawyer should do his work as professionally as with other clients**, because he/she is often the only person in the Czech system who can help the defendants with disabilities during the criminal proceeding.
- Czech public attitude towards perpetrators in general is still based on the **need to punish perpetrators** as severely as possible. The attitude towards persons with disabilities is based on a **high level of stigma and prejudice**, which as a result constitutes a significant barrier to access to justice for defendants with disabilities.
- There is lack of **training programs regarding disability issues** based on the human rights model of disability. The stakeholders generally do not understand the importance of a human rights approach. The issue of defendants with disabilities and awareness of the importance of CRPD is not widespread among law enforcement authorities, let alone other professionals, supporters and the general public. Thus the development and investment in training are seen as one way to promote a more accessible justice system for persons with disabilities.
- Best practices identified included **the involvement of psychologists, social workers and NGOs or the Probation and Mediation Service**. However, these supportive services should be involved from the beginning of the criminal proceedings and not only at the end in the context of the execution of the sentence.

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CONCLUSIONS AND RECOMMENDATIONS

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01 Conclusions

The general aim of this national briefing paper was to provide an overview of the main national barriers- and best practices to overcome the main gaps – regarding access to justice and provision of procedural accommodations to defendants with intellectual and/or psychosocial disabilities in the Czech Republic. The study was based, among others, in the *International Principles on Access to Justice for Persons with Disabilities (UN, 2020)* (Principles **1, 3, 4, 5, 6** and **10**). The main barriers to participation identified will be presented according to the principles analysed:

Principle 1. All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability.

In the Czech Republic, a person's legal capacity can still be limited due to a mental health condition. If a person lacks legal capacity for the purpose of acting before the court, he or she may be a party to the proceedings, but he or she cannot act independently in proceedings; instead, his or her legal representative or a guardian appointed by the court acts on his or her behalf. If a person lacks legal capacity, law enforcement will require an expert report to determine his or her criminal responsibility. According to the expert report, the proceedings will be halted if there is criminal irresponsibility.



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RESPECT FOR THE RIGHTS OF ALL PERSONS, INCLUDING PERSONS WITH DISABILITIES, THE FULFILMENT OF THEIR FULL EQUALITY AND THE PROTECTION OF THEIR DIGNITY REVEAL WHAT KIND OF SOCIETY WE ARE AND WILL BE.

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Principle 3. Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.

The Czech legal framework does not mention any procedural accommodations applicable for persons with disabilities, nor specifically for accused or defendants with intellectual and/or psychosocial disabilities. Law enforcement authorities are used to follow strictly the Criminal Procedure Code, so there is no margin for individual accommodations. The law does not guarantee the possibility of an intermediary or facilitator in cases involving persons with intellectual and/or psychosocial disabilities. This can have an impact on the right to participation of defendants with disabilities.

When we asked interviewees about process accommodation, they didn't know what to say. We were asking them about something that doesn't exist. None of the interviewees had asked for any procedural accommodations, nor did they know what they could ask for, but at the same time they mostly did not need them. However, in all cases, all law enforcement authorities were aware of the persons' disabilities, as in all cases an expert report had already been prepared in the pre-trial proceedings and was usually part of the case file. Even so, no accommodations were offered to them.

Principle 4. Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others.

In fact, neither the Czech (criminal) justice system nor the accused or defendants with intellectual and/or psychosocial disabilities receive communication support. The only exception is the right to an interpreter and the use of deaf and deaf-blind people's communication systems. Except that the Czech law makes no provision for the technical means of communication proposed by the United Nations in the document "International principles and guidelines on access to justice for persons with disabilities" in 2020. There are no legal provisions that require the provision of information on the defendant's procedural rights in criminal proceedings in an easy-to-read format or in alternative formats.

CONCLUSIONS AND RECOMMENDATIONS

Principle 5. Persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process.

The Czech legal system ensures procedural safeguards recognised by international law, such as the presumption of innocence and the right to remain silent. However, no procedural accommodations for persons with disabilities are mentioned in the Czech legal framework, nor specifically for accused or defendants with intellectual and/or psychosocial disabilities. Because law enforcement officers are trained to strictly enforce the Criminal Procedure Code, there is no room for individual accommodations.

Principle 6. Persons with disabilities have the right to free or affordable legal assistance.

Access to justice for defendants with disabilities is limited because not all people with disabilities are automatically entitled to free legal aid and there is no mandatory legal representation for all people with disabilities. Furthermore, effective access to justice in practice is dependent on the approach of individual lawyers, who are not always supportive. It is critical that the disabled defendant's lawyer performs his or her duties as professionally as he or she does for other clients, because he or she is frequently the only person in the Czech system who can assist the disabled defendant during the criminal proceeding.

Principle 10. All those working in the justice system must be provided with awareness-raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice.


In the Czech Republic, a lack of training for police, judicial officers, lawyers, forensic experts, psychologists, social workers, judges, and prosecutors on the rights of people with disabilities is a significant barrier to their access to justice. Training is scarce, and information about best practices in interactions with people with disabilities is even scarcer.

CONCLUSIONS AND RECOMMENDATIONS

02 Recommendations

On the basis of research and interviews, several essential recommendations would improve access to justice for persons with disabilities charged in criminal proceedings:

- To incorporate into legislation **the possibility of using procedural accommodations** including the possibility of **an intermediary or facilitator**.
- To **guarantee at the legislative level the means for providing communication support** to persons with disabilities in the criminal proceedings having regard to the document “International principles and guidelines on access to justice for persons with disabilities” published by United Nations in 2020.
- To **make law enforcement authorities aware that they should use simple, easy-to-understand and accessible language**. Written information should also be available in alternative formats.
- To ensure that even **defendants found not criminally responsible due to their disability** and defendants who are found by an expert to have a disability could **enjoy all their rights, including the right to participate effectively** in criminal proceedings.



THE JUSTICE SYSTEM HAS A CRITICAL ROLE TO PLAY IN PREVENTING DISCRIMINATION AGAINST PERSONS WITH DISABILITIES AND PROVIDING EFFECTIVE REPARATIONS WHEN THEY OCCUR, PARTICULARLY WHEN THEY STEM FROM UNFAIR LAWS.

CONCLUSIONS AND RECOMMENDATIONS

- To provide **free legal aid and mandatory legal representation** specifically **for all persons with disabilities automatically from the first contact with the justice system**.
 - To ensure **the quality of lawyers' work and create the controlling mechanism** of it by the Czech Bar Association. Emphasis should be put on advocates being supportive of persons, being sufficiently proactive, also maintaining personal and sufficiently frequent contact with clients, and treating defendants with disabilities the same as any other clients.
 - To allow the **accompaniment of relatives/trustees in all actions** of criminal proceedings and from the beginning of it.
 - To **hear and involve persons with disabilities and their representative organisations** in the debate on their access to justice.
 - To **provide training for judges, police officers and other stakeholders** with a focus on the human rights model of disability, procedural accommodations and on communication with persons with disabilities.
 - To **involve psychologists, social workers and NGOs or the Probation and Mediation Service** to criminal proceedings **from the beginning** and not only at the end in the context of the execution of the sentence. To provide these services automatically to defendants with disabilities and to entitle defendants to request them at any time.
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REFERENCES

REFERENCES

United Nations. (2006, December 13). *Convention on the Rights of Persons with Disabilities*.

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en

United Nations. (2020). *International principles and guidelines on access to justice for persons with disabilities*.

<https://www.ohchr.org/en/special-procedures/sr-disability/international-principles-and-guidelines-access-justice-persons-disabilities>

United Nations. (2008). Backgrounder: Disability Treaty Closes a Gap in Protecting Human Rights. Available at:

<https://www.un.org/development/desa/disabilities/backgrounder-disability-treaty-closes-a-gap-in-protecting-human-rights.html>

ANNEXES

ANNEXES

Annex 1 - Profile of the interviewees

ID	Interviewee*	Sex	Age	Duration of the interview	Years when had contact with the justice system	Type of interview (remote, on-site, other)	Other relevant information
CZ/DPS/M/05	Person with psychosocial disability	Male	27	45 minutes	2019 - 2021	online	Placed in cell
CZ/DI/M/02	Person with intellectual disability	Male	64	60 minutes	2021	In person	
CZ/DPS/F/09	Person with psychosocial disability	Female	36	50 minutes	2021 - 2023	In person	Recording not allowed, placed in protective detention
CZ/DPS/M/13	Person with psychosocial disability	Male	24	45 minutes	2019 - 2023	In person	Recording not allowed, a woman with a disability has not been found, placed in protective detention

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ID	Interviewee*	Sex	Age	Duration of the interview	Years when had contact with the justice system	Type of interview (remote, on-site, other)	Other relevant information
CZ/L/M/10	Lawyer	Male	39		2017 - 2023		Testimonials were written
CZ/L/M/03	Lawyer	Male	49	55 minutes	2020 - 2023	online	
CZ/P/M/11	Police	Male	54	45 minutes	2003 - 2023	online	Recording not allowed, informed consent provided verbally
CZ/J/M/04	Judge	Male	42	50 minutes	2017 - 2023	online	Informed consent provided verbally
CZ/J/M/07	Judge	Male	48	75 minutes	2014 - 2023	online	

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Annex 1 - Profile of the interviewees

ID	Interviewee*	Sex	Age	Duration of the interview	Years when had contact with the justice system	Type of interview (remote, on-site, other)	Other relevant information
	Prosecutor						Not found
	Prosecutor						Not found
CZ/S/M/12	Psychologist	Male	41	40 minutes	2015 - 2023	In person	Recording not allowed
CZ/S/M/06	Social worker	Male	54	20 minutes	2023	online	
CZ/HR/M/08	National Human Rights Institution	Male	33	30 minutes	2018 - 2023	online	
CZ/HR/F/01	NGO	Female	40	35 minutes	2020 - 2023	online	

* First the interviewees were asked to read the informed consent form, and only after it was read and signed did the interview and its recording begin.