

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

ENABLE - Enabling inclusion and access to justice for defendants with intellectual and psychosocial disabilities

The project seeks to promote access to justice and fairer criminal proceedings for defendants with intellectual and psychosocial disabilities in 8 EU countries:

- Romania (Centrul de Resurse Juridice)
- Portugal (Fenacerci – Federação Nacional de Cooperativas de Solidariedade Social)
- Czechia (Fórum pro lidská práva)
- Slovakia (Fórum pro lidská práva)
- Slovenia (PIC – Pravni center za varstvo človekovih pravic in okolja)
- Bulgaria (KERA Foundation)
- Spain (Confederación Plena Inclusión España)
- Lithuania (Mental Health Perspectives)

The project is coordinated by the Validity Foundation (Hungary), while the Model Disability Bench Book is developed by the International Commission of Jurists – European Institutions (Belgium)



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Disclaimer

Some of the expressions used in this paper are inappropriate due to their connotations. Although they are considered derogatory, the Slovenian criminal justice system still uses them when applying the law. As the authors deem it important to retain the language of the law when describing the way in which PWDs and other defendants are considered under Slovenian criminal law, the expressions are used but labeled with citations (“”).

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EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

The aim of this national briefing paper is to allow an assessment in Slovenia 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.

EXECUTIVE SUMMARY

Main findings regarding barriers, challenges and best practices

- **Incomplete understanding of the situation by the defendant**, particularly why the undertaking of a psychiatric treatment is necessary in their case.
- **Lack of an official support service for defendants** (and witnesses), with particular expertise in the work and communication with PWDs.
- **The law does not foresee any intermediaries or facilitators** other than guardians (of which role is questionable) or defense counsels.
- **Discretion of a judge to grant procedural accommodations.** When it comes to procedural adjustments and modifications, it is up to an individual judge to grant those, which can also be viewed as a discretionary barrier.
- **Lack of identification of disability from the very first contact with official authorities.** Sometimes, due to stigma and personal circumstances of a defendant, disability of a person will not be identified from the very first start of proceedings, already in the pre-trial phase.
- **Treatment of PWDs for whom neither the prison nor the psychiatric unit are appropriate.** The barrier is the gray zone in which persons with mild intellectual and psychosocial disabilities find themselves, where neither the prison nor the forensic unit for a psychiatric treatment are appropriate for their accommodation and treatment.
- **Lack of alternative provision of information in an easy-to-read language** for PWDs and others, from the first interaction with official authorities (the police) onward.
- **Lack of expertise of lawyers**, in this case defence counsels, about the needs, barriers and circumstances experienced by PWDs.

EXECUTIVE SUMMARY

- **Diminished legal capacity in practice.** Lack of full participation of PWDs in criminal proceedings, in some cases due to placing them under guardianship (particularly those with intellectual and psychosocial disabilities).
- **Free legal aid is premised on financial circumstances of a defendant or their family.** Although exceptional legal aid can be granted to PWDs in some circumstances, the criteria and financial threshold are still set rather high and many administrative obstacles in place.
- **Unknowing of procedural accommodations available.** Some of the procedural accommodations may be unknown to the defendant, especially if they are not represented by a defense counsel, which renders them unknowing of the procedural possibilities possibly relevant to them and their individual needs.

Main recommendations

Structural

- **It shall be reviewed if an individual judge alone is in the best position to decide on procedural accommodations and referrals to the support office** (in case of a victim), or shall this be done by a panel, including psychiatric experts.
- **Additional types of procedural accommodations in law.** Furthermore, although accommodations are to certain extent already provided for in law and in practice, there is still room for improvement. Additional types of procedural accommodations listed in section 3.1.2.2 - Adapting procedures for hearings could be adapted in law and put into practice.

EXECUTIVE SUMMARY

- **Setting up a programme in educational care institutions devoted to people with intellectual and psychosocial disabilities with a prison sentence.** A point of action for persons with “diminished mental capacities” would be to accommodate them in an educational care institution (“vzgojno varstveni zavod”), rather than in prisons, should the security measure of a psychiatric treatment no longer be needed.

Process

- **Attentive one-on-one work and adjustments as to the pace of proceedings.** The two procedural guarantees were pointed out as the most important for ensuring that the defendant with disabilities is well aware of the proceedings and can follow them.
- **Providing a list of possible procedural accommodations.** The issue of unknowing procedural adjustments could be addressed by providing a list of all the possible ones that PWDs or their defense counsels (or a lawyer) could request during criminal proceedings, so as to equip them with information regarding all the legal possibilities upfront.

Outcomes

- **Training of criminal justice professionals and other personnel about the particular rights and needs of PWDs.** So as to ensure a better environment and involvement of PWDs in criminal proceedings, educating legal professionals and **drawing up a list of legal representatives with expertise in disability**, who are knowledgeable of the rights, problems and barriers PWDs face, would be beneficial for PWDs.
- **Involving PWDs in debates on how to improve the criminal justice system and draw up the next Action programme for Persons with Disabilities.** That would enable them to the greatest extent possible to exercise their right to participation not only in criminal proceedings themselves but also in the systemic law making.

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 recognized in 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^[1], 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 analyzing the barriers (and best practices) to participation in the criminal justice process, focusing specifically on persons with intellectual and/ or psychosocial disabilities.

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 conceptualization 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.

1 “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

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 recognized 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 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**[2]; **right to information in criminal proceedings**[3]; **right of access to a lawyer in criminal proceedings**[4]; strengthening of certain aspects of the **presumption of innocence** and on **the right to be present at the trial** in criminal proceedings[5]; **legal aid** for suspects and accused persons in criminal proceedings[6]; and **procedural safeguards for vulnerable persons suspected or accused in criminal proceedings**[7].

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

3 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;

4 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

5 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;

6 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;

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

02

GOALS AND
METHODOLOGY

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:

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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.

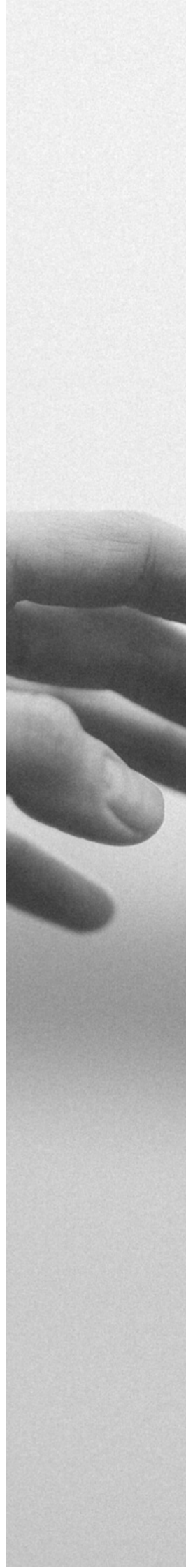
Additionally, for the **field work, semi-structured interviews** (N=11) were carried out with key stakeholders: Defendants with intellectual and /or psychosocial disabilities (N=2); Criminal justice professionals (N=3); Support services professionals (N=2); Non-Governmental Organizations (N=1), and Human Rights Institutions (N=3). As two of the interviewees (SI/O/F/11 and SI/P/M/04) had no experience working with defendants with disabilities, the content of the interview conducted with them was not deemed relevant for the present research by the authors. The interviews were conducted from February 2023 to April 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 analyzed using content analysis. In the next section we summarize 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



DEFENDANTS WITH DISABILITIES ACCESS TO JUSTICE

“

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

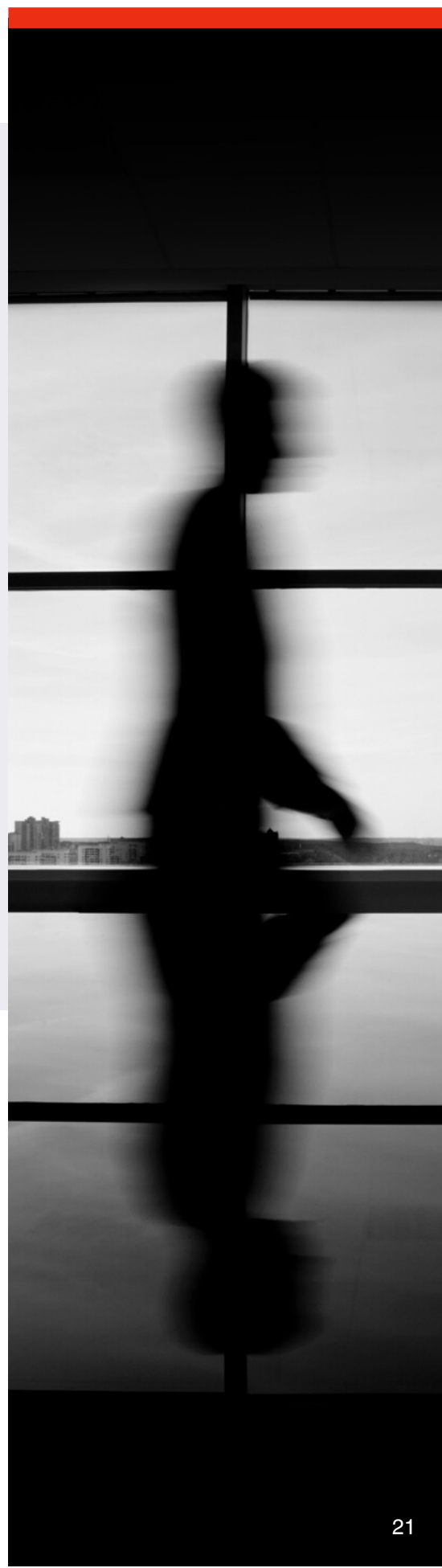
The results of this analysis are presented in four sub-sections:

a) identification of the main international legal policies and orientations regarding access to justice adopted in Slovenia;

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.

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01 Transposition of the international legal framework

Applicable United Nations regulations

Slovenia ratified the **United Nations Convention on the Rights of Persons with Disabilities** in 2008 without reservations[8]. Following ratification of CRPD, Equalisation of opportunities for persons with disabilities act was adopted in 2010[9]. The CRPD became binding on Slovenia also by virtue of the EU's confirmation of the Convention in 2011. Regarding article 12 (Equal recognition before the law) the concluding observations made by the UN Committee on the Rights of Persons with Disabilities pointed out "the discriminatory legal provisions in the Non-Contentious Civil Procedure Act and the Family Code [of Slovenia], which allow for the deprivation of the legal capacity, including business and procedural capacity, of persons with psychosocial and/or intellectual disabilities." [10] The Committee was concerned with the fact that in different areas of life the state appoints guardians as substitutes, rather than a form of support, for people with disabilities. It was also concerned by the lack of a *supported* decision-making regime replacing the current *substitute* decision-making regime. In relation to article 13 (Access to justice), the observations point out the following concerns:

- "The lack of information on specific procedural, gender- and age-appropriate accommodation for persons with disabilities in judicial proceedings, in particular for deafblind persons;

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

9 Equalisation of Opportunities for Persons with Disabilities Act

10 UNCRPD, Concluding observations on the initial report of Slovenia, 2018. p.5 Available at:

<https://digitallibrary.un.org/record/1483329>

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- The lack of accessibility of the buildings of law enforcement agencies and the judiciary;
- Barriers to access to justice for persons with psychosocial and/or intellectual disabilities, in particular persons living in institutions and/or deprived of their legal capacity;
- The fact that the State party has not formulated policies to empower persons with disabilities to be part of the justice system as direct or indirect participants, such as lawyers, court officers or law enforcement officials”[11]

However, the authors are not informed of any study that would consider the exact impacts of the implementation of the CRPD on the experiences of defendants with disabilities involved in criminal proceedings in Slovenia

The **United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (CAT) became binding on Slovenia in 1993 via its accession to the convention. Slovenia also acceded to the Optional Protocol of the Convention against Torture (CAT-OP) in 2007. Despite regular reporting on the implementation of CAT on the basis of the CAT-OP by the Human Rights ombudsman of the Republic of Slovenia, no explicit mention seems to have been made regarding access to justice for persons with disabilities.[12] A recommendation of the Ombudsman that could be linked to access to justice for persons with disabilities in the context of CAT regards the representatives of the rights of persons with disabilities. Namely, the Ombudsman recommended the Ministry of Labour, Family, Social Affairs and Equal Opportunities to place ”the list of representatives of persons with mental health problems on the website in a way that makes it easier to find, together with a definition of their competences, and in a place that is general”. [13]

European Committee for the Prevention of Torture

Due to its membership in the Council of Europe, the Committee for the Prevention of Torture (CPT) also exercises its supervisory functions in Slovenia. The latest visit was paid to Slovenia in 2017 upon which a report was drawn.[14]

11 Ibid.

12 Reports 2019 and 2021 <https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/NPM-Slovenia-2019.pdf> and https://www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/Letna_porocila_DPM/Slovenian_Ombudsman_NPM_Report_2021.pdf

13 https://www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/Letna_porocila_DPM/Slovenian_Ombudsman_NPM_Report_2021.pdf

14 <https://rm.coe.int/pdf/168074adf9>

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During the visit, the delegation examined the treatment of persons deprived of liberty and the provision of legal protection to them, as well as the treatment of forensic psychiatric patients at the Forensic Unit of the Psychiatric Department of Maribor University Hospital. Regarding the former, no relevant mention of the situation experienced by persons with disabilities was made in the report. However, regarding the latter, CPT noted down several concerns such as means of restraint. Fixation of patients to a bed was used as a restraining order but was not always used as a last resort and not always terminated promptly. According to the report “no member of the health-care staff was constantly present in the patients’ room and patients were not de-briefed by staff once the measure had been terminated.” Some of the conditions were also considered degrading treatment (putting patients in adult nappies or having them use a bedpan in view of other patients). When it comes to legal safeguards, CPT noted that when undertaking a six-months review of the security measure of compulsory psychiatric treatment, all patients subject to the measure shall be heard in person by the judge to decide upon the matter. The CPT also instructed that as a matter of principle, psychiatric patients shall be given the possibility to give free and informed consent to the treatment undertaken after the imposition of the security measure.

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)

Directive 2010/64/EU lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant. In the directive, the requirement for enacting disability friendly provisions in the field of interpretation and translation is already emphasized in recital 27 of the preamble. The recital stipulates that authorities are obliged to ensure that persons in a potentially weak position, particularly physically impaired people, can effectively exercise their rights to interpretation and translation as enshrined in the Directive. Furthermore, the Directive provides in Article 2 that suspected or accused persons who do not speak or understand the language of the criminal proceedings must be provided with interpretation without delay. This interpretation must be provided for the length of all the proceedings before investigative and judicial authorities. According to the article, that includes police questioning, all court hearings and any necessary interim hearing. Article 2 further clarifies that the right to interpretation “includes appropriate assistance for persons with hearing or speech impediments”.

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Furthermore, it is specified in article 5 of the Directive that a register of appropriately qualified interpreters must be established. Additionally, article 6 provides that judicial staff must ensure efficient and effective communication, by means of being trained in the particularities of communicating with the assistance of an interpreter. Lastly, article 2(6) states that “where appropriate, communication technology such as videoconferencing, telephone or the Internet may be used, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings”.

The directive was transposed into national law in 2014, amending the then Criminal Proceedings Act (ZKP).[15] It transposes article 2 of the Directive by means of amending Article 8 of ZKP, so that it grants the right to participants in proceedings to use their own language in investigative and other any judicial proceedings or during the main hearing. Should the proceeding not be conducted in their language, oral interpretation of what has been said, and their own speaking, as well as written translation of documents and other written evidence (providing a list of examples) shall be ensured. [16] Furthermore, the amended article stipulated that the provisions of the preceding paragraphs apply *mutatis mutandis* to deaf persons. This provision was further amended at a later date so that it now also includes persons with speech disability (“mute” in ZKP).[17] In transposing the directive, article 5 on the establishment of a register of appropriately qualified interpreters, however, seems not to have been transposed into national law. The same goes for article six of the directive, with no provision even in the present ZKP ensuring the training of judicial staff in the particularities of communicating with the assistance of an interpreter, so as to ensure efficiency and effectiveness.[18] With the transposition of the Directive only Article 8 ZKP was adapted so as to provide more accommodations for persons with disabilities. Hence, the Directive was only transposed partially.

- **Right to information** in criminal proceedings (*Directive 2012/13/EU*)

Rules on the right to information in criminal proceedings are set out in Directive 2012/13/EU. In Article 2, the directive determines the scope of application, clarifying that the right is to be ensured throughout all the proceedings. In Article 3, the Directive obliges Member States to ensure that suspects and accused persons are provided with information, orally or in writing, in simple and accessible language, while taking into account any particular needs arising from their potential vulnerability. Based on the right, suspects and accused persons have the right to be informed of:

15 Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku (ZKP-M)

16 ZAKON O SPREMEMBAH IN DOPOLNITVAH ZAKONA O KAZENSKEM POSTOPKU (ZKP-M), 2. člen

17 Article 8(8), ZKP

18 <http://pisrs.si/Pis.web/porociloKorelacijskaEu?celex=32010L0064> korelacijska tabela

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- their right of access to a lawyer,
- any entitlement to free legal advice and the conditions for obtaining such advice,
- the right to be informed of the accusation, in accordance with Article 6,
- the right to interpretation and translation and
- the right to remain silent.[19]

Furthermore, the relevant disability provisions are also Article 4 (on the Letter of Rights on arrest) and Article 6 (on information about the accusation), as they further elaborate on the rights to information listed under Article 3.

Directive 2012/13/EU was transposed into national law in 2014, together with the above Directive 2010/64/EU.[20] Article 3 was transposed into national law by again amending Article 8 ZKP, obliging authorities to inform participants in proceedings of their right to interpretation and translation.[21] Further, Article 4 of the Directive, regarding information provision after arrest or detention, was transposed by means of amending Article 4 ZKP, drawing up a list of rights about which suspects deprived of liberty shall be informed.[22] The list, made available in Annex 1, included all the rights listed under Article 3 of the Directive as well as under Article 4(2).[23] The list in the annex was drawn up on the basis of an indicative model provided in the Directive. Furthermore, the amended article Article 4 also transposed provisions stating that the suspect deprived of liberty must be informed of their rights in a written manner, with information being provided in their mother tongue or in a language which they understand.[24] Should written information not be available in an appropriate language, the suspect deprived of liberty shall first be informed of their rights orally in a language they understand and then, without undue delay, be provided with written information.[25] Article 4(5) of the Directive has mostly been transposed word by word into national law, namely into Article 4(5) of ZKP. Right to information about the accusation for suspects and the accused persons, provided for under Article 6 of the Directive, was transposed into ZKP to the extent that it was listed under Annex 1 ZKP.[26] Hence, the transposition only ensured the right to be informed of accusations for suspects deprived of liberty, as the annex is drawn up only for them.

19 Para 1

20 <http://www.pisrs.si/Pis.web/porociloKorelacijskaSlo?eva=2014-2030-0046> korelacijska tabela

21 ZKP-M, Article 8(3), first sentence

22 Article 4(5) ZKP-M

23 Annex 1 ZKP-M https://www.uradni-list.si/files/RS_-2014-087-03503-OB~P001-0000.PDF

24 Article 4(5) ZKP-M23

25 <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2014-01-3503/> ZKP-M, Article 1

26 <http://www.pisrs.si/Pis.web/porociloKorelacijskaSlo?eva=2014-2030-0046> korelacijska tabela

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Article 3(2) of the Directive not only stipulates that information is to be given orally or in writing, but also obliges Member States to ensure that information is provided in a simple and accessible language, taking into account any vulnerabilities of suspects or the accused. Although it shall be pointed out that in transposition of the Directive ZKP did not explicitly provide for the use of simple and accessible language, such accommodation could be inferred from the provision stating that information must be provided in a language that is understandable to suspects deprived of liberty or made available in appropriate language. The amendment, however, only regards suspects deprived of liberty and is not applicable to all the suspects in general.

Amendments as to Article 4 ZKP are, thus, only telling of the rights of suspects deprived of liberty. Regarding the right to information for suspects in general, the legislator only amended Article 148 ZKP by stating that the police must inform the suspect of the right to use their own language and the rights to interpretation and translation under Article 8.[27] Other rights listed under Article 3 of the Directive have mostly already been provided in the then ZKP, under Article 5 and Article 148(5).[28] However, the two articles make no explicit reference to providing information in an understandable manner, using appropriate language, as is provided for in the amended Article 4 ZKP. Furthermore, although provision of information regarding rights has predominantly already been ensured before, there seems to be an exception with provision of information on free legal aid. In transposing Article 3 to ZKP, the legislator seems to have transposed the right to be informed of free legal aid only for suspects deprived of liberty, not for all suspects. In view of the above analysis, it seems like the Directive was transposed to ZKP only partially.

Regarding vulnerabilities, ZKP has only been amended to include the concept of vulnerable defendant at a later stage.[29] At the time of transposition of the Directive, the concept of vulnerability was not yet part of the national criminal procedure legislation.

- Right of **access to a lawyer** in criminal proceedings (Directive 2013/48/EU)

Directive 2013/48/EU concerns, inter alia, the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings. In recital 52, the European legislator reaffirmed that the Directive upholds the fundamental rights and principles recognised by the Charter, listing integration of persons with disabilities as one of them. Furthermore, the legislator enshrined in Article 13 that Member States “shall ensure that the particular needs of vulnerable suspects and vulnerable accused persons are taken into account in the application of this Directive.”

27 ZKP-M, 4.člen

28 ZKP, Article 5 and Article 148(4).

29 Article 18.a ZKP

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While the Directive grants suspects and accused persons the right to legal representation (Article 3 and 10), the right can also be waived by means of Article 9. Similarly to the above analyzed Directive 2012/13/EU, Member States shall ensure that defendants are provided with language accommodations when informing them of the content of that right and the possible consequences in case of the waiver - the information has to be provided orally or in writing, clearly and sufficiently, in simple and understandable language. Furthermore, recital 39 importantly states that “specific conditions of the suspects or accused persons concerned should be taken into account” when providing information, such as age and their mental and physical condition.

In transposing the Directive, changes were made to the Slovenian criminal legislation in multiple installments, with the latest one taking place in 2021.[30] However, regarding rights of suspects and accused persons, changes only took place in 2014. As mentioned earlier, the concept of vulnerability only made its way explicitly into the national procedural criminal law at a later stage, in 2019,[31] and not via transposition of Article 13 of the present Directive. In other words, the provision on vulnerabilities was not transposed in ZKP via ZKP-M in 2014, but was included in the national law later on. Regarding recital (52) of the directive, the current ZKP makes no such explicit reference as to the integration of persons with disabilities in criminal proceedings. Regarding Article 9, the possibility to waive one's right of access to a lawyer has already been part of the national criminal law prior to the transposition of the Directive. However, no provision seems to have been explicitly incorporated so as to ensure that persons choosing to waive their right are clearly and sufficiently informed, orally or in writing, in a simple and understandable language about the possible consequences of a waiver. Furthermore, no safeguards such as those under recital 39, regarding the suspect's or the accused person's mental or physical condition when informing them of their right to waive the access to a lawyer, seems to be explicitly provided for in ZKP.

- 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)

Directive (EU) 2016/343 sets out common minimum standards concerning certain aspects of the presumption of innocence in criminal proceedings and the right to be present at the trial. Regarding provisions on disability, the Directive states in recital 42 that particular needs of vulnerable persons shall be taken into account particularly when considering the right to be present at the trial and the right to a new trial. Furthermore, Article 3 safeguards the general principle of presumption of innocence, while Article 8 explicates the right of suspects and accused persons to be present at the trial.

30 <http://pisrs.si/Pis.web/porociloKorelacijskaEu?celex=32013L0048> korelacijska tabela

31 ZKP-N, Article 18.a

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As already explained in consideration of Directive 2013/48/EU, the concept of paying particular attention to vulnerabilities only made its way into ZKP in 2019, via the general provision of Article 18.a in ZKP-N. Hence, recital 42 again had no effect on ZKP, when transposing Directive (EU) 2016/343. [32] Next, Article 3 on the presumption of innocence and Article 8 on the right to be present at the trial were already part of the Slovenian criminal law prior to the enactment of the Directive.[33]

- **Legal aid** (Directive (EU) 2016/1919)

According to Article 4(1) of Directive (EU) 2016/1919 on legal aid, Member States shall ensure that “suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require”. Furthermore, recital 29 reiterates the non-discrimination clause, stating that people with disabilities shall not be discriminated against when it comes to the protection of their rights under this directive.

When it comes to suspects deprived of liberty, legal aid under Article 4(1) of the Directive was already provided prior to the enactment of the directive, for those lacking sufficient resources and if provision of legal aid was in the interest of justice.[34] With transposition, no further changes have been made to ZKP regarding provision of free legal aid. The act has most recently been amended in 2015, with some of the improvements being explicated later in the paper, in section 3.1.2.2 on procedural accommodations and legal aid.

- Procedural safeguards for vulnerable persons suspected or accused (Commission Recommendation of 27 November 2013)

With Commission Recommendation 2013/C-378/02, the Commission encouraged Member States to strengthen the procedural rights of suspects and the accused who are in a vulnerable position due to their personal circumstance (age, mental or physical condition or disability). In its recommendation, the Commission further elaborated on the waiver of the right of access to a lawyer (Article 9 of Directive 2013/48/EU), stating that the right should not be waived if vulnerable persons are not able to understand and follow the proceedings.

The concept of compulsory defense (i.e. “*institut obvezne obrambe*”) was part of the Slovenian criminal law already prior to the recommendation, and the transposition of the above directives.[35]

32 ZKP-M

33 <http://pisrs.si/Pis.web/porociloKorelacijskaEu?celex=32016L0343> korelacijska tabela

34 Article 4(2) and (4) ZKP-L

35 ZKP-L, Article 70.

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In Article 70(1) ZKP makes it clear that in certain cases the defendant must have a defense counsel present already at the time of a first hearing, and, according to Article 70(2), as long as they are subject to detention. According to the article, the presence of a defense counsel is mandatory for defendants with, *inter alia*, speaking or hearing impairments or those otherwise incapable of defending themselves successfully.[36] In view of the authors of the briefing paper, and depending on the circumstances of each case, defendants with psychosocial and intellectual disabilities could fall under the definition of the latter category. In a case before the Supreme Court, the concept of a person incapable of defending oneself successfully was further elaborated upon, indicating the inability to correctly spell one's name as an up front circumstance pointing out the incapability. Furthermore, upon receiving the opinion from the psychiatric expert, "mental subnormality" as a permanent disorder was also listed as one of the circumstances. The Supreme Court also stressed that the inability to defend oneself successfully should not be equated with complete lack of adherence or insanity.[37] It further stressed that the provision of article 70(1) must be applied when the accused is incapable of presenting a *successful* defense, rather than when they come to the point when they are *completely* incapable of presenting any defense. As it is clear from the case:

"A convict who, according to the information in the file, is not qualified to live independently and must therefore live in an institution, who, even after special schooling, is not able to spell his surname correctly, who cannot always tell the year of his birth, and who has made no attempt to do anything in his favor during criminal proceedings, is certainly at least as incapable of presenting a successful defense as can be assumed for blind or deaf defendants, who are also required by law to have a lawyer from the first hearing onwards."

Depending on the circumstances of each case, one can reasonably presume that the provision makes the presence of a defense counsel compulsory also for people with psychosocial and intellectual disabilities, which would align the Slovenian legislation with the recommendation by the Commission.

36 Article 70(1). The termin incapable of defending themselves is an unofficial translation of the legal provision "nezmožen, da se sam uspešno brani" obtained from the English language translation of the text of the Criminal Procedure Act from 2007 <https://www.policija.si/images/stories/Legislation/pdf/CriminalProcedureAct2007.pdf>

37 ECLI:SI:VSRS:1993:I.IPS.246.93 [https://www.sodnapraksa.si/?q=id:23692&database\[SOVS\]=SOVS&database\[IESP\]=IESP&database\[VDSS\]=VDSS&database\[UPRS\]=UPRS&submit=i%C5%A1%C4%8Di&page=0&rowsPerPage=20&moreLikeThis=1&id=doc_22889](https://www.sodnapraksa.si/?q=id:23692&database[SOVS]=SOVS&database[IESP]=IESP&database[VDSS]=VDSS&database[UPRS]=UPRS&submit=i%C5%A1%C4%8Di&page=0&rowsPerPage=20&moreLikeThis=1&id=doc_22889)

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The most relevant acts and policy documents in the field of criminal law and/or disability in Slovenia are:

- Criminal Code (KZ)
- Criminal Procedure Act (ZKP)
- Legal Aid Act (ZBPP)
- Equalisation of Opportunities for Persons with Disabilities Act (ZIMI)
- Action programme for Persons with Disabilities (drawn up in 2007, 2014 and 2022)
- Mental Health Act (ZDZdr)

In the following sections we consider the above legislation and acts, further elaborate on them and analyse the relevant provisions they offer and list other legal documents present in the field but are deemed irrelevant for consideration in the present research.



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General Disability and Mental Health legislation

The umbrella act on disability in Slovenia is the Equalisation of Opportunities for Persons with Disabilities Act (ZIMI). The definition of disability pursuant to this Act is very general and somewhat resembles the definition from CRPD as it states in Article 3 that people with disabilities are people with long-term physical, mental and sensory impairments and intellectual disabilities, which in connection with various barriers can limit them from participating fully and effectively in society.[38] The act, however, does not regulate disability status but rather ensures equal opportunities for people with disabilities and their non-discrimination. Provisions concern inclusion of people with disabilities in various aspects of society, such as public services, the built environment, provision of goods and services, information and communication. Additionally, the Mental Health Act (ZDZdr) defines the system of medical and social care in the field of mental health, the institutions responsible for this activity, and the rights of a person during treatment in psychiatric intensive care units, secure wards and regarding supervised care.

Slovenian legislation on disability also includes acts on war disability (people with disabilities due to war, war veterans and victims of war violence), insurance, vocational rehabilitation and employment, and social inclusion. No other act, however, seems to regulate procedural accommodations in legal proceedings to a greater extent than ZIMI and ZDZdr. On this occasion it shall also be noted that in Slovenian law, there is no uniform definition of disability. Although ZIMI provides the general, all-inclusive definition of the term, definitions of disability vary between the laws considering different aspects of disability depending on their contexts.[39] The issue arises when each law, with a fragmented definition of disability, entitles people with disabilities to different rights, benefits and services.

Prior to discussing individual rights and procedural safeguards available in the national legal framework, Article 18.a ZKP shall again be put up front as it, according to the authors, most clearly addresses the obligation of criminal justice professionals to treat PWDs with particular care throughout the entire criminal proceedings. According to the article:

38 Article 3(1) ZIMI

39 It is worth mentioning, that the Ministry of Labour, Family, Social Affairs and Equal Opportunities, in their reply to the inquiry of the Slovenian Ombudsman in 2021, took the position that persons with mental health problems are not disabled since mental health issues are a sickness which can be treated and do not constitute a permanent condition that cannot be remedied, which, in their view, is a fundamental element of disability. The Ministry, however, did not clarify on which legal basis their argument was based. In contrast, the Ombudsman took the view that persons with psychosocial disabilities should also be considered disabled and should enjoy protection under the CRPD and legislative protection if the mental or psychosocial impairment was long-lasting and affected the individual's ability to participate fully and effectively in society. <https://www.varuh-rs.si/obravnavane-pobude/primer/vsi-so-enaki-le-da-so-nekateri-malo-bolj/>

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“The police, the state prosecution service, courts and other state authorities, experts, expert witnesses, court and other interpreters and mediators must treat the injured parties, suspects, accused persons and convicts with particular care and act with due consideration where necessary because of their vulnerability such as age, health condition, disability, or other similar circumstances.”

No provision in the national legal framework, however, seems to establish a protocol on the basis of which vulnerability of persons involved in criminal proceedings could be assessed up front.

Right to participation / Recognition of legal capacity

According to Article 12 ZKP, the accused person shall have the right to conduct his or her own defence or to defend themselves with the expert assistance of a defence counsel that they choose. The right to participation is also safeguarded in Article 7 of ZIMI, which concerns equal participation of PWDs in proceedings. The article, however, only considers blind, partially sighted or deaf-blind persons. According to the article, the aforementioned group of people shall have the right to submit any written material and to be provided access to all written material in an intelligible form in any proceedings conducted before official authorities, which shall ensure this right.[40] Although ZIMI provides an all-inclusive definition of disability, so as to involve all people with long-term physical, mental or sensory impairments and/or developmental mental disorders,[41] the provision, as it is currently written, is only addressed to persons with certain disabilities.

Until 2019, the Family Code deprived PWDs of legal capacity, but the act has since changed so as to substitute deprivation of legal capacity provisions with the concept of a guardianship, placing adults under guardianship (“skrbništvo”).[42] Although legal capacity of PWDs is now recognized, provision of a guardian for adult PWDs, as provided for in the Non-Contentious Civil Procedure Act[43] and the Family Code,[44] does not follow the principle of equal participation in practice. The institution of a guardian, intended to protect the interests and benefits of the most vulnerable PWDs, can leave the defendant excluded from the process, as the guardian is entitled to make statements and perform all procedural acts in their name and instead of them.[45]

40 Article 7(1) ZIMI

41 Article 3(1) ZIMI

42 Action programme

43 Section Two of Chapter X of the ZNP-1

44 Articles 262 to 265 of the Family Code

45 Jablanovic, S. Glasovi za pravičnost - Žrtve kaznivih dejanj z oviranostjo v Sloveniji (2022) <https://validity.ngo/wp-content/uploads/2022/04/National-finding-report-Slovenia-Slovenian-220424.pdf>

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This is in direct contrast with Article 12 ZKP and Article 7 ZIMI mentioned above, as well as Article 12(2) of CRPD and Principle 1 of the International Principles and Guidelines on Access to Justice for Persons with Disabilities document, safeguarding legal capacity and equal participation for PWDs. As a guardian *de facto* replaces the person in legal proceedings, rather than enhances their role therein, participation of PWDs in legal proceedings can be weakened.

Insanity defense / Incapacity to stand a trial

A complete exclusion of a person from criminal proceedings

Under Slovenian law, insanity defense is applied in situations when it was recognized that a person committing an unlawful act was incapable of understanding the meaning thereof or was incapable of controlling their conduct due to a mental disorder or mental underdevelopment - they are deemed to be “legally insane”.[46] According to Article 29(1) KZ, any person for whom it was recognized that he was “legally insane” at the time of committing an unlawful act, shall not be rendered guilty of the act. If “legal insanity” was self-induced by the perpetrator through consumption of alcohol, drugs or other psychotic substances, a perpetrator of criminal offense shall be criminally liable if in his case guilt is established.[47]

A person undergoes a psychiatric examination in the trial stage, if there is a suspicion that they “lacked mental capacity due to mental disorder or mental retardation when the criminal offense was committed, or that his or her mental capacity was diminished due to such condition or due to some other lasting and severe mental disorder”.[48] Furthermore, a psychiatric examination shall also be undertaken if there is a serious doubt “that he or she is able to participate in criminal proceedings due to his or her mental condition”.[49] The examination is ordered by a written order of the authority conducting the proceedings, specifying the facts that need to be established or assessed by expert witnesses or other persons entrusted with examination.[50] The order is also served to the parties,[51] however, the Chapter on Expert witnesses (“Izvedenstvo”) seems to involve no provision enabling defendants to decline such examinations.

46 Article 29(2) KZ. The term “legally insane” is used in Slovenian Criminal Code to designate a person not fully in charge of their faculties, according to the unofficial translation of the code obtained from the governmental website.

47 Article 29(4) KZ

48 Article 265(1), first para ZKP

49 Article 265(1), second para ZKP

50 Article 249(1) ZKP

51 Article 249(1) ZKP

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The expert witness in psychiatry draws up an expert opinion containing information on questions posed by the Court. Upon establishing “that the accused person is suffering from a mental disorder, mental retardation or some other lasting and severe mental condition, he or she shall determine its nature, type, degree and duration” and also include in their opinion how such mental condition affected the accountability of the accused person at the time they committed the criminal offence. Furthermore, the expert shall also establish how his mental state still affects their perception and behaviour, or whether the condition is such as to render them incapable of participating in criminal proceedings. The anticipated period of their procedural incapacity shall also be provided.[52] The latter regards their possible incapacity to stand a trial.[53]

Upon receiving the opinion, and should it be established that the defendant is unable to defend themselves successfully, the defendant shall be appointed a defence counsel, as explained above, via the institute of compulsory defence.

Involuntary admission and treatment during the pre-trial and trial stage

In order to obtain an expert opinion, a prolonged examination of the defendant in an appropriate medical institution might be necessary.[54] The observation may last for a maximum period of one month, which can be extended to a maximum of two. The decision for extending the period of observation may be appealed, but the appeal does not stay the execution thereof.[55] The defendant transferred for observation shall have a defence counsel already prior to the ruling on medical observation.[56]

If the court sends to the medical institution an accused who is remanded in custody, it shall inform the institution of the reasons for which the remand has been ordered, so that the institution can do all the necessary to ensure the purpose of the remand.[57] The court shall also inform the institution of any other decision taken regarding detention and treatment.[58] It is also important to note that the time spent in a medical institution counts towards a defendant's detention or a possible sentence.[59]

52 Article 265(3) ZKP

53 Article 265(3)

54 Article 265(2) ZKP

55 Article 265(2) ZKP

56 Article 265(5) ZKP. Should the defendant not have retained one, a defense counsel shall be appointed for him *ex officio*.

57 Article 265(4) ZKP

58 Article 265(4) ZKP

59 Article 265(6) ZKP

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Compulsory treatment, institutionalization, alternatives of incarceration

Regarding mandatory psychiatric treatment, Article 491(1) states that “if the accused person has committed the offense in insanity, the Public Prosecutor shall propose to the court to order a compulsory psychiatric treatment and protection of such offender in a medical institution or a compulsory psychiatric treatment of the offender at large, provided that such a precaution is subject to the conditions laid down in the Criminal Code.[60] Compulsory psychiatric treatment in a health care institution or at liberty shall be imposed as a safety measure on the accused who was not in charge of his faculties, if the safety of the public could not be otherwise ensured.[61] During treatment in a psychiatric intensive care unit, secure ward or supervised care, persons have the right to a mental health advocate[62] and a defense counsel.

If the court establishes in the main proceedings that the defendant committed a criminal offense but was lacking mental capacity at the time of commitment it can impose on the defendant the precautionary measure of compulsory psychiatric treatment and confinement in a medical institution or compulsory psychiatric treatment at liberty.[63] The court of first instance decides about the measure after the main hearings,[64] when it becomes known whether the person should be considered legally insane or not, or the extent to which he was not in charge of his faculties at the commitment of the crime. In such a situation the court discontinues the criminal proceedings and decides upon the imposition of a precautionary measure.[65] If a punishment is imposed on a person committing the offense in a state of substantially diminished mental capacity the court imposes the measure in the same judgment.[66] Both persons lacking mental capacity and not rendered guilty as well as persons with substantially diminished mental capacity and rendered guilty can be imposed a compulsory psychiatric treatment and confinement in a medical institution or at liberty as a precautionary measure. Precautionary measures of a psychiatric treatment may also be imposed at the main hearing, when the state prosecutor changes the filed indictment or the motion of indictment so as to request the imposition.[67]

For offenders lacking mental capacity (insanity defense), the measure of a compulsory psychiatric treatment can last for a maximum period of five years.[68] Each time a period of six months has lapsed, the court shall decide again whether treatment in the institution is still necessary and discontinue the measure should it not be.[69]

60 Article 491(1) ZKP

61 Article 70.(3) KZ

62 Article 12(2) ZDZdr, indent six

63 Article 492(3) ZKP

64 Article 492(1) ZKP

65 Article 492(4)

66 Article 494 ZKP

67 Article 493(1) ZKP

68 Article 70.a(3) KZ

69 Article 70.a(2) KZ

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The court of first instance that has imposed the measure of a compulsory psychiatric treatment in the first place takes all subsequent decisions on the institutionalization of the person. The court does so on its own motion, on the proposal of the offender or the institution, and on the basis of the opinion of the physicians.[70]

If the defendant's ability to understand the meaning of their actions was substantially diminished due to a mental disorder or mental underdevelopment, or due to any other permanent or severe mental disturbance, a sentence imposed on them may be reduced.[71]

National Disability strategy

In 2021 the government of Slovenia drew up a new Action programme for persons with disabilities, for years 2022-2030.[72] Two objectives of the action plan can be linked to access to justice for PWDs, namely Objective 3 – Accessibility and Objective 12 – Violence and discrimination. As part of the former objective on accessibility, the use of Slovenian sign language, as well as languages of deafblind and the sign language of the Italian and Hungarian minority is explicitly mentioned but no mention is made as to the measures taken for ensuring accessibility for persons with intellectual and psychosocial disabilities. Furthermore, as part of the objective, Measure 3.4 is oriented towards ensuring “the accessibility of information and communication (the adaptation of documents relating to decision-making at the national and local levels to easy-to-read formats)” which could be linked to access to justice, however “decision-making” is not further specified. The second objective on violence and discrimination focuses mostly on detection, resolution and prevention of violence against PWDs, as well as raising awareness about the ways in which they experience discrimination. The objective seems to be oriented towards protection of PWDs as victims, not as defendants, witnesses and other positions in which PWDs may be involved in legal proceedings. Furthermore, although the objective is fleshed out a bit further via the seven measures, none of them concerns explicitly the provision of procedural accommodations to PWDs during legal proceedings. At most, Measure 12.5 regards the implementation of programmes and services which would provide assistance to PWDs in the detection, resolution and prevention of violence against them, however provision of legal services thereunder, in light of resolution and prevention, would only be a guess. All in all, none of the objectives of the programme list the Ministry of Justice as an institution responsible for the execution of measures set down therein, the ministry acts as a rapporteur for some of them. Its task is to obtain data on activities carried out in connection with the measures (also measures 3.4 and 12.5) from the institutions responsible, which are budget users and other subcontractors.[73]

70 Article 496(1) ZKP

71 Article 29(3) KZ

72 Action programme for Persons with Disabilities 2022 – 2030; <https://www.gov.si/zbirke/projekti-in-programi/akcijski-program-za-invalidne/>

73 Action programme

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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) provide adjustments to procedural rules (e.g., may include use of audio-video records, video-links, adjustments on questioning) and e) be appropriate to gender and whether a person is deprived of liberty. As already mentioned, these are the necessary modifications in the context of access to justice for ensuring the participation of persons with disabilities in legal proceedings on an equal basis with others.

Prior to describing procedural guarantees provided to PWDs in Slovenia, it shall be noted no separate definition of disability exists in the Slovenian criminal law. The Criminal Procedure Act, the Criminal Code and the Court Rules^[74] do not provide any definitions of disability nor do they specify which groups of people are to be considered vulnerable, apart from minors.

Next, we will briefly describe the situation regarding the provision of **procedural accommodations** in Slovenia.

Right to information

With regards to the right to information, Article 8(1) ZIMI stipulates that PWDs shall not be discriminated against when it comes to accessing goods and services that are otherwise available to the public. Furthermore, in Article 3(4) the act speaks of non-discriminatory access to information, communication and other services, as well as emergency assistance, and the removal of obstacles preventing PWDs from accessing them or making the access more difficult.^[75] In the context of services, which are relevant for consideration in the context of this research, the act requires information to be provided in an easily legible and understandable format,^[76] which can be understood as an accommodation made for PWDs.

74 Sodni red <http://www.pisrs.si/Pis.web/pregledPredpisa?id=DRUG4076>

75 Article 3(4) ZIMI

76 Article 8(3), indent 4

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However, in considering services, the act only makes reference to services such as services in the health sector, residency and public transport, and makes no explicit reference to the provision of information in services that concern the justice system. The most recent act in the field of disability, the 2023 Accessibility of Products and Services for Persons with Disabilities Act (ZDPSI), further fleshes out the above Articles 3(4) and 8 of ZIMI. Similarly, the act obliges economic operators to offer PWDs access to products and services in a manner accessible to them, however none of the provisions concern the justice system. The act seems to consider accessibility only from the viewpoint of consumerism.[80]

However, Article 14 ZIMI does concern access to information explicitly. According to the article,

“[d]iscrimination on the basis of disability shall also include the denial of regular and equal access to information provided to the public without additional costs for a person with a disability, with due consideration of the principle of appropriate or reasonable accommodation as to the types of recordings, languages and technologies that meet the needs of various types of disabilities.”

As to the provision of information under ZKP, Article 65.a provides an exhaustive list of the type of information to be provided to the injured party upon their first contact with competent authority. The article was included in the criminal proceedings act upon implementation of the Victim’s Rights Directive. However, unlike the explicit right of victims to receive information and what type, no article seems to provide a parallel right for defendants. In other words, there seems to be no such clear listing of the scope and type of information for defendants. The article also stipulates that the amount and type of information shall depend on personal circumstances and vulnerability of the injured party, [81] which would take into consideration a person’s disability. Even though no such explicit provision seems to exist for defendants alike, one shall be reminded of Article 18.a ZKP, which obliges criminal justice professionals to act with particular care and with due consideration when it comes to PWDs, also suspects, accused persons and convicts.

Although ZKP does not give explicit mention of the right to receive information in a simple and accessible manner, ZKP does ensure that defendants are provided with information regarding their accusations in a way that is understandable to them. According to article 321(4) ZKP the presiding judge shall ask the defendant if they have understood the charge, and if they have not, the judge shall call on the prosecution “to explain the content of the indictment so that it can best be understood by the defendant.” The article stipulates a rule on the basis of which defendants must be provided with information in a manner accessible to them, presumably using a simple language.

80 <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2023-01-0238?sop=2023-01-0238>

81 Article 65.a(2) ZKP

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Independent intermediaries and/or facilitators (Right to participation)

Apart from a defense counsel, Slovenian criminal law itself does not seem to foresee any intermediaries or facilitators that would additionally support the defendant in understanding procedures. The possibility of an official assistant does exist for victims of crime, as victims must be informed of, *inter alia*, "the contact person of the competent authority, with whom they can communicate about their matter", which can facilitate their participation in proceedings.[82] However, while the law provides a professional profile for victims of crime, no provision seems to exist that would guarantee that same right to defendants. The Family code does provide for an intermediary in the form of a guardian, although the concept of guardianship has been questioned before. In any case, the essence of guardianship is to provide a guardian to adults who for reasons of mental development disabilities or mental health problems or on any other grounds that affect their capacity to decide are not capable of defending their rights and interests on their own,[83] which could contribute to them being better involved in proceedings. In such a scenario, guardians would act as facilitators and intermediaries between the court and the defendant, acting according to their wishes and perceptions.[84] The scope of the guardian's obligations and rights is defined by the court when placing a person under guardianship[85] and can also involve proceedings before a criminal court, should the defendant be incapable of defending their rights and interests on their own.

ZIMI does not provide for any independent intermediaries or facilitators during legal proceedings and only includes articles on the provision of technical aids such as tools and devices which aid PWDs in overcoming communication barriers.[86] The provisions on technical aid predominantly regard financing. At most the establishment of a call centre for persons with hearing impairments could be considered, which is in charge of enabling communication and information provision by means of adapted techniques when it comes to the field of work of official authorities and service public in its nature,[87] under which the work of the justice system could fall.

Allowing persons with disabilities to be accompanied by family, friends or others

With transposition and the implementation of Directive 2012/29/EU, also known as the Victims' Right Directive, the right to be accompanied by a person of trust became available to victims of crime from 2019 onwards.[88]

82 article 65.a(1)

83 Article 262(1) Family Code

84 The latter is also an obligation for guardians, to allow PWD to live their lives according to their wishes and perceptions. Article 264(2) of the Family Code.

85 Article 262(2) Family Code

86 Article 17. - 20. ZIMI

87 Article 23 ZIMI

88 ZKP-N

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Article 65(4) of ZKP was amended so that in pre-trial and criminal proceedings, “a minor as victim, an injured party who is a victim of violence or another injured party, if so required by the nature and gravity of the crime, his or her personal circumstances or the degree of threat to his or her life and body, may be accompanied by a person of his or her choosing, unless this is contrary to the interests of the successful implementation of pre-trial or criminal proceedings or the benefit of the injured party.” Disability could be treated as one of those personal circumstances. Unlike for victims, no provision in ZKP or KZ seems to provide defendants with disabilities the same right to be accompanied by family members, friends or others during proceedings. The transposition of the Victims Rights Directive thus brought a substantial change in this regard.

No provision in ZIMI allows PWDs to be accompanied by family members, friends or others in criminal proceedings. The Action programme also does not mention the support of a third person in criminal proceedings, however it does mention personal assistants, family assistants and home carers as an important source of information for PWDs, acting as a support service.[89]

Provision of Legal Aid

The right to legal aid (“brezplačna pravna pomoč”) is protected in the Legal Aid Act (ZBPP). According to Article 13(1) ZBPP, “[l]egal aid shall be granted to persons who, given their financial circumstances and the financial circumstances of their families, are not able to cover the costs of judicial proceedings or the costs of legal assistance without jeopardizing their social situation and the social situation of their families.” The social situation is not put at risk if the personal income or the family’s income exceeds twice the base amount of the minimum income laid down in the Act governing social assistance benefits.[90] In deciding on the granting of legal aid conditions listed under Article 24 shall also be considered, namely that the matter is not clearly unreasonable, that the applicant has fair prospects for the successful conclusion of the matter, and that the matter is important for the applicant’s personal and socio-economic situation or is the outcome of vital importance for them or their family.

Additionally, *exceptional* legal aid can also be granted. It shall be granted, *inter alia*, in the following circumstances relating to disability:

- due to the applicant’s family circumstances if the cost of living of the applicant’s family is burdened by extraordinary costs arising from the medical treatment of a family member, the costs of maintaining a family member with a physical or mental developmental impairment, the costs of the education and training of children with special needs, and other costs caused by force majeure or other reasons beyond the control of the applicant or the applicant’s family

89 Action programme, Objective 1, Measure 1.6

90 Article 13(2) ZBPP

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- due to the applicant's state of health if the costs arising from the applicant's treatment are burdened by justified costs that are not covered by compulsory health insurance but are necessary due to the applicant's level of disability or other forms of physical or mental impairment;
- if the major part of the personal income of the applicant or any of the applicant's family members is intended for the payment of institutional care services (e.g. payment for care in a home for the elderly);
- in the case of an applicant to whom a guardian has been assigned to represent a special case in judicial proceedings, or an applicant deprived of legal capacity unless the legal capacity of the applicant has been limited or denied due to the applicant's frequent filing of unreasonable applications in judicial proceedings[91]

However, provision of exceptional legal aid is still subject to the applicant's or their family's financial circumstances. Exceptional legal aid can only be granted in the above listed cases "if the personal income of the applicant or the applicant's family does not exceed four times the base amount of the minimum income laid down in the Act governing social assistance benefits and if the value of the assets of the applicant and the applicant's family does not exceed 60 times the base amount of the minimum income.", as well as upon fulfilling Article 24 requirements again. In that regard, the legal framework regulating the right to legal aid remains unsuitable. The main criterion for eligibility under the Legal Aid Act is the financial position of the applicant and their family members, even when it comes to provision of exceptional legal aid in disability cases. The threshold is set as twice the amount of monetary social assistance benefit, but that doesn't mean that persons with disability will necessarily fall under the eligibility criteria. It is a strong possibility, since disability benefits are low, but it also depends on the other income of a disabled person and their family members, and on their property. Additionally, the process of obtaining free legal aid is problematic because it is lengthy and administratively complicated - the form is very complicated and the applicants have difficulties providing supporting documents, which is especially difficult for persons with psychosocial disabilities. [92]

Requests for and offers of accommodations

No provision in ZKP seems to explicitly provide PWDs the possibility to make a request for individualized procedural accommodations in legal proceedings. Although ZIMI similarly gives no mention of such an option, it clearly provides a definition for reasonable accommodation, clearly stipulating that one shall be entitled thereof:

91 Article 22 ZBPP

92 Poročilo Sanja Jablanovic, Glasovi za pravičnost - Žrtve kaznivih dejanj z oviranostjo v Sloveniji (2022) <https://validity.ngo/wp-content/uploads/2022/04/National-finding-report-Slovenia-Slovenian-220424.pdf>

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“Reasonable accommodation shall mean necessary legal, administrative and other measures not imposing a disproportionate burden that are required in a particular case to ensure persons with disabilities the enjoyment or exercise of all rights and freedoms on an equal basis with others”.^[93] The article, however, does not operationalize the right further, so as to enable PWDs to actively make such a request on their own motion. The National Disability Strategy does not mention requests for and offers of accommodations and adaptations in any other relevant way than via Measure 3.4 of Objective 3 on accessibility of information described before. The latter only speaks of providing accessible communication and information but affords no agency to PWDs to make such requests.

Information on requests for accommodation is provided on the website of the Slovenian judiciary, but only concerns deaf, hard of hearing, blind and visually impaired persons who enjoy special rights regarding the use of language.^[94]

In its 2020 interim report on the Establishment of professional foundations for the regulation of different statuses of disabled people, the Social Protection Institute of the Republic of Slovenia devoted a short section to the access to justice for PWDs. Regarding procedural accommodations it stated that procedural adaptations and alternative forms of communication should be ensured, paying particular attention to the situation of deaf-blind persons and persons with psychosocial and/or intellectual disabilities, including those living in institutions, and increasing their awareness of access to justice.^[95]

Right to interpretation and communication support

As mentioned earlier, the right to interpretation and translation is enshrined in Article 8(1) ZKP, which states that involved parties, witnesses, suspects and other subjects involved in proceedings shall have the right to use their own language during investigative and judicial proceedings. While the provision particularly mentions interpretative accommodations for deaf and mute people, the article, in its current format, makes no similar explicit reference to accommodations provided for persons with other disabilities (e.g. psychosocial and intellectual).^[96] Hence, the article safeguards the right to interpretation and translation for defendants with disabilities but only does so explicitly for certain disability groups. Discretion of the judge to provide accommodations in terms of translation and interpretation to other groups of disability does, however, exist in Article 8(3) ZKP.

93 Article 3(3) ZIMI

94 https://www.sodisce.si/informacije/gluhi_in_slepi_v_sodnih_postopkih/

95 https://irssv.si/wp-content/uploads/2023/03/Status_invalidov_2020_vmesno2.pdf

96 ZKP Article 8(8)

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According to the article, the court may decide that “depending on the specific circumstances of the case, interpretation or translation needs to be provided in other cases too in order to ensure the exercise of guarantees or rights in pre-trial or criminal proceedings”. Hence, based on the provision, the court enjoys discretion to provide accommodations also to people with psychosocial and intellectual disabilities, should the circumstances of the case require them to do so.

Adapting procedures for hearings

According to Article 233 ZKP, in situations prescribed by law, interrogation of a defendant may take place with the help of an interpreter. Regarding PWDs, the provision only makes reference to the needs of deaf and persons of speech disability who may need the assistance of a sign-language interpreter. Interpretation to an easier language for defendants with psychosocial and intellectual disabilities does not seem to be explicitly provided for in the chapter on the interrogation of the defendant in ZKP. The umbrella ZIMI act on disability does not provide for any other adaptations to be undertaken during legal proceedings. Neither ZKP, ZIMI nor the current National Disability strategy provide for measures such as adaptation of the venue, appropriate waiting spaces, removal of cloaks and wigs, separate building entrances and waiting rooms and protective screens to separate persons with disabilities from others if necessary due to physical or emotional distress. Although adjustments to the pace of proceedings, modifications to the method of questioning in appropriate circumstances, such as allowing leading questions, avoiding compound questions, finding alternatives to complex hypothetical questions, providing extra time to answer, permitting breaks as needed and using plain language are not prescribed in the aforementioned legal documents, such adjustments could in fact already be taking place in practice.

According to Article 310 of ZKP, the main hearings can be adjourned under a ruling panel if, inter alia, it is established in the course of the trial that the defendant upon committing the criminal offense has become afflicted by a temporary mental illness or a temporary mental disorder.

Right to be present at trial

The presence of a defendant is not always mandatory during the main proceedings. Article 307(3) ZKP stipulates that the chamber may decide that the main hearing shall be held in the absence of the defendant should his presence not be necessary, if his defense counsel is present and if he has been previously interrogated.

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ZIMI and the Action programme do not concern the right of defendants to be present at trial per se, but ZIMI does prohibit discrimination based on disability in relation to access to facilities intended for public use - therefore the courts.[97]

Remote hearings

Fulfilling one of the four conditions listed under Article 244.a ZKP, the hearing of a defendant can take place via videoconference. Regarding defendants, a hearing of a defendant can take place remotely if the competent authority submitted a relevant request to another state in accordance with ZKP or an international treaty or “it is not desirable or possible for the person to come to the authority conducting the hearing for other justified reasons.”

Rights Monitoring

Independent mechanism

On a national level, the Council for Persons with Disabilities of the Republic of Slovenia is an independent body tasked with promoting and monitoring the implementation of CRPD.[98] However, according to the UN Committee on the Rights of Persons with Disabilities and the Slovenian Human Rights Ombudsman, the Council does not fulfill all the requirements necessary for being an independent monitoring body for rights compliance under Article 33 of the Convention.[99] In Fall 2022, the government of Slovenia initiated discussions addressing the issue.[100]

In 2013, the Council produced an Initial report on the implementation of the Convention but did not mention therein procedural accommodations ensured to persons with intellectual or psychosocial disabilities during criminal proceedings or access to justice in general.[101] From the research it seems that no other report on the implementation of the Convention has been made by the Council in later years.

97 Article 9 ZIMI

98 <https://www.gov.si/zbirke/delovna-telesa/svet-za-invalidne-republike-slovenije/>

99 https://www.iusinfo.si/Priloge/PRIPDZ/PRIPDZ101E0117IXN3_7_1.PDF

100 <https://drzavnisvet.si/post/656652/posvet-ureditev-neodvisnega-telesa-v-skladu-s-33-clenom-konvencije-o-pravicah-invalidov>

101 <https://www.gov.si/assets/ministrstva/MZZ/Dokumenti/multilateral/clovekove-pravice/porocila-SLO-po-instrumentih-o-clovekovih-pravicah/bc31dc603c/Uvodno-porocilo-Slovenije-o-izvajanju-Konvencije-o-pravicah-invalidov.pdf> p.19

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Furthermore, as to the monitoring, The National Council of Disability Organizations of Slovenia (NSIOS), an NGO connecting various representative and other disability organizations, criticized the work of the Council in 2017, arguing that the rights monitoring system is deficient. According to NSIOS, lack of appropriate monitoring complicates the assessment of the implementation of all fundamental provisions of the Convention and others. They also pointed out the overall lack of implementation of an integrated disability protection strategy in Slovenia.[102]

In January 2023, NSIOS and the Council reminded the government of Slovenia of its commitment to draw up a report on the implementation of the Convention in the present year.[103] They stressed that the compilation of all the reports and special reports on realization of the rights of PWDs under the Convention would give a good insight into the actual state of the situation of rights protection in the country. Although the state would monitor the realization of rights in practice, it is doubtful to what extent the reporting would be legitimate and holistic, in light of independent reporting. In that regard, NSIOS would draw up a shadow report, which would comment upon the state report or respond to it. [104] The reporting by NSIOS could be considered as more independent, as it acts as an NGO.

102 <http://www.drustvo-distrofikov.si/?p=17950>

103 https://ds-rs.si/sites/default/files/dogodek/658-1zap_predlog.pdf p.6

104 https://ds-rs.si/sites/default/files/dogodek/658-1zap_predlog.pdf p.6

03 Training and awareness for criminal justice professionals

According to publicly available information, training of criminal justice professionals on access to justice for PWDs seems to be taking place only to a limited extent. The central body for judicial education, the Judicial Training Centre, which operates under the auspices of the Ministry of Justice, provides further training modules and qualification courses for the justice system work. The centre is also responsible for organising and conducting the state legal examination, which is one of the prerequisites for exercising the functions of a judge, a public prosecutor and a lawyer. The centre carried out the following trainings related to disability:

- **16.9.2021 Mental health days;** A multidisciplinary consideration of current topics in the field of mental health, practical aspects of the implementation of legal provisions and review of case law. The conference was organised in cooperation with the Ombudsman, the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Health and the Association of Centers for Social Work.[105]
- **7.4.2021 Treatment of children with special needs;** interdepartmental consultation of experts from various fields of work who deal with children; the consultation takes place every year and is held by the Association of State Prosecutors and the police in cooperation with the Center for Judicial Education, in 2021 on the topic of children with special needs.[106]
- **Fall 2022 HELP Online course on the rights of people with disabilities;** The course began with an introductory online seminar on the international standards and standards of the Council of Europe concerning the rights of persons with disabilities.[107] The offices of the Slovenian Human Rights Ombudsman and the Advocate of the principle of equality shared their own experiences in the field of protecting the rights of PWDs.[108] No information about the course is yet available online (only the 2017 edition).

105 <https://cip.gov.si/aktivnosti/detajli/?ID=d2e797ef-a075-eb11-9c65-005056818ee6&Tag=470>

106 <https://www.dt-rs.si/158/obravnavava-otrok-s-posebnimi-potrebami-letos-v-srediscu-tradicionalnega-posveta> Publically available information on the consultation is scarce.

107 <https://cip.gov.si/aktivnosti/detajli/?ID=5fc805d2-5d57-ec11-9c77-005056818ee6&Tag=470>

108 https://cip.gov.si/media/2822/program_spletni-uvodni-seminar-help_pravice-oseb-z-ovirami_2022_p_2.pdf

04 Statistics and data on access to justice

As to the knowledge of the authors, there is no publicly available data on access to justice for persons with disabilities in terms of statistics.^[109] Although the Ministry of Justice collects and publically publishes certain statistical data about the working of the courts and cases quarterly via Bilten,^[110] no relevant data has been found in this field. Upon making an official request to the Ministry of Justice for obtaining relevant statistics in the field, the Punitive Law and Human Rights Directorate of the Republic of Slovenia, working under the auspice of the Ministry, replied that “the Ministry does not itself collect or hold data on the number of criminal court hearings proceedings in which the defendant was a person with a disability or on the number of security measures for the compulsory psychiatric treatment of persons with disabilities, nor shall such detailed data collection be planned in the future.” The Ministry also stated that they do not have access to any other data than what is available to the public via Bilten.

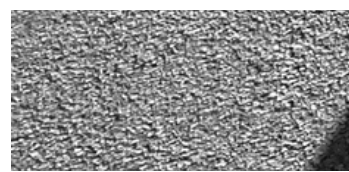
109 <https://podatki.gov.si/dataset/43606a24-b254-40ef-846d-2b7df3db22ed/resource/124b649f-d599-44a1-ab5c-69b71316492c/download/sodnastatistika2022.pdf>

110 <https://podatki.gov.si/dataset/sodna-statistika-bilten>

DEFENDANTS WITH DISABILITIES
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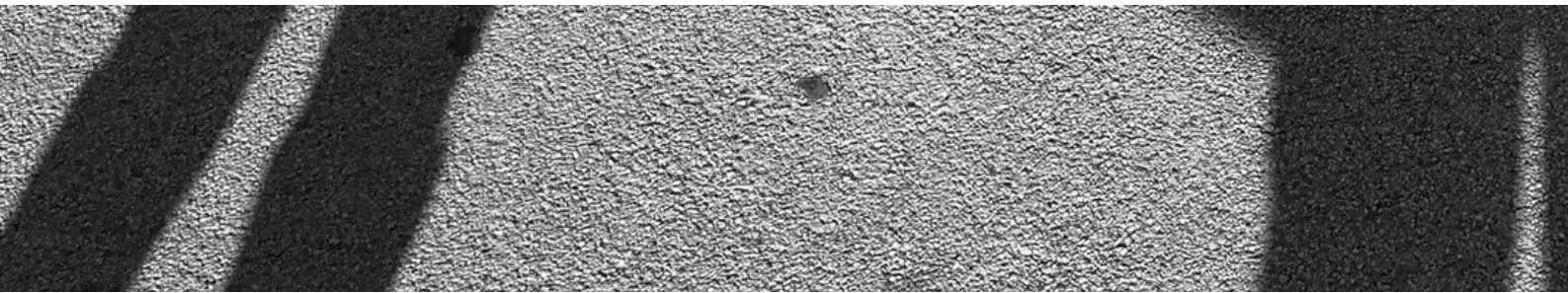


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DEFENDANTS WITH DISABILITIES ACCESS TO JUSTICE

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

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

In order to examine, in Slovenia, the experience of different stakeholders about access to justice of defendants with intellectual and/ or psychosocial disabilities - identifying barriers, challenges and areas of improvement they envision in it - 11 semi-structured interviews were conducted (for detailed information see Annex 1) with

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

In the following sections we will present the main findings of these semi-structured interviews.



EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

Information obtained during two interviews with the accused gave a limited insight into the ways in which PWDs experience the Slovenian criminal justice system. However, the interviews were still important due to the acute situation in which the prison, the two female defendants and the staff find themselves in the very moment of writing, which is further elaborated upon in the interview with the prison director and their psychologist. Even if several longer interviews would have been necessary to gain a better insight into the general situation in prisons in this area, the multi-perspective case study was also useful to gain insight into the broader problem.

Experiences, challenges and areas of improvement identified

Legal aid and provision of procedural accommodations

» Right to information and communication

During the interview, both of the interviewees gave the impression that they understood the situation they are in well, as they were able to list the events that occurred to them, sentences that they are serving and their applications for conditional release. One of the interviewees seemed aware of the stages of the proceedings they are in, saying that upon obtaining medical and psychiatric opinion, she is now only waiting for the reply to her application for conditional release by the court. In the case of one of the interviewees it seemed that it was unclear to them why they were placed in the forensic unit, under psychiatric treatment, rather than going to Ig, the female prison, as they requested. Hence, it is doubtful whether the interviewee was properly and promptly informed of the reasons why they were placed in the psychiatric institution first. One of the interviewees said she was provided with information via her mentor, whom she had at disposal here in the prison.

Additionally, both interviewees remembered well the names and surnames of their lawyers and some others involved in criminal proceedings, which can indicate that at least to some extent they were informed and aware of the course of proceedings.

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

» Legal aid and right to access to a lawyer

Both interviewees had access to a lawyer throughout proceedings, however they did not have one assigned at all times. The experience of their legal representatives was, however, different, with one of them commenting that her lawyer was all right^[111] while the other one experienced hers as bad.^[112] She listed three of them, saying that they did nothing for her because they did not manage to relocate her from the psychiatric hospital to the prison. According to her:

"The court was unpleasant because I had a very bad female lawyer. And she just wouldn't let me go to Ig. Because she said that it didn't make sense for me, that I should rather undergo the necessary treatment in forensics, and then I cried a lot after that court session. Then Berkovic, if you know him. Robert Berkovic. He also didn't do anything for me. /.../ And then I got Sandi Vukovic. He also wasn't, but then there was an expert witness. That for me the better environment is Ig rather than the treatment in the forensic unit."^[113]

She also had the feeling that they did not care, mostly in the context because they did not want the same as she did.^[114] On the other hand, in case of one of the interviewees it seemed that she had a better relationship with her lawyer, saying that she still has one (although a different one from before) and that she writes letters to him.^[115] He informs her about stages of proceedings and matters related to court.

» Right to interpretation and communication support

According to one of the interviewees who no longer has a lawyer, she reads all the materials and information received from the court (e.g. opinion of the court) by herself.^[116]

Contact with police

One of the interviewees described her interaction with police as follows:

111 SI/DI/F/01

112 SI/ DPS/F/02

113 SI/ DPS/F/02

114 SI/ DPS/F/02

115 SI/DI/F/01

116 SI/ DPS/F/02

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

*"Yes, yes, the police came, I was tied up, and the police came, the ambulance came, they took me to the hospital at forensics. /.../ They were fine, I was just shouting b*****, b*****, one this and that. I was under that shock, I wasn't even allowed to wear slippers, I came in flip-flops."*[117]

She further commented that the policemen were not rough or rude, that she was not rough either and that they were talking to one another. According to her, it was all in order when it came to the police and the court.

In prison

One of the interviewees expressed dissatisfaction with prison, saying that:

"I don't feel comfortable in lg. No. Because I'm being used, they make fun of me, insult me."[118]

However, she did not describe the case further.

Psychiatric hospital/institution

One of the interviewees described her relentlessness when detained by police, as she was brought to psychiatry:

"But when I was angry, I was so close from kicking one of those lawyers between the legs. From that anger ... and they thought to take those fingerprints ... and out of mouth. And one of the nurses said no, better not, that I could bite and also swallow, and I was also dangerous."[119]

Thus, there is doubt that the accused, and later the convicted, were not fully or adequately informed of the proceedings in order to understand what was happening and the need to take a swab.

117 SI/ DI/F/01

118 SI/ DPS/F/02

119 SI/ DI/F/01

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

During the trial/ contact with judges

One of the interviewees shortly described her experience with the court, saying that the proceedings were not difficult to understand, that people present were nice and that they explained everything to her.[120] Regarding her interaction with the judge, she said that they talked, that there were witnesses there too and that it was said that she will no longer be placed in the institution but rather go to prison, which the interviewee agreed with.[121]

Voices heard and positive and/ or negative experiences

Although it is doubtful to what extent the interviewees fully understood the proceedings and the reasons for being placed in a psychiatric institution at least one of the two interviewees seemed to have a positive, or neutral experience with the criminal procedure. No dissatisfactions were expressly communicated.

120 SI/ DI/F/01

121 SI/ DI/F/01

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

01 Defendants' with disabilities experiences

Main recommendations

Recommendations to the responsible national institutions on the above topics are as follows:

- **Establish a list of legal representatives with expertise in the field of disability** who are familiar with the difficulties and obstacles faced by PWDs, especially those with intellectual and psychosocial disabilities. At the same time, it is necessary to ensure that the list of legal representatives is made available to relevant persons, i.e. PWDs and persons working in the field of disability (e.g. associations, institutions).
- Establish a list of procedural adjustments that may be requested during the procedure. Better information on possible adaptations would enable PWDs to refer to the relevant procedural adaptations they individually need to participate effectively in criminal proceedings.
- Providing information in an easy-to-read format. Providing information in an easy-to-read format would provide participants with a higher level of information about their rights in criminal proceedings. Information could be provided in written form as well as in the form of video content. In a broader sense, providing information in an easy to read format would generally ensure better accessibility of the judicial system to the general public.

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

02 Criminal justice professionals' experiences

Regarding criminal justice professionals, we had the chance to interview a person working in the position of a Criminal court judge, an attorney with some experience working with PWDs and also obtained written answers to the questions from the Senior State Prosecutor. The outcomes of the interview with a counselor at the Punitive Law and Human Rights department were deemed not relevant for consideration as the interviewee had no experience working with PWDs. Additionally, we had the chance to interview the director of one of the prisons in Slovenia which currently accommodates the above interviewed PWDs currently serving a prison sentence.

Experiences, challenges and areas of improvement identified

Main challenges identified

According to the Senior State Prosecutor, one of the challenges experienced by people with psychosocial and intellectual disabilities in the criminal justice system is to familiarize themselves with the already existing provisions of Slovenian criminal law, which would enable them to effectively exercise their right of defense. According to her, the law already provides protection for PWDs by ways of adapting procedure to their individual needs, however the defendants are poorly informed of their legal rights and the ways in which they can derive them from the existing law.

Differently, the Attorney speculated that one of the main challenges for PWDs is the fear of the unknown. Criminal law proceedings are particularly challenging for people having difficulties understanding what is happening and what consequences the process would have on them. Additionally, the lack of finding out that a person has a disability can be another substantive challenge faced by PWDs, as pointed out by the Criminal Court Judge. According to her, the fact that disability of a person is not recognized can arise from the fact that the attorney is lacking adequate engagement with the defendant or in situations when the suspect does not yet have a defense counsel chosen or assigned. Lacking an expert opinion on the presence of a disability, disability can sometimes be quite difficult to recognize.

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

02 Criminal justice professionals' experiences

In the interview with the prison director, the interviewee pointed out several challenges that the prison is currently facing in connection with the above two PWDs serving the sentence there. The issue lies primarily in the fact that the two convicts belong neither to prison, says the director, neither to the Forensic Psychiatry Unit, according to the medical experts. In a situation where their mental capacity was diminished, not lacking, they find themselves in the grey zone where neither of the two institutions can adequately and comprehensively take care of their being. Hence, according to the prison director, the grey zone of diminished mental capacity, where convicts still need to serve their sentence yet in practice they require medical treatment and attentive care, could be viewed as another main challenge identified, faced by everyone involved. Her concerns were expressed in the following quote:

Because these are, I will say, people who we assess as not fit for prison, the forensics assesses that the treatment is complete and they are not even fit for forensics, they have to serve their sentence and so we are in a vicious circle of what to do with them and how to deal with them, I will say, professionally. And that they are safely looked after.[122]

Process of identification of disability

According to the prosecutor, although ZKP does not explicitly provide for the determination of the psychosocial and/or intellectual handicap of the accused in the general sense of the word, the justice system does identify persons with disabilities, as postulated in Article 256 ZKP. She pointed out that psychiatric examination shall be ordered from reasons of mental deficiency or impaired faculties due to permanent or serious mental disorder, or if there is a serious doubt as to whether the state of mind of the defendant renders them unfit to take part in criminal proceedings. Summarizing the law, the prosecutor pointed out that it is the psychiatric expert who determines the defendant's disorder or impairment and the possibility of him being able to stand a trial.

As per experience of the judge, intellectual and psychosocial disabilities are sometimes identified in the investigation phase and sometimes, but rarely, at the court, during the hearings. Sometimes they are also recognized during the police procedure, according to them. Once disability is recognized, an expert is appointed immediately for evaluation.

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

02 Criminal justice professionals' experiences

She also noted, however, that no standard procedure is used to assess defendants for disability. Regarding the question on the electronic case management system, she stated that no such comprehensive system exists in Slovenia, what is available is rather limited and not optimal - in theory, some of the information about defendants could get lost as the case proceeds from one stage to the other. In relation to the system, bureaucracy is time consuming and it takes time to enter some of the data from the physical files to the electronic system. More administrative support in that regard would optimize the work, she said.

>> Consequences of assessments

According to the prosecutor, if the court, with the help of a psychiatric expert, establishes that the defendant was not fully in charge of his faculties when committing a criminal offense, they are not rendered guilty of a crime.[123] She reiterated the law saying that assessment may also lead someone to undergo a compulsory psychiatric treatment either in a medical institution or at liberty, if the relevant conditions of Criminal Code are met.[124]

Regarding the placement of PWDs in institutions after the assessment, the judge pointed out that minors are sometimes placed in a forensic department together with adults due to the lack of a specialized forensic department for minors in Slovenia. In fact, there is only one forensic department in Slovenia, namely in Maribor.

According to the prison director, expert opinion which includes the assessment is sometimes not delivered to the prison together with other documentation, and has to be requested by the office from the court.

>> Information about accommodations

Regarding the granting of accommodations, the attorney said she can request them but then it is up to an individual judge to grant it. A request by the defendant, however, is not necessary. The difficulty arises if the judge is of the opinion that the attorney and her client only try to stall the proceedings by making a request for accommodations. Speaking from her own experience, it is not too difficult to be granted accommodations that are commonly applied in legal proceedings, however it is more difficult to get approved those that are not applied so often.

123 Insanity defense, Article 28 of the Criminal Code

124 Article 70.a and 70.b of the Criminal Code

EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

02 Criminal justice professionals' experiences

She is not aware of any kind of a unified system of disability recognition that would ensure application of relevant measures and accommodations in a systematic way. Sometimes disabilities and measures are also already established by the police or the prosecutor, as she sees it from the file.

>> Use of force or coercion

In providing the answer, the prosecutor restated the law saying that no force, threat or other similar means of coercion may be used against the defendant in order to obtain statements from them.

Provision of procedural accommodations

>> Right to information

Just like any other defendant, defendants with disabilities first receive information about their rights from the police or the investigative judge in the pre-trial proceedings, explained the prosecutor interviewed. For those for whom it was found that they have psychosocial and/or intellectual disabilities, information is provided orally, using appropriate adaptations to communication. Deriving from the law, the prosecutor stated that the same goes for provision of information during the trial, provided by the criminal court. Should the defendant not be informed of their rights properly and fully, evidence obtained via examination shall be excluded.

Furthermore, there are two important procedural guarantees that enable people with intellectual and psychosocial disabilities to understand the situation: the obligation to inform the person in a language they understand and the right to a defence counsel, explains the prosecutor. Regarding the former, the prosecutor referred to Article 4(5) of ZKP, which stipulates that persons deprived of freedom have to be informed of their rights in writing, in their mother tongues “or in a language they understand” which, according to the prosecutor, can be understood more broadly. The prosecutor also pointed out that procedural accommodations are most effectively guaranteed in the actual conduct of state authorities, if they carry out their

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actions consistently, on the basis of law, and if they use appropriate means of communication in pre-trial and trial proceedings. Regarding detention, the prosecutor also noted the possibility of using simpler language (less legal terminology) in issuing detention orders to the defendants, which means adaptation of communication to defendants with disabilities.

Additionally, the prosecutor noted that information provided is currently not compatible with assistive technology used by the users.

According to the attorney, some of the information regarding rights of defendants is handed out at the court by means of information papers, however most of it is communicated orally. The same was confirmed by the judge. She also added that, according to her, everyone involved in the criminal proceeding has the responsibility to equip the defendants with information about the course of procedures and their rights - the police, the court and the public prosecutor's office.

>> Right to interpretation and communication support – general

According to the prosecutor, information that goes beyond the above-mentioned instruction on the defendant's rights (provided by police, investigative judge, court workers) and legal assistance is primarily provided by the defendant's defence counsel. The judge was also of the opinion that it is on the defence counsel to assist PWDs individually with information. In relation to the provision of information, the attorney additionally stressed that although it is on the police to provide defendants with information, and explain to them what will happen, she, as a judge, would still always check with the defendant how much they really understood. Sometimes information needs to be repeated multiple times, also at the court, she said. The judge also pointed out that adaptations to the way of speaking and conveying information, and repetition as well as simplification of information, is also needed in cases when people experience high levels of stress. Hence, adaptations may be de facto required even in cases that do not involve a disability per se.

The judge also pointed out the general spirit of the use of law, namely that if legislation does not prescribe certain accommodations as explicitly obligatory, actions in this regard will not take place in practice.

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>> Right to interpretation and communication support – questioning

In the opinion of the attorney, communication support is generally ensured, so that defendants understand information communicated during proceedings. The judge also stated that communication support is realised by means of talking slower, taking more time in communication and having patience during the course of proceedings.

>> Requests for and offers of accommodations

Twice throughout the interview the prosecutor stated that the decision on procedural accommodations, as stipulated in ZKP and KZ-1, as well as the way in which relevant information is conveyed to the defendant, is best to be left at the discretion of law enforcement bodies and judicial authorities, and their individual assessment. According to her, legal guarantees are *inter alia* realised through the actual conduct of people within the law enforcement and judicial authorities, which is, in her opinion, the most appropriate approach, since in this way proceedings can be individually adapted to both the nature as well as intensity of the psychosocial and/or intellectual handicap of each defendant. Hence, according to her, recognizing the need for accommodations on an individual basis is, generally speaking, the most important. Furthermore, procedural guarantees are most *effectively* implemented if the authorities carry out their actions consistently and on the basis of the law, and by using appropriate means of communication, despite the fact that a (pre-)criminal procedure is aimed at prosecuting potential offenders.

According to the attorney, who normally takes up cases involving PWDs via the obligatory criminal defence scheme, the provision of a defence counsel to people who are not capable of representing themselves, could already in itself be considered as an accommodation which is provided by the criminal justice system and ensured *ex officio*.

In the context of accommodations, one shall also consider the period following the conviction of a defendant. In that regard, and as the situation has already been illustrated above, the prison director noted that the circumstances of the prison, at least the way it is now, can not accommodate the special needs people with intellectual and psychosocial disabilities.

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“So, the problem is that we, as an institution, are somehow not adapted, or we are not able to provide, I will say, in a way, the proper treatment that they need, the proper setting, the safe imprisonment, both for them and for everybody else.”[125]

According to the prison director, in the situation they find themselves the prison administration is doing everything they can to ensure an appropriate environment for the two defendants, considering the given context:

“Now, in these specific cases, as Andreja said, these measures are even more specific. Every week we have an expert group, that is to say, where the security department meets, where the education department meets, where they check on a weekly basis whether the measures are appropriate, whether there is a need to relax something, whether there is a need to add something. What is really essential here is that we communicate with each other.”[126]

>> Access to a lawyer

Regarding access to a lawyer when in prison, accommodations are provided so that access is ensured. According to the prison leader:

“Now, in principle, depending on the security assessment, they could in principle go for the “designated” exits also themselves. If, for example, a person needs a lawyer, but the lawyer is not able to come, or if he or she needs to attend some other hearing, say at the Association for Nonviolent Communication, wherever, then that person can go out on his or her own, even from a closed prison regime. In open and semi-open areas, they go alone anyway. If there are any such acute situations, they are probably also taken, accompanied by judicial police officers, although there is a staffing aspect here, how much we are able to do at the time.”[127]

If needed, legal support in the prison is also provided by the prison director, who is a lawyer, according to her education, and another employee also with a background in law.

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Insanity defence

The attorney confirmed that, as stated in the law, information about the decision not to hold someone criminally liable due to him lacking mental capacities is communicated to a defendant in a due way. According to her, defendants are commonly not present in proceedings as they are usually already placed in one of the institutions under detention. The attorney visits them there and, sometimes together with an expert employee, updates them with information on the case.

According to the judge, there are two ways in which disability may act as a circumstance in court proceedings, from the defendants' side - some may hide it, due to the stigma, and some may be telling of their disability with the hope of lowering their sentence. The judge also pointed out that in cases where psychosocial and intellectual disabilities are involved, or could be involved, the meaning of confession about the crime is taken with particular care, especially as the disability could have potentially influenced it.

Attitudes and training / awareness

Regarding training, the attorney pointed out that professionals, particularly attorneys, do not have adequate educational resources in the field of disability. Much more could be done in that respect, providing attorneys with learning modules on the topics such as communication skills, recognition of different types of disabilities and their manifestations. Additionally, she pointed out that more cooperation could take place between attorneys, police and the judiciary (joint training), to see what obstacles each experiences and how could those be overcome in a joint manner. At the same time she noted that such training programs are commonly not mandatory and that it is up to each attorney to decide how they would like to perform their work and represent their clients - viewing the case just as another one or supporting their clients in other ways too. Similarly, trainings are not obligatory for the judges, with the lack of interest in such trainings being a huge problem, according to the judge. She also mentioned that some judges claim that such different trainings could have an undesirable influence on their impartiality at the court.

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In addition to raising awareness about the rights of PWDs under CRPD, the attorney was of the opinion that an insight into the needs of PWDs from the professionals working in the field of disability would be even more useful and appreciated by the legal professionals.

Regarding the attitude and awareness, it is relevant to also share the opinion of the prosecutor. According to her:

“[u]nderstanding the needs of PWDs is part of the general awareness of every person in society who, in his or her professional role, can also contribute to their recognition, so that equality for persons with disabilities is consistently implemented in all spheres of society, including in legal proceedings. In this respect, awareness-raising about legal documents safeguarding the rights of PWDs is the first step towards understanding their situation and needs in society.”[128]

Hence, according to her, while the rights of PWDs are already protected in the relevant law, it is the awareness raising that is lacking. Raising awareness about the rights would also enable the rights to be realised. However, the attorney's overall impression about the knowledge of the rights of PWDs by professionals was that the level of knowledge is satisfying and that currently that is not an issue.

As to the attitudes, the attorney pointed out that people with intellectual and psychosocial disabilities can be perceived as “additional work”, requiring more time during proceedings and the need to educate oneself on liability in cases where the defendant lacked mental capacity at the time they committed the crime. The judge also voiced out the overall negative view of PWDs by the criminal justice professionals, reminding of how much resistance there was from the side of the judiciary when victims of crime got more standing in the Slovenian criminal law after the implementation of the Victims Rights Directive. The judge also pointed out that in the Slovenian legal system the study of law does not teach the practitioners (judges, prosecutors ...) of the ways in which specificities of individual persons can be addressed during criminal proceedings.

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Best practices

According to the prosecutor, good practices and awareness-raising programmes exist in Slovenia, as information on situations faced by PWDs in the current system is publicly provided. Information is provided by associations working in the field of disability and the Ombudsman. According to her, the national Disability Action Programme 2020 - 2023 also concerns desired legislative changes, which also represents a positive practice. The prosecutor, however, did not specify further what those legislative changes would be.

Main recommendations

According to the prosecutor, Slovenian criminal law ensures equal treatment and procedural safeguards in criminal proceedings for all defendants. Based on that she recommended to first analyse whether persons with intellectual and psychosocial disabilities are in fact deprived of their right to justice, prior to developing new measures. Furthermore, she made a claim that insofar as the authorities, in applying provisions already built into the criminal procedure, derive their actions from the purpose of the provisions, they can overcome, to a sufficiently relevant extent, the difficulties faced by persons with psychosocial and intellectual handicaps or disabilities. A similar view was given by the attorney, stressing that a lot can already be done within the current framework of the Slovenian criminal law, if the provisions are read and used from the human rights perspective and on the basis of procedural principles. Differently, the criminal court judge claimed that although more could be in any case done by the criminal justice professionals (judiciary, prosecutors, judges and attorneys) in the justice current system,

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“IF THIS WERE NOT WORKING, AND I THINK IT IS NOT, THEN THE LEGISLATION SHOULD CHANGE. AS IT WAS WITH THE VICTIMS, UNTIL THE LAW CHANGED, NOTHING CHANGED, EVEN THOUGH THE LEGISLATION ENABLED MOST OF WHAT WAS AFTERWARDS PRESCRIBED.”[129]

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It would also be useful to set up support services for lawyers and other legal professionals to equip them with information on disability. Furthermore, the attorney pointed out the option of a more multidisciplinary approach to handling cases concerning disability and cooperation. The criminal court judge also proposed training for judiciary and attorneys.

The judge also suggested that a support service for defendants could be established, with expertise in special protection needs, accommodations and disabilities - just like the one that exists for victims.

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In order to obtain information on access to justice for persons with intellectual and psychosocial disabilities we conducted interviews with the Deputy Human Rights Ombudsman, social worker at an NGO working in the field of disability as well as an employee of the Victim Support Service of the District Court of Ljubljana.

Experiences, challenges and areas of improvement identified

The social worker pointed out three barriers or challenges generally faced by PWDs, whether they are victims of crime or defendants. She pointed out the lack of access to information in practice, lack of direct involvement of PWDs in legal proceedings and the lack of individual consideration of those persons by means of one-on-one, individual work with them.

>> Equality Perceptions

According to the deputy ombudsman, defendants with disabilities are in practice not treated on an equal basis as other citizens. For them, there is no systemic provision of support and assistance, according to him. Regarding the question of equal treatment, the social worker pointed out that in any kind of process people with disabilities require individual work, to work with them one-on-one. According to her,

“whether it is the perpetrator or if they are involved in proceedings in any other way, they tend to really need more time to do that work, which would also empower them to recognise some of the patterns of their behaviour and then guide them further”.

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In that sense, they should not be treated as other citizens but provided with specific accommodations.

>> Complaints

Neither the social worker from NGO Društvo Vizija nor the Deputy Ombudsman would know of any major case involving access to justice for defendants with intellectual or psychosocial disabilities. While the former, in the context of their work with victims, has not had any direct contact with defendants, the latter only noted one petition recently submitted to them, namely by the advocate of the rights of people with mental health issues.[130] They also know of a petition submitted by a mother of a child with intellectual disabilities lodged some time ago but have not noted any other petition to the Ombudsman's office regarding access to justice for defendants with intellectual or psychosocial disabilities. According to the deputy ombudsman, "similarly to the case of victims, there are no such initiatives before the Ombudsman, and if there are, they come from the relatives. There are practically no such initiatives, which does not mean that the situation in this area is fine. We are more afraid that these persons do not know how to make use of this opportunity or to take care of themselves, of their rights." On this occasion he also stressed that the Ombudsman's office intends to address those topics in future, via the Centre for human rights operating under its auspice as, inter alia, research and education body.

Procedural accommodations

>> Accessible information

As mentioned above, according to the social worker from the NGO, access to information and generally to the justice system is one of the main obstacles for persons with disabilities, even more so for those with intellectual or psychosocial impairments, as provision of information in an easy-to-read form is unavailable. Hence, they are not provided with accessible and understandable information directly. While the Ministry of justice has issued informative

130 The advocate reported about the case involving a person who awaited police officers naked in their home, raising the question of whether the person will be adequately taken care of, since the person is now supposedly accommodated in prison. The Ombudsman's office contacted their lawyer and will visit him shortly.

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brochures on proceedings and rights of those involved in a case, information is accessible to social workers and volunteers working with these people and not to persons themselves, says the interviewee. She also stated that the extent to which defendants with disabilities are provided information is most probably the same as the extent to which victims with disabilities are.

Regarding provision of information, the deputy ombudsman pointed out that the issue lies in “identifying these needs, assessing what help they need and who needs help”. He noted that the Criminal proceedings act (ZKP) does not provide for such evaluation and so no protocol has been set up. While ZKP does not prohibit assistance and accommodations, it also does not set up a mechanism that would legally require those considerations, according to him. The deputy agrees that some theoreticians and academics, who claim that ZKP already provides adequate protection to people with disabilities, interpret the act more broadly than it is commonly interpreted or used in practice.

Regarding accommodations, the psychologist said that she is aware of some procedural accommodations regarding information but that it is doubtful to what extent lawyers are trained to convey those in an adapted way.

“Yes, in one case I heard that the expert made some recommendations that there should be shorter hearings, that someone should properly, not that she will not be able to understand everything that is going on, that she should have someone, someone who can explain it to her, help her, in brackets it said a lawyer, now what lawyers are capable of dealing with such a population is again a question, so here, they just put these people in a proceeding and just issue a judgement.”[131]

>> Support services

The social worker from the NGO has not named any support service focusing specifically on defendants with disabilities involved in court proceedings. As stated by the social worker, there is a case manager at the Centre for Social Work assigned to work with the perpetrator individually, as part of social first aid for perpetrators of violence. Regarding information about

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the case, he is usually the one most empowered to aid the defendant with information, according to her. However, as to the knowledge of the social worker interviewed, there is no support service at the Centre for Social Work that would specialise in working with persons with disabilities – either defendants or victims.

The social worker also recommended the institution of a public office or an independent NGO that would focus solely on provision of information to victims as well as perpetrators, as an improvement in the field. According to the interviewee, the benefit of an NGO providing information would be that the point of first contact would not be a public body, towards which particularly defendants might feel aversion, but rather a non-public association. Such a body would also be helpful for associations working with people with disabilities and others (e.g. family members), to receive information on legal proceedings, the rights of people with disabilities, which lawyers could be recruited for legal aid.

Similarly, the deputy ombudsman has not identified any support service that would exist for defendants with disabilities to obtain access to legal aid, information about case and proceedings or in terms of communication and psychological support. There is, however, a systemic possibility provided for in ZKP, namely the appointment of a defence counsel ex officio if a person is unable to defend himself successfully, as stipulated in Article 70., as pointed out by deputy. Yet, the deputy also noted that although a person enjoys the legal right to request a defence lawyer, it is unknown to them how these requests are made, whether they are made and how they are dealt with. Apart from the Victim Support Service offering aid to victims of crime, no similar service exists for defendants, states the deputy. According to the deputy, “there is no information and adaptation service, apart from the information that every person who has been deprived of his or her liberty should already receive from a police officer.” Regarding legal aid, he also pointed out Article 4 of ZKP, which ensures to some of the suspects deprived of liberty the right to a lawyer for reasons of fairness. However, according to him, the provision has only been relied upon four times, in four cases in the past year. Hence, according to him,

“WHILE THE POSSIBILITY OF OBTAINING LEGAL AID FOR REASONS OF FAIRNESS IS POSSIBLE IN LAW, IT IS LARGELY UNUSED IN PRACTICE.”[132]

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The psychologist noted that while some support is offered to PWDs in prison, in such cases prisons are not the appropriate institution for the support needed:

"We can't lock them up somewhere and they are completely without everything. In fact, they need constant attention, we talk to them, we talk to them a lot more, not that we are engaged, but there are no activities available for this population. Or for somebody to talk to them."[133]

>> Identification of disability

The social worker did not encounter any situation in which disability would be confused with uncooperative behaviour or considered suspicion, nor has the Deputy Ombudsman. Regarding prejudices, the social worker instead pointed out that rather than disability being confused with uncooperative behaviour or considered suspicious, people with disabilities are oftentimes not even given the possibility to participate in proceedings in the first place. "Automatically she is assigned a defence counsel, rather than conferring on her the right to self-representation", she explains.

According to the psychologist, identification of disability in prison takes place in the following way:

"Yes, we do, in fact, when we admit people here, we do an assessment from all aspects and profiles, we do all the interviews, the initial interviews, with those who are new arrivals, and also with those who are returning from, say, psychiatry, we do again a new, new assessment. So that we see what state the person is in. Purely from a security point of view, from a psychological point of view. That is to say, we interview and then we also follow up with people who may be foreseeing some risks. Whether, I don't know, there should be regular monitoring, whether just increased vigilance is needed, whether we just inform each other more about what has been noticed."[134]

The grey zone in which PWDs with "diminished mental capacities" find themselves can also be related to the issue of properly identifying disability beforehand, which is not always such a clear and straightforward process, with clear outcomes as to where the convicts shall be allocated.

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The inability to designate a person to either a prison or an institution for compulsory psychiatric treatment, as part of their sentence, was pointed out by the psychologist in relation to the above viewed PWDs:

“They are not really people with a mental disorder where psychiatric treatment would be a reasonable measure, which is why they are often sentenced to imprisonment, but they are not able to stay in prison, because we are not a social welfare institution.”[135]

>> Awareness and attitudes

The social worker at the NGO did not know of any social workers or psychologists that would work in the justice system (only at the Centre for Social Work). According to her, the area is in that sense very poorly covered and deems it a good improvement to the system to “also have a psychologist in the justice system, a social worker, who would offer help to those who also come to court - whoever that may be.”

Regarding lack of knowledge of the rights, the social worker emphasised again the lack of the primary right of self-representation as a possibility given to persons with disabilities involved in criminal proceedings in the first place. Another issue pointed out was the lack of knowledge of which lawyers have the legal expertise in representing persons with disabilities in court proceedings (e.g. when signing up for legal help). The psychologist also noted that prison workers are probably also not as professionally trained as they are in educational and care institutions regarding disability.

Best practices

The social worker, working predominantly with victims of crime with disabilities, did not know of any good practice in the field. The deputy ombudsman pointed out the Mental health days educational event that was launched on the initiative of the Ombudsman's office and has been relatively well attended (200-300 participants).[136] The event is both an educational activity as well as a networking event as participants from various disciplines (lawyers, courts, prosecutors, institutions) come together. He also mentioned a research activity conducted by the NGO Peace

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institute on the topic recently. The deputy ombudsman also would not know of any association specialised in providing legal aid to persons with psychosocial and intellectual disabilities.

Main Recommendations

One of the recommendations derived from the interviews held with representatives of the NGOs, human rights and support service sector is **to better equip PWDs with accessible information**. Whether one is a victim of crime or a defendant, according to the interviewee working in the NGO sector, one should receive information in an easy and understandable language. That means, according to her, to receive information about one's rights, to which institution or service one can turn for help, how the proceedings will look like, and what, for example, awaits someone for whom detention or compulsory psychiatric treatment have been ordered. **Working with individuals one-on-one and adjusting the pace** of a conversation, as well as, consequently, proceedings, is also of utmost importance to ensure that PWDs are well informed and can participate actively in proceedings.

The deputy ombudsman also recommended **improving access to information**, as well as **training of the relevant personnel** at criminal justice authorities, including police, to identify needs of PWDs, and to promptly signpost them to the relevant support services. In view of the authors, as official support services only exist for victims and not defendants, and even that only in certain district courts, **new legal services offering support could be established**. Furthermore, the deputy ombudsman recommended also to set up a uniform system of assessment and evaluation of individual's needs and condition, from the first contact with official authorities onwards. According to him, there is generally a lot of room for improvement in the area - the more such topics are discussed, the more people as well as institutions will realise the importance and needs for improvements, he says. Overall, the system should more generally be **more geared towards providing support to those involved** in legal proceedings, whether it is a victim, a defendant or a witness. As derived from his statement, the possibility to rely upon Article 4 of ZKP, which ensures legal representation for reasons of fairness could be used more often.

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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 Slovenia. 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 analyzed:

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

Diminished legal capacity in practice. Lack of full participation of PWDs in criminal proceedings, in some cases due to placing them under guardianship (particularly those with intellectual and psychosocial disabilities). Instead of supporting PWDs in legal proceedings and empowering them to participate, guardians can work as substitutes, taking over their business and procedure-related matters.. In their concluding observations the UN Committee on the Rights of Persons with Disabilities also voiced the same concern regarding guardianship.

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

Lack of identification of disability from the very first contact with official authorities.

Sometimes, due to stigma and personal circumstances of a defendant, disability of a person will not be identified from the very first start of proceedings, already in the pre-trial phase. One of the barriers regarding procedural accommodations is thus the inability of the system to recognize disability and promptly provide procedural accommodations needed. There is no unified system in place which would enable authorities to carefully evaluate individuals for potential disabilities or other relevant circumstances (e.g. high levels of stress) which would require procedural accommodations to be applied (adjusting the pace, adaptation of expert legal language to the more accessible version ...).

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Additional types of procedural accommodations. Furthermore, while accommodations are to some extent already provided, there is still room for improvement as to accommodations listed in section 3.1.2.2 - Adapting procedures for hearings.

Discretion of a judge to grant procedural accommodations. When it comes to procedural adjustments and modifications, it is up to an individual judge to grant those, which can also be viewed as a discretionary barrier.

Treatment of PWDs for whom neither the prison nor the psychiatric unit are appropriate. The barrier is the gray zone in which persons with mild intellectual and psychosocial disabilities find themselves, where neither the prison nor the forensic unit for a psychiatric treatment are appropriate for their accommodation and treatment. Procedural accommodations for PWDs accused of crimes, prisoners and detainees are ensured by prison administration and other institutions to the extent possible within their capacity - in terms of legal (institutional), spatial (adaptations as to the premises) and human resources (staff).

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.

Incomplete understanding of the situation by the defendant, particularly why the undertaking of a psychiatric treatment is necessary in their case.

Lack of alternative provision of information in an easy-to-read language for PWDs and others, from the first interaction with official authorities (the police) onward. Regarding the right to information, PWDs are equally to others informed of their rights and other relevant information regarding proceedings first by the police. Furthermore, information is provided to them in an individualized way, one on one and more substantively by their defense counsel.

Unknowing of procedural accommodations available. Some of the procedural accommodations may be unknown to the defendant, especially if they are not represented by a defense counsel, which renders them unknowing of the procedural possibilities possibly relevant to them and their individual needs.

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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.

Lack of an official support service for defendants (and witnesses), with particular expertise in the work and communication with PWDs. The possibility to make use of such service at one's own motion, rather than upon a referral by the judge, would be appreciated for the defendants and others to find the service more tailored to their needs and circumstance. As no such office for communication support seems to exist for defendants, they could be viewed as being in a disadvantaged situation.

The law does not foresee any intermediaries or facilitators other than guardians (of which role is questionable) or defense counsels. For victims of crime, criminal legislation allows victims to have people of trust present during the course of proceedings, for support, however this does not seem to hold true, or at least not so expressly for defendants. Accommodation in terms of having the possibility to be accompanied by a person of trust would be welcoming for all defendants, but seemingly mostly for PWDs.

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

Free legal aid is premised on financial circumstances of a defendant or their family. Although exceptional legal aid can be granted to PWDs in some circumstances, the criteria and financial threshold are still set rather high.

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.

Lack of expertise of lawyers, in this case defence counsels, about the needs, barriers and circumstances experienced by PWDs. Communication support can be provided by defense counsels of PWDs, but the issue is the lack of professional training for legal representatives, and other criminal justice professionals for that matter, in representing people with such circumstances.

CONCLUSIONS AND RECOMMENDATIONS

02 Recommendations

In the following we put forward some of the core recommendations for better participation of PWDs in criminal proceedings, particularly those with intellectual and psychosocial disabilities. We outline some of the points of action which directly correspond with the above listed barriers while also put forward some other general recommendations in that regard.

Structural recommendations

It shall be reviewed if an individual judge alone is in the best position to decide on procedural accommodations and referrals to the support office (in case of a victim), or shall this be done by a panel, including psychiatric experts.

Additional types of procedural accommodations in law. Furthermore, although accommodations are to certain extent already provided for in law and in practice, there is still room for improvement. Additional types of procedural accommodations listed in section 3.1.2.2 - Adapting procedures for hearings could be adapted in law and put into practice.

Setting up a programme in educational care institutions devoted to people with intellectual and psychosocial disabilities with a prison sentence. A point of action for persons with “diminished mental capacities” would be to accommodate them in an educational care institution (“vzgojno varstveni zavod”), rather than in prisons, should the security measure of a psychiatric treatment no longer be needed. Imprisonment should be aimed at rehabilitation (through conversation, occupational therapy, etc.) and an environment that is safe and supportive for them as well as the people around. Accommodations and attention in that regard would contribute to them better integrating in society after the imprisonment

Process recommendations

Attentive one-on-one work and adjustments as to the pace of proceedings. The two procedural guarantees were pointed out as the most important for ensuring that the defendant with disabilities is well aware of the proceedings and can follow them.

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Providing a list of possible procedural accommodations. The issue of unknowing procedural adjustments could be addressed by providing a list of all the possible ones that PWDs or their defense counsels (or a lawyer) could request during criminal proceedings, so as to equip them with information regarding all the legal possibilities upfront.

Others

Training of criminal justice professionals and other personnel about the particular rights and needs of PWDs. So as to ensure a better environment and involvement of PWDs in criminal proceedings, educating legal professionals and **drawing up a list of legal representatives with expertise in disability**, who are knowledgeable of the rights, problems and barriers PWDs face, would be beneficial for PWDs as they would have the chance to understand the criminal justice system better but the also for the justice professionals to get to know them better. The training of staff would be especially important for persons with intellectual and psychosocial disabilities, as in their case more attention to individual needs and communication support is often needed.

Involving PWDs in debates on how to improve the criminal justice system. Generally speaking PWDs should be consulted and involved in the debate on how to improve the criminal justice system. That would enable them to the greatest extent possible to exercise their right to participation not only in criminal proceedings themselves but also in the systemic law making. Furthermore, PWDs should also be consulted and involved in the drawing up of **the next periodical Action programme for Persons with Disabilities**, as it is the core policy paper dictating some of the core areas of their life. In that regard, the next action plan could address the above listed challenges and barriers faced by PWDs in the criminal justice system better, reflecting the actual obstacles they face in criminal proceedings. In that way, the Ministry of Justice would also be involved to a greater extent, together with PWDs, in shaping the disability, criminal or generally legal policy.

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ANNEXES

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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
SI/DPS-DI/F/01	Person with intellectual disabilities	F	/	13'06"		On-site	Accused and sentenced to prison.
SI/DPS-DI/F/02	Person with psychosocial disabilities	F	/	09'11"		On-site	Accused and sentenced to prison.
SI/L/F/03	Lawyer	F	/			On-site	
SI/HR/M/04	Counsel at the Ministry of Justice (Punitive Law and Human Rights Directorate)	M	/	/		On-site	The outcomes of the interview were rather irrelevant because the interviewee had no experience working with PWDs.
SI/P/F/05	Prison leader	F	/	55'02"		On-site	Interview conducted together with the psychologist.
SI/J/F/06	Judge	F	/			On-site	
SI/J/F/07	Prosecutor	F	/	/		On-site	Answers provided in a written form.

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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
SI/S/F/08	Psychologist	F		55'02"		On-site	Interview conducted together with the prison leader.
SI/HR/M/09	National Human Rights Institution	M	/	36'20"		On-site	Due to convenience, the interview concerned two research projects, thus the conversation also considered the position of victims.
SI/HR/F/10	NGO	F	/	20'43"		On-site	
SI/O/F/11	Victim Support Service	F	/	/		On-site	The outcomes of the interview were rather irrelevant because the interviewee had no experience working with PWDs.

* 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.