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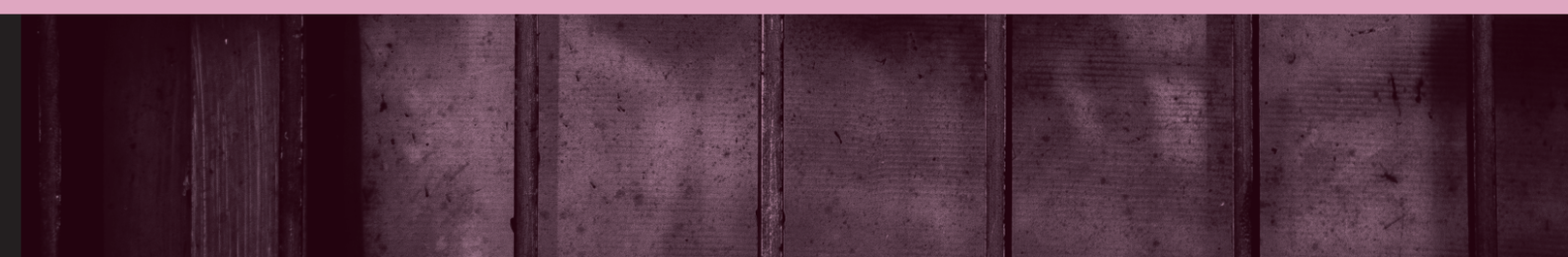
An empirical study of suspects' rights at the investigative stage of the criminal process in nine EU countries

INSIDE POLICE CUSTODY 2



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Contents

1. Introduction

1.1 The nine country study of procedural rights at the early stages of the criminal process

This national report is based on empirical research carried out in Slovenia. It is part of an international project implemented in nine European Union (EU) member states, examining the rights of suspects and accused persons – the right to interpretation and translation, the right to information, and the right of access to a lawyer – as they are applied and experienced in practice at the investigative stage of the criminal process. The research was carried out by partner organisations in the nine countries, co-ordinated by the Irish Council for Civil Liberties (ICCL). The partner organisations are:

- The Ludwig Boltzmann Institute of Human Rights, Austria
- The Bulgarian Helsinki Committee, Bulgaria
- The Hungarian Helsinki committee, Hungary
- Associazione Antigone, Italy
- The Human Rights Monitoring Institute, Lithuania
- The Helsinki Foundation for Human Rights, Poland,
- The Association for the Defence of Human Rights in Romania – the Helsinki Committee, Romania
- The Peace Institute, Slovenia
- Rights International, Spain

The project was primarily funded by the European Commission under an Action Grant, JUST/2015/Action Grants, reference number 4000008627 ‘Inside Police Custody: Application of EU Procedural Rights’. The action grant funded the research in eight countries. Research in the ninth country, Spain, was funded by the Open Society Justice Initiative. The project was co-ordinated by the ICCL on behalf of the Justicia Network.

The primary objective of the project was to measure the practical operation of suspects’ rights at the investigative stage, and to use this evidence to conduct national advocacy directed at improving respect for those rights in practice. It is well established in relation to criminal processes that there is often a significant gap between legal norms and the practical application of those norms. Thus, in addition to establishing and describing the legal norms in the nine countries, the research sought to explore how they operate in practice by conducting

observations in police stations and carrying out interviews with key criminal justice personnel. In this way, the project was designed to contribute knowledge concerning the impact of key aspects of the EU procedural rights roadmap, to identify both good and poor systems, procedures and practices, and to make recommendations, both at the national and EU levels, directed at the improvement of procedural rights at the investigative stage in EU Member States.

Work on the project was carried out between June 2016 and December 2018, although the periods during which fieldwork was carried out varied depending on a range of factors in each country. However, fieldwork in all countries was conducted after the respective transposition dates of the EU Directives concerning the three sets of rights which were the subject of the study (see further section 1.2). In other words, when the fieldwork was carried out, member states should already have introduced the laws, regulations, and administrative provisions necessary to give effect to the respective Directives. Therefore, the project provided a timely opportunity to discover how the actions taken by member states were working in practice, and to make an assessment of whether they complied with the requirements of the respective Directives both in principle and in practice.

The study builds upon earlier research projects examining procedural rights at the investigative stage of the criminal process. In particular, the study sought to adapt the methodology developed for the EU funded project that was published in 2014 as Inside Police Custody: An Empirical Account of Suspects' Rights in Four Jurisdictions (Intersentia, Cambridge, 2014). That study also examined the three sets of rights that are the subject of this study – in England and Wales, France, the Netherlands, and Scotland. However, the fieldwork for that study was carried out before any of the three EU Directives had come into force. A further study, using a similar methodology, was carried out in three non-EU states – Georgia, Moldova and Ukraine – between 2013 and 2016.

As noted earlier, the current project was co-ordinated by the ICCL, and managed by an experienced project management team consisting of representatives from the ICCL and the Open Society Justice Initiative (OSJI), together with the project research consultant, Professor Ed Cape of the University of the West of England, Bristol, UK. Both the OSJI and Professor Cape had been members of the teams that carried out the first Inside Police Custody project, and the subsequent project in Eastern Europe. The first meeting of the whole project team took place in London in September 2016. A two-day fieldwork training course for researchers from all national research teams was held, also in London, in January 2017. The training was designed to acquaint researchers with the processes, methods and research instruments to be used in the fieldwork, and to train them in those methods. A third meeting was held in Brussels in June 2018 to discuss initial results, analysis and plans for national advocacy. The project management team

also held regular telephone conferences with research teams to discuss progress, and any problems arising.

The project consisted of four major elements: desk reviews; empirical research; analysis and report writing; and national advocacy. The first two elements require further explanation.

Desk reviews
National teams were required to research and write desk reviews regarding their national systems. The overall purpose of the desk reviews was to provide a critical, dynamic account of the system and processes in each country in the study, using existing sources of information, in order to provide a context against which data collected during the research study may be understood. The objective was two-fold: firstly, to serve as a baseline concerning the laws, regulations, institutions and procedures relevant to the realisation of suspects' procedural rights in each jurisdiction; and secondly, to equip the country researchers with sufficient contextual knowledge to undertake the empirical work. The desk reviews also included relevant information from existing sources about criminal justice systems and processes using, for example, official and other statistics, official reports and existing research (if any).

Empirical research
Following the method adopted in the Inside Police Custody project, the original plan for the empirical stage of the research consisted of three elements.

Direct observations
In order to observe criminal justice practitioners as they go about their daily routine work, researchers were to be located in a number of police stations, and to accompany a number of lawyers advising clients at police stations. The purpose was to understand the implementation of suspects' rights from multiple perspectives and to gain a deeper insight into practical influences and constraints upon working practices. Researchers were asked to keep a narrative log of their observations.

Interviews
It was planned to conduct semi-structured interviews with a number of police officers and lawyers. In order to enable researchers to secure relevant information and to ask appropriate questions, the interviews were planned to take place after the observation stage of the research was completed. This meant that researchers would be able to probe answers that did not reflect their observations, and gain insights into the motivations that influenced practice. Research teams were provided with interview pro-formas that could be adapted to local circumstances.

Analysis of case pro-formas

Case pro-formas (one for cases observed by researchers when based in police stations, and another for researchers when based with lawyers) were adapted from the Inside Police Custody study with a view to enabling researchers to secure some quantitative data: for example, about the proportion of suspects who sought to exercise their right of access to a lawyer, socio-demographic characteristics of suspects, the time taken for lawyer/client consultations, and the proportion of suspects who exercised their right to silence.

It was anticipated that national research teams would have to adapt the methodology, and the research instruments, to take account of local circumstances. However, some national research teams had to radically revise their research methodology as a result of lack of co-operation, at a political and administrative (that is, relevant government ministries) level, and on the part of the police. Despite the fact that observational research in police stations has been conducted in previous projects in a range of countries with the co-operation of the relevant authorities, that the research was funded by the European Commission, and that assurances were provided regarding the confidentiality of research data (so that no person or location could be identified from any published data, and that research data would be stored securely), agreement for researchers to be based in police stations and/or to accompany lawyers to police stations, was not forthcoming in a number of countries in the study. Whilst access to police stations by researchers was secured in Lithuania, Romania and Slovenia, it was not forthcoming in Austria, Bulgaria, Italy, Hungary and Poland. In Spain, agreement could not be obtained at the national level, but the national research team was able to secure permission to conduct observational research in police stations in the Basque region. Italy may be regarded as a special case. Whilst permission to observe in police stations was not secured, generally suspects are not interviewed by the police following arrest, but appear at an arrest validation hearing where, depending on the procedure adopted, they may be questioned by a judge. Nevertheless, many provisions of the EU Directives apply where a person is arrested and detained, and observations conducted at police stations would have enabled data to have been obtained about implementation of these aspects of the Directives.

In those countries in which observational research could not be carried out, other methods of seeking data about how procedural rights at the investigative stage work in practice were developed and adopted. Such methods included, for example, interviews of arrested detainees in prison awaiting a validation hearing, an enhanced number of interviews of lawyers, interviews of police officers, and interviews of interpreters. Further information about the research methodology adopted in particular countries is provided in the country reports.

The EU Directives require Member States to transmit the text of measures adopted to give effect to the Directives to the Commission, and require the Commission to submit reports to the European Parliament and to the Council assessing the extent to which Member States have taken the necessary measure in order to comply with the Directives. This project, in common with similar research previously conducted, demonstrates that even if legislative and other measures are adopted to give effect to the Directives, it does not follow that the requirement of the Directives are given effect in practice. Even if the provisions of the Directives are faithfully reflected in national legislation and regulations, the nature of the provisions in the Directives is such that effective implementation is reliant on a range of other factors, including financial and other resources, detailed regulation of processes and procedures, and the professional cultures of criminal justice officials and lawyers. The best way of obtaining reliable and comparable data on practical implementation of the Directives, and on the ways in which they are experienced by criminal justice actors, lawyers, and suspects and defendants, is by fieldwork-based research involving observation (including in police stations). A failure by the relevant government ministries, officials and institutions in Member States to facilitate, and to co-operate with, such research will mean that the European Commission, and ultimately the EU itself, will not have an adequate basis for assessing either compliance with, or the effectiveness of, its policies and legislation in this field. Moreover, it will mean that Member States will forgo the opportunity to effectively regulate and improve their criminal justice systems and processes, having particular regard to procedural rights and, ultimately fair trial. This is true for both the EU Directives which are the focus of this research, and for the other Directives adopted under the EU procedural rights roadmap.

1.2 The EU context - the procedural rights roadmap and the EU Directives

In 2009 the EU adopted a ‘roadmap’ of procedural rights in criminal proceedings, with the aim of adopting EU legislation on a range of procedural rights for suspected and accused persons, to be introduced over a number of years. The EU had, over a decade or more, introduced extensive legislation on police, prosecution and judicial co-operation and mutual recognition (most notably, the European Arrest Warrant (EAW)), and it was recognised that this should be matched by measures that would protect the rights of individuals in criminal proceedings and those who are the subject of an EAW. The legislative mechanism to be adopted was the EU Directive, which would require EU member states to introduce legislation, regulations and other measures that ensure that the provisions of the Directive are complied with in domestic law. The Lisbon Treaty enhanced the role of the Court of Justice of the European Union (CJEU), and

it has competence to deal with questions of interpretation of the Treaty and of Directives. In doing so, it must also take account of the principles, rights and freedoms embodied in the Charter of Fundamental Rights of the EU. National courts may, in criminal proceedings, ask the CJEU to give a preliminary ruling on a question of interpretation of a Directive during the currency of a case, and there is an expedited procedure in cases where the accused is in detention. Further, the European Commission has the power to refer a case to the CJEU on the grounds that a member state has failed to fulfil its obligations. A finding that a member state has not brought its national legislation into compliance may result in financial penalties being imposed by the CJEU.

In drafting the Directives, full account was taken of the relevant provisions of the European Convention on Human Rights (ECHR), and of European Court of Human Rights (ECtHR) case law. However, the EU legislation was informed by a concern that the ECHR regime was not sufficiently able to ensure that national authorities comply with their responsibilities to safeguard the procedural rights of suspects and accused. Some of the limitations are practical, in particular the backlog of cases to be dealt with by the ECtHR, leading to lengthy delays in consideration of and judgements in respect of cases taken before it. However, others were systemic. The mechanisms for enforcing ECtHR decisions are relatively weak, and applications can only be made to the court after all domestic avenues of appeal have been exhausted. Of particular significance was the fact that the court considered the procedural rights of suspects and accused within the context of whether, overall, the proceedings were fair. Together with the fact that the court could only consider principles in the context of the fact of cases taken before it, the result has been that whilst the ECtHR has been successful in establishing general minimum standards, it could not develop a comprehensive set of procedural standards, nor general guidelines on how they could or should be implemented.

The EU Directives, together with the enhanced enforcement regime resulting from the Lisbon Treaty, are able to remedy some of these weaknesses and, whilst detailed implementation of the standards is the responsibility of Member States (with, in certain respects, a wide margin of appreciation), the Directives are more comprehensive and more detailed than the ECtHR jurisprudence.

The three Directives that are the subject of the current study are the Directive on the right to interpretation and translation, the Directive on the right to information, and the Directive on the right of access to a lawyer. The provisions of the Directives are briefly described here, and are more fully explored in the relevant sections of the report.

1.3 The national context

The criminal justice system in Slovenia is based on the so-called mixed model that came into existence in the beginning of the 19th century. The procedure has inquisitorial roots but several adversarial elements have been introduced over the centuries. The first Slovenian Criminal Procedure Act (CPA)[1] adopted in 1994, which was heavily based on the previously applicable Yugoslavian Criminal Procedures Act, was clearly inquisitorial as the repressive function of the procedure prevailed over the guarantee function, while the inquisitorial elements prevailed over the adversarial ones. The most important novelty of the 1994 Act comparing to the old Yugoslavian one was, from a systemic point of view, the duty of the police to inform the suspect about his or her rights.[2]

The typical elements that defined the nature of the criminal procedure were: 1) the judges' orientation towards establishing the truth which was seen from the right of the judge to propose and carry out evidence; 2) two-phase composition of the pre-trial phase and 3) ancillary (subordinate) meaning of the criminal procedure.[3] Many of these elements are still visible today, in spite of the fact that numerous changes have been introduced. Namely, over the years the Constitutional Court issued a number of rulings repealing certain provisions of the CPA in order to protect individual rights of defendants from state interventions. The Slovenian legislature followed, and the CPA was already amended thirteen times in the direction of a more adversarial procedure in which the guarantor function of the court would become stronger. Also the role of the investigative judge changed over the time: while the investigative judge used to be responsible for the outcome of the court investigation it is now engaged as a guarantor of individual rights in case when the state prosecutor demands that special surveillance measures are imposed on suspects.[4] Many provisions in CPA also show that the state prosecutor is the key body in the criminal procedure in general. Over the years, through the Constitutional Court decisions and subsequent legislative amendments the role of the state prosecutor has been strengthened to make the criminal proceedings more adversarial.[5]

1 Zakon o kazenskem postopku, Official gazette of the Republic of Slovenia, no. 32/12 – official consolidated text, 47/13, 87/14, 8/16 – decision of the Constitutional Court, 64/16 – decision of the Constitutional Court and 65/16 – decision of the Constitutional Court.

2 Katja Šugman Stubbs, Strukturne spremembe slovenskega kazenskega procesnega prava v zadnjih dvajsetih letih, Zbornik znanstvenih razprav, Letnik 75 (2015) / Volume 75 (2015), p. 131.

3 Katja Šugman Stubbs, Strukturne spremembe slovenskega kazenskega procesnega prava v zadnjih dvajsetih letih, Zbornik znanstvenih razprav, Letnik 75 (2015) / Volume 75 (2015), p. 124.

4 Summarised from the Legal opinion of the Supreme Court of the Republic of Slovenia no. 1/2012. Available at: http://www.sodisce.si/znanje/sodna_praksa/pravna_mnenja_in_stalisca/41039/ (accessed 3 November 2017).

5 Ibid.

The most important two changes in the composition of the criminal procedure took place with the amendments of the CPA of 2011.[6] These two changes – i) introduction of plea-bargaining and ii) introduction of a pre-trial session (Slov. *predobravnavni narok*) – reformed the criminal procedure towards an even more adversarial direction. This completely revised the fundamental principle of the mixed system in which the court had to carry out evidence and lead the whole criminal procedure even in cases when the defendant plead guilty.[7] The policy choice of the Slovenian legislature in these cases was to enable the parties to negotiate an agreement, however, the court continues to have a strong controlling role in the court supervision of the agreement.[8] The court retained the right to check whether the defendant's confession is in line with the evidence in the file, which still reflect the duty of the court to establish the truth.[9] Hence, apparently the Slovenian legislature in spite of introducing plea bargaining into the system, did not chose to depart completely from the mixed model of the criminal justice system.[10]

While it is positive that the role of the investigative judge is increasingly judicial as it has to issue decisions between the two parties in cases of special investigative and surveillance measures, its role remains unclear. Initially they were investigators, while more recently their role has shifted towards a judicial function. The problem is that these two functions are contradictory.[11] This is one of the issues focused on in the current debates, to further limit court investigation.[12] In March 2017 the Slovenian Ministry of Justice prepared new amendments to the CPA that would, among other steps further limit the role of the court investigation. However, the amendments were not successful as, after the veto of the National Council, the National Assembly failed to adopt the law with the absolute majority as required for such cases.

The distinction between the suspect and the accused

The CPA contains definitions of suspects [*osumljenci*], accused persons [*obdolženci*] and defendants [*obtoženci*].[13]

6 Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku – ZKP-K, Official gazette of the Republic of Slovenia no. 91/11 of 14. 11. 2011.

7 Katja Šugman Stubbs, Strukturne spremembe slovenskega kazenskega procesnega prava v zadnjih dvajsetih letih, Zbornik znanstvenih razprav, Letnik 75 (2015) / Volume 75 (2015), p. 134.

8 Ibid., p. 135.

9 Ibid.

10 Ibid.

11 Ibid., p. 137.

12 Ibid., p. 144.

13 Criminal Procedure Act 1994 and subsequent modifications, Article 144

A suspect is a person against whom the competent government agency undertook, before the introduction of criminal proceedings, a specific act or measure because grounds existed to suspect that he or she had committed, or participated in the commission of, a criminal offence. For a person to have the status of a suspect, both conditions need to be fulfilled: (1) that grounds for suspicion exist, that the person had committed a criminal offence; and (2) that the competent authority (usually the police) introduced certain measures against him or her. Legally, the status of all suspects in pretrial proceedings is not the same.[14] Legal guarantees, available to suspects in general, are not available to persons against whom undercover investigative measures are ordered.

An accused person is a person against whom investigation is conducted or against whom the indictment, charge sheet or private charges have been filed. A defendant is a person against whom the indictment has become final.

Criminal procedure

The criminal procedure usually begins with a criminal report which can be lodged by anyone.[15] It should be lodged with the competent state prosecutor.[16] If the complaint is lodged with the court, police or state prosecutor who is not competent for the matter these bodies should accept the report and forward it to the competent state prosecutor.[17]

Broadly speaking, there are three phases of the procedure: 1) police phase; 2) court investigation – the both compose a pre-trial phase; and 3) trial phase. In the past there were debates whether the police phase is part of criminal proceedings at all, or should it be regarded as a separate phase, a pre-procedure phase, as it is not lead by the court.[18] This so-called 'thesis of separation' was weakened by later changes of the CPA. Firstly, by introducing the Miranda warning very early on in the procedure, at the moment of focused investigation, which indicated that the criminal procedure begins before the first action of the judiciary.[19] The 'thesis of separation' was further undermined by introducing the role of the investigating judge as a judge of freedoms already at the preliminary stage of the procedure and allowing certain evidential material collected by the police to be produced as evidence in court.[20]

14 Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p. 299
15 Article 146(1) of the Criminal Procedure Act.
16 Article 147(1) of the Criminal Procedure Act.
17 Article 147(3) of the Criminal Procedure Act.
18 Katja Šugman Stubbs, Strukturne spremembe slovenskega kazenskega procesnega prava v zadnjih dvajsetih letih, Zbornik znanstvenih razprav, Letnik 75 (2015) / Volume 75 (2015), p. 131.
19 Ibid., p.159.
20 Ibid.

Pre-trial phase (Slov. *predhodni postopek*):

1. Police phase (Slov. *predkazenski postopek*): In this phase the role of *dominus litis* (master of the procedure) is held by the state prosecutor. The role of the state prosecutor has changed the most in the recent twenty years. From a relatively passive body it changed into body that is actively directing the course of the procedure and is taking over the role of the party to the proceedings.[21] Based on the criminal report the police starts collecting evidence and information from witnesses and suspects. For the police to start investigating the alleged crime there have to be 'reasons to suspect' that a crime has been committed.[22] For most of their tasks at this stage, the law does not prescribe strict procedural formalities and therefore do not have the probative value of evidence. One of the exemptions is the written record of the police interrogation during which the suspect is represented by an attorney – in which case the record of the interrogation can be used as evidence in court.[23] The police work is directed by the state prosecutor,[24] however, the latter is not a body that would be hierarchically higher than the police. Cooperation between the police and the state prosecutor is defined in the *Decree on the cooperation of the state prosecutorial service, Police and other competent state bodies and institutions in detection and prosecution of perpetrators of criminal offences and operation of specialised and joint investigation teams*.[25] A certain role in the police phase is also played by the investigative judge, when he or she decides upon the special investigative and surveillance measures. If there is no court investigation the pre-trial phase is carried out solely by the state prosecutor in cooperation with the police.

2. Court investigation (Slov. *sodna preiskava*): In this phase the role of *dominus litis* is the held by investigative judge.[26] The purpose of the investigation is to gather evidence needed for a decision whether an indictment should be lodged or the procedure should be terminated, evidence that could not be gathered at the trial or other evidence that would be useful for the criminal procedure.[27]

21 Ibid., p. 138.

22 Article 148(1) of the Criminal Procedure Act.

23 The process of acquiring the suspect's statement without a lawyer present is not considered a police interrogation under the CPA- interrogation can only take place in the presence of the suspect's lawyer. The official note of the suspect's statement in this case cannot be used as evidence in court. To be able to use the suspect's statement in court, a lawyer needs to be present during interrogation.

24 This can be derived from Article 45(1) of the Criminal Procedure Act.

25 Uredba o sodelovanju državnega tožilstva, policije in drugih pristojnih državnih organov in institucij pri odkrivanju in pregonu storilcev kaznivih dejanj ter delovanju specializiranih in skupnih preiskovalnih skupin. Official gazette of the Republic of Slovenia, no. 83/10.

26 Katja Šugman Stubbs, Strukturne spremembe slovenskega kazenskega procesnega prava v zadnjih dvajsetih letih, Zbornik znanstvenih razprav, Letnik 75 (2015) / Volume 75 (2015), p. 125.

27 Article 167(2) of the Criminal Procedure Act.

The court investigation is carried out by an investigative judge. The court investigation begins at the demand of the prosecutor, when the investigative judge, after carrying out a hearing of the suspect, issues a decision on the introduction of court investigation.[28] The court investigation is carried out in cases when there is 'well-grounded suspicion' that a person has committed a crime.[29] The investigating judge may consent to the motion of the public prosecutor that no investigation be conducted if evidence gathered about the criminal offence and the perpetrator provide sufficient ground for filing an indictment.[30] If the prosecutor concluded a plea bargaining agreement with the defendant or in case of a criminal offence punishable under law by imprisonment of up to eight years the public prosecutor may file the indictment without the investigating judge's consent.[31] After the court investigation is completed, the investigative judge send the matter back to the state prosecutor who decides whether to file an indictment.[32]

Court phase

3. Trial: The trial begins with an indictment lodged by the state prosecutor to the competent criminal court. In addition the indictment may also be filed by private plaintiff or by the victim of the crime under the conditions provided for by the law.[33] The content of the indictment defines the matter that will be examined by the court at the public hearings as it defines the defendant and the crime.[34] The defendant has the right to file an appeal against the indictment in eight days since the indictment was served to him/her.[35] Upon the appeal the court may terminate the procedure and dismiss the indictment in cases defined by law,[36] or reject the appeal as unfounded and continues with the trial.[37] After the indictment becomes final the court calls a pre-trial session/hearing (Slovenian: *predobravnavni narok* – novelty in the proceedings since 2011) where the defendant pleads guilty or not guilty.[38] This is the first moment where a classic triangle of the court and two parties is being formed and that has to be attended by both parties.[39] If the defendant pleads not guilty the court carries out the whole trial phase with public hearings where the evidence is presented. This session/hearing is also a moment where the parties have to reveal all evidence and propose new evidence,

28 Article 169(2) of the Criminal Procedure Act.
29 Article 167(1) of the Criminal Procedure Act.
30 Article 170(1) of the Criminal Procedure Act.
31 Article 170(6) of the Criminal Procedure Act.
32 Article 184(2) of the Criminal Procedure Act.
33 Article 268(1) of the Criminal Procedure Act.
34 Article 269(1) of the Criminal Procedure Act.
35 Article 274 of the Criminal Procedure Act.
36 Articles 276-278 of the Criminal Procedure Act.
37 Article 280(1) of the Criminal Procedure Act.
38 Article 285.a(1) of the Criminal Procedure Act.
39 Katja Šugman Stubbs, Strukturne spremembe slovenskega kazenskega procesnega prava v zadnjih dvajsetih letih, Zbornik znanstvenih razprav, Letnik 75 (2015) / Volume 75 (2015), p. 145.

demand exclusion of evidence and propose modifications of the trial. The pre-trial hearing is an attempt of the legislator to activate the parties even before the trial begins to ensure a shorter and more focused procedure.[40]

During the trial the judge who is presiding the panel leads the public hearings and gives word to the prosecutor, the defendant(s), the victim of the crime, legal representatives, defence lawyers, expert witnesses and panel members, and poses questions to defendants, witnesses and expert witnesses.[41] The judge presiding the panel has a duty to take care that the matter is clarified from all aspects and rejects all proposals that would delay the procedure without contributing to the clarification of the matter.[42]

Police detention

In criminal cases, according to Article 157 (1) of the CPA, the police may deprive a person of freedom if any of the conditions for pre-trial detention from Article 201 (1) of CPA or 432 (1) of CPA are met. In this case the police must bring the suspect before investigative judge without delay.[43]

Exceptionally, police officers may deprive a person of freedom and detain him or her if there are reasonable grounds for suspicion that he or she has committed a criminal offence for which the perpetrator is prosecuted ex officio, if detention is necessary for identification, the checking of an alibi, the collecting of information and items of evidence for the criminal offence in question, and if and if at the same time some of the conditions for pre-trial detention are met.[44] These conditions are:

- if the suspect is hiding, if it is not possible to establish the identity of the suspect or if there are other circumstances pointing at the danger that the suspect might escape;
- if there is a danger that the suspect might destroy the traces of the crime;
- if the weight, the manner of commission of the crime and the circumstances of the crime and the personal characteristics, previous life, environment or the living conditions or other circumstances of the suspect indicate that there is a danger that the crime will be repeated, finish the attempted crime or commit another crime as threatened by the suspect.

40 Ibid.

41 Article 299(1) of the Criminal Procedure Act.

42 Article 299(2) of the Criminal Procedure Act.

43 Article 157(1) of Criminal Procedure Act.

44 Article 157 (2) of the Criminal Procedure Act in connection with Article 201 of the Criminal Procedure Act which defines conditions for pre-trial detention.

According to Article 157 (5) of PTPA police detention in criminal cases may last for a maximum of 48 hours. After the expiration of 48 hours the police must release the person or bring the person to the investigative judge in line with Article 157 (1) of PTPA. If criminal detention lasts for more than 6 hours, the police must issue a written decision and inform the detainee on the reasons for detention and instruct them that they have the right to look into the documents related to detention.[45]

Police detention can also be triggered in the following ("non-criminal") situations:

1. Detention of a person who was apprehended while committing a minor offence. This may be done if it is not possible to establish the perpetrator's identity or if by leaving the country the suspect would avoid responsibility for the minor offence, or if the circumstances show that the perpetrator will continue with committing the minor offence or repeat it, or if there is a justified fear that the perpetrator will hide, destroy or drop the evidence on the commission of the small offence. In such cases the perpetrator should be brought before a judge without delay.[46]
2. Detention under Article 64 of the Police Tasks and Powers Act. According to this provision, the police may put in custody a person who:
   - disturbs or threatens public order, public order cannot be maintained in another way or if the threat cannot be removed otherwise;
   - violates issued restraining order issued in accordance with the Police Tasks and Powers Act;
   - violates the issued prohibition to attend sports events,
   - the person has to be transferred to police authorities of other states or was handed over from the police authorities of other states, or has to be transferred to another competent body.[47]

   In case of reasons defined in the first three indents the person may be in police custody for a maximum of 12 hours, and in case of the fourth indent for the maximum of 48 hours.
3. Temporary restriction of movement due to the implementation of a particular police power or any other official action. This restriction may only be in force for as long as strictly necessary for the implementation of a police power or any other official actions and may not exceed 6 hours.[48]

45 Article 157 (6) of Police Tasks and Powers Act.

46 Article 110(1) of Small Offences Act.

47 Article 64 of Police Tasks and Powers Act.

48 Article 149 of the Criminal Procedure Act, Article 64 of Police Tasks and Powers Act; Article 32 of State Border Control Act.

The overall number of persons detained in 2012 to 2017 due to criminal offence:

YEAR	2012	2013	2014	2015	2016	2017
Criminal Detention under Art 157/1 and 157/2 CPA[1]	2.913	2.456	2.367	1.839	1.498	1.414
Increase comparing to the previous year	-5 %	-15,7 %	-3,6 %	-22,3 %	-18,5 %	-5,6 %
Total no. of all detentions[2]	9.596	6.089	5.858	4.500	5.552	4.944
% of criminal detentions/all detentions	30,4 %	40,3 %	40,4 %	40,9 %	27 %	29%
Population of the country[3]	2.058.123	2.060.663	2.062.731	2.064.632	2.065.879	2.065.890

The number of all detentions in 2016 and 2017 has increased particularly on the account of administrative detention related to migration crisis. Consequently, the share of criminal detention significantly dropped compared to the previous years.

Number of registered criminal offences can be seen from the number of received criminal reports by the state prosecutor's office. In 2016 this number was 25.286.[49]

The number of all (suspected) persons interviewed by the police is not presented in the official police statistics. The latter contain only the number of interviews that are considered to be (formal) police interrogations – that is the number of interviews conducted in the presence of a lawyer.[50] In 2016 the police carried out 686 interrogations and 727 interrogations in 2017.[51]

No. of prosecutions can be seen from the number of filed indictments by the state prosecutors. In 2016, 9.570 indictments were filed against adult defendants, 399 minors and 215 legal persons.[52]

49 Supreme State Prosecutors' Office Annual Report for 2016, available at: https://www.dt-rs.si/letna-porocila (accessed 12 July 2017), p. 16.

50 Previous research show that only a small percent of suspects retain a lawyer in the police stage of the proceedings, which explains the low number of police interrogations in the official police statistics (Katarina Vučko, Neža Kogovšek Šalamon, Majda Hrženjak, National Study on the Right to Access to a Lawyer and the Right to Legal Aid of Suspects and Accused Persons in Criminal Proceedings, The Peace Institute, 2018, p. 52);

51 Annual reports of the Police for 2016, available at: https://www.policija.si/index.php/statistika/letna-poroila (accessed 15 september 2017), p. 88.

52 Supreme State Prosecutors' Office Annual Report for 2016, available at: https://www.dt-rs.si/letna-porocila (accessed 12 July 2017), p. 35-37.

Arrest
The procedure for arrest is defined in the Police Tasks and Powers Act. The provisions relevant for arrest of criminal suspects are comprised in Article 35 on inviting individuals to police premises, Article 40 on establishing identity, Article 41 on the manners of establishing identity, Article 52 on personal search, Article 53 on entrance into apartment, Article 56 on temporary limitation of movement, Article 57 on apprehension and bringing the person into police premises.

Police interrogation
Police interrogations are regulated in Articles 227 to 233 of the Criminal Procedure Act. These rules are in place for all events when the suspect is interrogated for the first time. If the police interrogate the suspect, they must abide by these rules.

First, the suspect has to be asked about name and last name and possible nickname, name and last name of parents, previous name if it was changed, the place of birth, place of residence, day, month and year of birth, personal ID number (EMŠO), ethnic origin, nationality, profession, family situation, whether or not the suspect is literate, which schools did he or she finished, army rank, possible medals received, personal income and property situation, possible previous convictions, for what and when, whether he or she already served sentence, possible other pending criminal proceedings, whether he or she is a minor and if yes, who is his or her legal guardian. Then the suspect has to be instructed that he or she has to immediately respond to invitations and inform the authorities about any change in address or intended change in address and informed about the consequences if he or she failed to do so.[53]

The suspect must be informed which crime he is suspected of and what are the grounds for suspicion. The suspect is then instructed that he or she is not obliged to defend himself (in the sense that he or she may stay silent) or answer the questions, while if he or she defends himself/herself he or she is not obliged to say anything against himself or herself, or his or her close ones, or confess to the crime. He or she is also informed about the right to take an attorney of her or his own choice who can be present at the hearing/interrogation.[54]

The suspect is interrogated orally. He or she is allowed to use his or her own notes during the interrogation.[55]

At the interrogation the suspect must be allowed to express himself or herself in an unhindered way about all circumstances against him and state all facts in his defence.[56]

53 Article 227 (1) of the Criminal Procedure Act.
54 Article 227(2) of the Criminal Procedure Act.
55 Article 227(4) of the Criminal Procedure Act.
56 Article 227(5) of the Criminal Procedure Act.

When the suspect finishes his or her statement, he or she is asked questions if this is need to fill the gaps, address inconsistencies or unclear aspects of the suspect's statement.[57]

Interrogations have to be carried out in full respect of the suspect's person.[58]

Against the suspect it is not allowed to use force, threat or other similar means in order to achieve a certain statement or confession for the crime.[59]

Since the 2003 amendment of the CPA, the police are not only obliged to inform the suspect of his right to a lawyer when they place him on her in police custody, but also before they want to procure a statement from the suspect. To ensure that suspects could exercise their right to access to a lawyer effectively, the CPA demands from the police to postpone the interrogation until the arrival of the lawyer, if the suspect declares that he or she wants to retain one.[60] The interrogation is postponed until the arrival of the lawyer or until the time determined by the police, which may not be shorter than two hours. Other acts of investigation, except for those which it would be unsafe to delay, are also put off until the arrival of the lawyer.

The questions posed to the suspect by the police have to be asked in a clear, eloquent and definite way so that the suspect can fully understand them. The questions may not come from the point as if the suspect confessed something when he or she did not. It is also not allowed to ask questions which contain instructions on how they should be responded. The suspect may not be fooled to achieve a certain statement or confession.[61] In case the police acted against these rule the suspect's statements cannot be taken as the basis of the judgment.[62]

If the interview takes place without a lawyer present, the police makes an official note [*uradni zaznamek*] of the suspect's statement. The official note includes the legal instruction given, the statement of the suspect and, in the event that the suspect wants to declare him/herself on the offence, the essence of his statement and comments thereon.[63] The official note cannot be used as evidence on court. However, the official note of the statement remains in the case file and thus available to the presiding judge during trial.[64]

57 Article 227(6) of the Criminal Procedure Act.
58 Article 227(7) of the Criminal Procedure Act.
59 Article 227(8) of the Criminal Procedure Act.
60 Criminal Procedure Act 1994 and subsequent modifications, Article 148/5
61 Article 228(1) of the Criminal Procedure Act.
62 Article 228(3) of the Criminal Procedure Act.
63 Article 148(6) of the Criminal Procedure Act.
64 Katarina Vučko, Neža Kogovšek Šalamon, Majda Hrženjak, National Study on the Right to Access to a Lawyer and the Right to Legal Aid of Suspects and Accused Persons in Criminal Proceedings, The Peace Institute, 2018, p. 31.

If the interview is conducted in the presence of a lawyer, it is formally considered a police interrogation and a written record [*zapisnik*] of the interrogation is made. A written record must be drawn up in accordance with the CPA rules, that apply for all written records made in the criminal proceedings. This record may be used as evidence in criminal proceedings.[65]

1.4 The research method

This research report was prepared on the basis of the following research methodology:

Desk Review: We predominantly reviewed official sources, in particular 1) the legislation, 2) draft legislation, 3) case law, 4) annual reports of Supreme Court and Supreme State Prosecutor's Office. In addition, the report also took into account other sources such as press releases and documents of the Ministry of Justice, Bar Association, responses to parliamentary questions, websites of various stakeholders in the criminal justice system and media reports related to criminal justice.

Direct Observation: The focus of the research was to observe criminal justice practitioners as they go about their daily routine work. We aimed to locate a researcher in police stations and by accompanying lawyers, to understand the implementation of suspects' rights from multiple perspectives and to gain deeper insight into practical constraints upon working practices. Our goal was to secure access to two police stations – one in a busy city police station and one in a smaller police station. For this purpose, we approached the General Police Directorate, presenting our project and the activities we wished to perform. The General Police Directorate was very open for cooperation and granted us access to two police stations as per our request. Our researcher was present for 14 days at each police station (28 in total) over the course of two months in the summer-autumn 2017. Our researcher was able to be present at the premises of the police stations, communicating freely with the police officers and being informed by them about the ongoing police custody procedures. The only limitation was not to attend police interrogations, as the authorities expressed concern that this is not possible under the criminal procedure legal provisions and the possible negative effects on the criminal proceedings that followed in the observed detention cases. To overcome this shortcoming, we were, as mentioned, able to discuss the cases with the police officers in detail and also interview the detained suspects who agreed to talk to us. The number of cases we were able to observe was not very large. In the course of the two months of our presence, we observed 12 police

65 Article 148.a(2) of the Criminal Procedure Act.

detention cases. The number reflects a generally low numbers of police detention annually – statistics show that each year the number of police detention in criminal cases is dropping. In 2016, the number of cases of police custody in the entire Slovenian territory was 1,498 – 18.5% lower than the previous year. For our observations we used case log proformas prepared by the project coordinators. We translated and adapted the proformas to the Slovenian national context. In each of the observed case, we filled out the case log proforma and drafted field notes.

To conduct our research, we also aimed to accompany criminal lawyers when they visit their clients in police custody and attend police interrogations. This part of the methodology proved to be a challenge, since previous research results (and the results of this research) confirmed that very few suspects are represented by a lawyer already in the police stage of the proceedings. Usually the suspects retain their lawyers in later stages of the criminal proceedings. Since mandatory legal aid is not established in the police proceedings and the legal aid scheme is not functioning at this stage, the lawyers are also not appointed to the detained suspects as legal aid/ ex officio lawyers. As for the police/custody proceedings there is no system of duty lawyers (such as established for the purpose of appointing ex officio lawyers to ensure mandatory legal assistance at detention hearings at courts), we were not able to approach such lawyers. We reached out to a Ljubljana based lawyer who handles many criminal law cases. We reached an agreement with the lawyer to inform us anytime a client would reach out to them from police custody so that the we would be able to accompany the lawyer to the police station. Despite this agreement was in place for six months in the first half of 2018, we were not able to accompany the lawyer to the police station, since the lawyer did not have any police custody cases.

Interviews: During our presence at the police stations we talked to police officers at the station, gathering as much information on the procedures in place for suspects who are deprived of their liberty. After the conclusion of the observations at the police stations, we conducted 10 interviews with lawyers who are regularly representing clients in criminal cases.

2. The right to interpretation and translation

2.1 The normative framework in Slovenia

The right to use one's language is protected by the Constitution of the Republic of Slovenia. In Article 62 it is stipulated that everyone has the right to use his language and script in a manner provided by law in the exercise of his rights and duties and in procedures before state and other authorities performing a public function.

The right to interpretation and translation has been incorporated into Article 8 of the CPA from its adoption in 1994. The provision, however, was not very detailed. Article 8 stipulated that parties, witnesses and other participants in the proceedings shall have the right to use their own languages in investigative and other judicial actions and at the main hearing. If a judicial action or the main hearing is not conducted in the languages of these persons, the oral translation of their statements and of the statements of others, and the translation of documents and other written evidence, must be provided. It also included the obligation to inform and the possibility to waive the right.

In 2014 the CPA was amended, one of the goals was to transpose the EU Directive on the right to interpretation and translation. As a result, Article 8 of the CPA now contains more detailed provisions on how the right to translation and interpretation is ensured.

Article 8 of CPA states that the parties to the procedure have the right to use their own language during the criminal procedure. If the suspects do not understand the language of the procedure, the state needs to provide translation of the essential documents, such as indictment, invitations, decisions on deprivation of liberty, judgments, court decisions on exclusion of evidence, on rejection of proposed evidence and on exclusion of judges. Based on the proposal of the suspect the court may decide that, considering the concrete circumstances of the case, translation of other documents must be ensured in order to ensure the respect for guarantees and rights in the pre-trial procedure. The court may also decide that for certain parts of the documents which are not important for the suspect to understand the criminal matter and for the use of legal remedies only oral interpretation is provided.[66]

66 Article 8(1) of Criminal Procedure Act.

The right to interpretation is guaranteed only in relation to court actions and main hearings. In this regard, the law does not mention interpretation of private communication between the suspect and the lawyer.[67]

Article 233(2) of CPA that includes rules related to the first hearing of the suspect, states that if the defendant is deaf the questions are posed to him or her in writing, while if he or she is mute, he or she is asked to respond in writing. If the hearing cannot be done in this way, the officer calls an interpreter who is able to communicate with the defendant.[68] In the latter case an appropriate court interpreter for sign language is called as in the case of foreign languages.[69]

The right to interpretation (but not translation) is also provided by the Police Tasks and Powers Act (hereinafter: PTPA). Article 19 of PTPA states that to communicate with suspects who do not speak Slovenian the police may also use another language that the suspect understands,[70] or engage an interpreter.

The police have to inform the suspect on the right to interpretation. The suspects receive the information from the police in writing (a brochure delivered in the language the suspect understands). The suspects must sign that he or she received the information and the police officer who have the information to the suspect also has to sign. If the suspects does not want to sign only the police officer signs and notes this on the minutes.

The state pays for interpretation services that are made available based on the law.

Waiver

If the suspect understands the language of the procedure the suspect may waive the right to interpretation, if they understand the language of the proceedings, but they must state this freely and explicitly. It has to be written on the record that the suspect has been informed about the right to interpretation and what was their response.[71]

Complaint

The suspect may complain if he or she believes that interpretation is not appropriate in the sense that it does not ensure the respect for guarantees and rights in the pre-trial or criminal procedure, or if they think that interpretation should be provided in parts of the procedure other than those in which it was

67 Article 8(1) of Criminal Procedure Act.
68 Article 233 (2) of Criminal Procedure Act.
69 Article 8(5) of Criminal Procedure Act; Article 19 of Police Tasks and Powers Act.
70 The law therefor allows a police officer to communicate with a suspect in another language they both understand without engaging an interpreter. In practice this is often English, Serbian/Croatian etc.
71 Article 8(3) of Criminal Procedure Act.

provided.[72] The complaint is made in the form of objection to the record of the interrogation/hearing as provided for with Article 82 (7) of CPA.

European Arrest Warrant
Slovenia as Member State executing a European Arrest Warrant has an obligation of the authorities of the (EAW) to provide the suspect, who does not understand the language of the proceedings in the executing state, with an interpreter and with the written translation of the European Arrest Warrant and other essential procedural documents.

The right to translation and interpretation is defined with Article 17(2) of the Cooperation in Criminal Matters with the Member States of the European Union Act[73] (hereinafter: Cooperation in Criminal Matters Act). This is a measure transposing a number of EU criminal law instruments, including Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) with subsequent modifications.

According to Article 17(2) of the Cooperation in Criminal Matters Act the person requested by EAW has the right to translation in line with the provisions of the statute that regulates criminal procedure (i.e. Criminal Procedure Act). If the requested person so demands, he or she has to be provided with a written translation of the Warrant into his or her language or the language he or she understands.

Hence, all the provisions related to suspects in CPA are applicable to persons requested by EAW.

Interpreters
In accordance with the CPA, translation and interpretation is provided by court interpreters.[74]

Court interpreters are nominated in line with the procedure carried out by the Ministry of Justice, based on a public call, provided that they meet the conditions set by law and after they pass the exam for a court interpreter. The call for new interpreters is made twice a year. Court interpreters are nominated by the Minister of Justice.[75]

72 Article 8(2) of Criminal Procedure Act.
73 Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije, Official gazette of the Republic of Slovenia, no. 48/13 and 37/15.
74 Article 8(4) of the Criminal Procedure Act.
75 Article 86 of the Courts Act.

The appointment procedure for court interpreters is defined in the Courts Act.[76] Court interpreters interpret for the court, state bodies or natural and legal persons. They are nominated in line with the procedure carried out by the Ministry of Justice, based on a public call, provided that thy meet the conditions set by law and after they pass the exam for a court interpreter. The call for new interpreters is made twice a year. Court interpreters are nominated by the Minister of Justice as defined in the Court Act.[77]

If there is no court interpreter available for a certain language, the court may appoint another person who speaks the required language.[78]

There is a national registry of court interpreters available on the website of the Ministry of Justice: http://spvt.mp.gov.si/tolmaci.html. The court interpreters may be contacted at any time.

The court interpreters have the right to payment for their work as well as the right to reimbursement of costs (travel costs, food and overnight stay, if they are employed they have the right to reimbursement of the part of their salary and material costs).[79] The amount of payment is defined with a tariff that is part of the Rules on Court Interpreters.[80]

Despite the provision of the CPA, which stipulates that interpretation services are provided by court interpreters, for interpretation at the police stations the police use interpreters, with whom the Ministry of the Interior has signed contracts.[81] These are not accredited court interpreters. The list of these interpreters is published on the police intranet and is accessible to all police officers. Contracts of the Ministry of the Interior with the interpreter are concluded once a year according to the actual needs; For the languages for which there is a lack of translators (Kurdish, Dari, Farsi, Urdu and Pashto), the Ministry issues several times a year special calls.[82] Newly proposed translators must provide appropriate proof of the written and oral knowledge of the language they translate. Contract translators must actively master the Slovenian language, but it is permissible for translators to master Serbian / Croatian or English in individual cases.[83]

76 Courts Act (Zakon o sodiščih), Official gazette of the Republic of Slovenia, no. 94/07 – official consolidated text, 45/08, 96/09, 86/10 – ZJNepS, 33/11, 75/12 – ZSPDSLS-A, 63/13, 17/15 and 23/17 – ZSSve). See also the Rules on Court Interpreters (Pravilnik o sodnih tolmačih), Official gazette of the Republic of Slovenia, no. 88/10, 1/12, 35/13 and 50/15).

77 Article 86 of the Courts Act.

78 Article 8(4) of Criminal Procedure Act.

79 Article 40 and 41 of Rules of Court Interpreters.

80 Article 49 of Rules of Court Interpreters.

81 Information provided by the General Police Directorate upon request.

82 Ibid.

83 Ibid.

These translators must be available to the police 24 hours a day, every day of the year, and must respond within two hours.[84]

2.2 Identification of the need for interpretation and translation

There are no specific provisions on how the need for an interpreter is determined. The law simply states that interpreters are needed if the procedures are not conducted in the language that the parties to the procedure understand.[85]

However, as the responsibility to inform lies on the police officer conducting police actions, he or she also holds the responsibility for determining the need of interpretation.[86] If a suspect decides to exercise this right the police have no ground to deny it; in such case the police always contacts an interpreter.[87] Otherwise, the police officer will assess the need from conversing with the suspect – either immediately upon deprivation of liberty or later at the interrogation. If the officer finds the conversation impossible or that the level of understanding on the suspect's part is not sufficient, the officer will engage an interpreter.[88]

Even if a person waives this right, the responsibility for determining the need of interpretation still lies on the police officer who has contact with the suspect – meaning the police officer may find that a court interpreter is necessary, although the suspect waived this right.[89]

The lawyers we interviewed in our research reported that identification of the need for interpretation usually is not problematic when the police officers do not speak the suspect's language and the suspect also does not speak English. In such cases interpreters are usually included in the proceedings, since communication with the suspect would otherwise be impossible.[90] Problems occur when the suspect speaks one of the languages of the former Yugoslavia (Croatian/Serbian) or speaks English. Interviewed lawyers report of communication

84 Ibid.

85 Article 8(1) of the Criminal Procedure Act.

86 FRANET, The right to interpretation and translation and the right to information in criminal proceedings in the EU, Slovenia, May 2015, p.4., available at: http://fra.europa.eu/en/country-data/2016/country-studies-project-right-interpretation-and-translation-and-right-information

87 Interview with a police officer.

88 Ibid.

89 FRANET, 2015, p. 4.

90 One lawyer, however, reported that she rarely encounters cases where the interpreter is included already at the police station – even in cases of Bulgarian citizens.

in broken English or Croatian/Serbian, when the police officers interpreted the proceedings to the suspect who then signed documents that were drafted in Slovenian language. This practice is enabled by Article 19 of the PTPA, stipulating that to communicate with suspects who do not speak Slovenian the police may also use another language (e.g. English, Serbian/Croatian etc.) that the suspect understands. However, the lawyers believe that the police choose this option too often, trying to save time when the suspect is in police custody, which is limited to 48 hours. They believe that the police should be more diligent when assessing the suspect's need for interpretation, as the basic ability to communicate in a language does not necessarily mean the ability to fully understand and participate in the complex and stressful circumstances of police proceedings, where even the smallest details can impact the outcome significantly. Mistakes made due to communication failure can even prevent effective defence in later stages. This is particularly detrimental if the suspect is not represented by a lawyer during police proceedings, which is often the case.

2.3 Interpretation at the initial stages of detention

The suspects in police detention (as well as during all investigative police actions) have a right to interpretation if they do not understand the language of the procedure.[91] In the case of deprivation of liberty, the suspect must be informed of this right (as well as other rights) immediately.[92]

In accordance with 'Additional guidelines on the implementation of CPA-M'[93] the police must inform suspects of this right and provide suspects with the list of registered court interpreters (*sodni tolmači*) from which suspects must chose a court interpreter.[94] These guidelines are not binding and in practice the provision of interpretation is done differently. The interpreter is selected from the list published on the intranet by the police officer who manages the procedure, or this is done at the police officer's request (in cases when the procedure does not take place in the police unit), by the duty officer or police officer of the Operational Communication Center.[95] The situation is different in the case of deaf suspects – as he or she can bring the interpreter with them or select an interpreter from the list of interpreters. If a deaf suspect does not want to choose an interpreter, the police officer will choose one for them.[96]

91 Article 8(1) of Criminal Procedure Act.
92 Article 4(1) of Criminal Procedure Act.
93 The 2014 CPA amendment transposing the EU Directive on the right to interpretation and translation
94 FRANET, 2014, p. 5.
95 Information provided by the General Police Directorate upon request.
96 Ibid.

Among the cases we observed at the police stations, there were only two in which the suspects required interpretation. The insight into the system of providing interpretation the empirical research provided was therefore limited. In the observed cases the interpreter called to the police station was chosen by the police.

While waiting for the interpreter to arrive at the police station, the police offers to suspects the letter of rights, which is prepared a s a standard brochure and translated into 23 languages (Slovenia, Italian, Hungarian, English, German, French, Spanish, Serbian, Macedonian, Croatian, Romanian, Turkish, Bulgarian, Moldavian, Russian, Albanian, Roma, Chinese, Kurdish, Iraqi, Iranian, Afghanistani, Pakistani.[97]

Article 19 of PTPA states that to communicate with suspects who do not speak Slovenian the police may also use another language that the suspect understands, meaning that the police officers can also replace interpreters if they are able to communicate with the person in a language they both understand (e.g. English, Serbian/Croatian etc.). This was widely criticised by the lawyers we interviewed (see section 2.2 - Identification of the need for interpretation/translation).

2.4 Interpretation during lawyer/client consultations

Article 8 of the CPA specifically guarantees the right to interpretation during investigative and judicial actions and hearings; and the right to translation only in relation to official documents issued by the police, investigative judge, state prosecutor, or court. The cited provision does not automatically provide for interpretation of private lawyer/client consultations.[98]

As such, this provision is very problematic, since police proceedings are pre-trial proceedings in which the courts are not involved. On the other hand, Appendix 1 to the CPA (Letter of rights), which is an essential part of the CPA as provided by Article 4(5)), states that the suspect has the right to a pay-free service of an interpreter who can also help them to communicate with their lawyer. However, for the purposes of legal clarity, it would be much more appropriate if the right to free-of-charge interpretation of lawyer/client consultations was clearly incorporated in the text of Article 8 of the CPA.

97 https://www.policija.si/images/stories/Publikacije/PDF/obvestilo-o-pravicah-osebe.pdf.
98 Article 8(1) of Criminal Procedure Act.

Interpretation during lawyer/client consultations is arranged by the police as described in section 2.3. One of the lawyers we interviewed expressed concern with this type of arrangement, as the same interpreter is used both for the police communication with the suspect and the lawyer/client consultation, which might affect the interpretation and possibly expose information the suspect and his/her lawyer decided to keep confidential.

As already mentioned, at the police station we observed only two cases in which the suspects required interpretation. In both cases the interpreter was not present during lawyer/client consultations, as the interpreter arrived at the police station either before or after the lawyer/client consultation.

2.5 Interpretation during interrogations

Interpretation during interrogations is arranged by the police as described in section 2.3.

The police must inform suspects of the right to interpretation and provide an interpreter, before the interrogation. To ensure the effective exercise of the right, the interrogation (as other investigative actions) will be postponed un the arrival of the interpreter, but no longer than two hours.[99]

2.6 Arrangements for translation of documents

Article 8 (1) of the CPA stipulates the right to *written translation* of documents and other written evidence materials, which for suspects and defendants includes essential documents, such as indictments, summons, all decisions on deprivation of liberty, judgments, court decisions on exclusion of evidence, on rejection of proposed evidence and on exclusion of judges. Based on the proposal of the suspect the court may decide that, considering the concrete circumstances of the case, translation of other documents has to be ensured in order to ensure the respect for guarantees and rights in the pre-trial procedure. The court may also decide that for certain parts of the documents which are not important for the suspect to understand the criminal matter and for the use of legal remedies only oral interpretation is provided.[100]

99 FRANET, 2014, p. 7.
100 Article 8(1) of Criminal Procedure Act.

Although the cited provision clearly requires written translation of essential documents, in some cases an *oral translation or summary* of these documents may be provided. This is stipulated in Appendix 1 to the CPA, which is an essential part of the CPA as provided by Article 4(5)). As explained in the 'Additional guidelines on the implementation of CPA-M', a court interpreter must be provided in 48 hours, so to provide the suspect with an oral translation of all documents related to the decision on detention and relevant for his possible appeal on this decision and assist in communication with the detained person's legal counsel.[101] This applies whenever detention lasts for more than six hours.[102]

As a result, in practice mostly oral translation of essential documents is provided.[103] This was the case in both of the cases we observed, which involved interpretation – interpreters were arranged by the police to provide the suspects oral translation of the decision on deprivation of liberty. The authorities explain this practice with the detention the time frame being quite short (48 hours before being brought before a pre-trial investigating judge).[104]

2.7 The quality of interpretation and translation

The quality of interpreters' work is monitored by the Ministry of Justice. The court interpreters are obliged to keep an archive of all translated documents.[105] The Minister of justice may demand from the interpreter at any time to access their archive of translated documents. To supervise the quality of work of the interpreters the Minister may nominate a supervisory commission composed of at least two officials from the Ministry of Justice. If the court encounters any irregularities at the interpreters' work it has to immediately inform the Ministry about it.[106]

The trainings for interpreters are regularly organized by the Judicial Trainings Centre at the Ministry of Justice.[107] Preparatory and refresher training seminars for court interpreters focus mostly on language or translation issues (e.g. terminology of certain fields of law in different countries, 'Key problems of legal terminology and typical forms of documents and their translations', 'Translation approaches of a court interpreter (how to translate for the target audience, parameters in translating the names of institutions)' etc.), as well as specific legal knowledge

101 FRANET, 2014, p. 20.
102 Article 157(6) of the Criminal Procedure Act.
103 FRANET, 2014, p. 20.
104 Ibid.
105 Article 37 of the Rules on Court Interpreters.
106 Article 39 of the Rules of Court Interpreters.
107 http://www.mp.gov.si/si/izobrazevanje_v_pravosodju_cip/sodni_tolmaci/izpopolnjevalni_seminarji/.

(e.g. 'the organization and functioning of the judiciary, the basics of court proceedings and legal provisions concerning the rights and obligations[108] The court interpreters have to attend at least five trainings in each period of five years to refresh and improve their expertise in a certain language, and submit evidence to the Ministry of Justice that they attended such trainings.[109]

There are two codes of conduct of interpreters and translators in place to ensure quality. One was adopted by the Association of Permanent Court Interpreters and Legal Translators of Slovenia[110] and the other by the Department of Court Interpreters of the Association of Translators and Interpreters of Slovenia.[111]

There is no explicit procedure defined in the law to replace an interpreter or translator who does not provide translation of adequate quality or acts unethically. There is, however, a procedure to discharge a court interpreter from this status.[112] In accordance with Article 89 of the Courts Act, a court interpreter may be discharged if he or she does not perform his or her duties regularly or conscientiously and with due diligence; or if he or she performs other gainful activity that might affect the objective and independent performance of his or her duties.

However, regardless of the provision of the CPA, which stipulates that interpreters and translators are provided by court interpreters, the police use interpreters with whom the Ministry of the Interior has concluded a contract and are not (necessarily) certified court interpreters. The aforementioned provisions on ensuring the quality of interpretation and translation do not apply for these contractual interpreters.

2.8 Conclusions

In 2014 the EU Directive in the right to interpretation and translation was transposed into the national Criminal Procedure Act. As a result, CPA now contains more detailed provisions on how the right to translation and interpretation is ensured, compared to the previous regulations.

108 FRANET, 2014, p. 18.
109 Article 84(4) of Courts Act.
110 http://www.sodni-tolmaci.si/wp-content/uploads/2013/01/Eti%C4%8Dni-kodeks-Zdru%C5%BEenja-sodnih-tolma%C4%8Dev.pdf.
111 https://www.dpts.si/sekcija-sodnih-tolmacev/eticni-kodeks.
112 Article 11 to 18 of Rules of Court Interpreters.

For the most part, it seems that the national legislation is in compliance with the EU Directive. Parties to the procedure have the right to use their own language during the criminal procedure. If the suspects do not understand the procedure, the state needs to provide translation of the essential documents, such as indictment, invitations, decisions on deprivation of liberty, judgments, court decisions on exclusion of evidence, on rejection of proposed evidence and on exclusion of judges.

The CPA stipulates that translation and interpretation is provided by court interpreters. In practice, the police use interpreters with whom the Ministry of the Interior has concluded a contract and are not (necessarily) court interpreters. This means that the procedure and conditions for the accreditation of court interpreters and guarantees regarding the quality of the services of court interpreters are not applicable to the interpreters used by the police.

Needs assessment

Article 2 of the Directive however requires from the Member States to ensure that a procedure or mechanism is in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter. In the national law there are no specific provisions on how the need for an interpreter is determined. The law simply states that interpreters are needed if the procedures are not conducted in the language that the parties to the procedure understand.[113] The responsibility to assess the need lies on the police officer conducting police actions. If the officer finds the conversation impossible or that the level of understanding on the suspect's part is not sufficient, the officer will engage an interpreter.

In practice appropriate assessment appears to be problematic when the suspect speaks one of the languages of the former Yugoslavia (Croatian/Serbian) or speaks English – languages often spoken and understood by police officers. It appears that the police should be more diligent when assessing the suspect's need for interpretation, as the basic ability to communicate in a language does not necessarily mean the ability to fully understand and participate in the complex and stressful circumstances of police proceedings, where even the smallest details can impact the outcome significantly.

Interpretation of private lawyer/client consultations

The law explicitly guarantees the right to interpretation during investigative and judicial actions and hearings; and the right to translation only in relation to official documents issued by the police, investigative judge, state prosecutor, or court.

113 Article 8(1) of Criminal Procedure Act.

The cited provision does not explicitly mention interpretation of private lawyer/client consultations. On the other hand, Appendix 1 to the CPA (Letter of rights), which is an essential part of the CPA, states that the suspect has the right to a pay-free service of an interpreter who can also help them to communicate with their lawyer. However, for the purposes of legal clarity, it would be much more appropriate if the right to free-of-charge interpretation of lawyer/client consultations was clearly incorporated in the text of Article 8 of the CPA. In two cases we observed in our research, the interpreter was not present during lawyer/client consultations, as the interpreter arrived at the police station either before or after the lawyer/client consultation. It is also problematic, that the same interpreter is used both for the police communication with the suspect and the lawyer/client consultation, which might affect the interpretation and possibly expose information the suspect and his/her lawyer decided to keep confidential.

Written translation of essential documents

Article 3(7) of the EU Directive provides for an exception of an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings. This option is also included in the Slovenian national legislation. Although the main provision of Article 8 of the CPA clearly requires written translation of essential documents, the possibility of an oral translation or summary is prescribed in Appendix 1 to the CPA. But the internal guidelines of the police direct towards an oral translation of all documents related to the decision on detention. As a result, in practice mostly oral translation of essential documents related to police detention is provided. This was the case in both of the cases we observed, which involved interpretation – interpreters were arranged by the police to provide the suspects oral translation of the decision on deprivation of liberty. The authorities explain this practice with the detention the time frame being quite short (48 hours before being brought before a pre-trial investigating judge).

3. The right to information

3.1 Information about rights

3.1.1 The normative framework in Slovenia

The sources of the right to information are the Constitution of the Republic of Slovenia (Article 19(3)) and the Criminal Procedure Act (Article 4).

The suspect must be informed about the rights in writing (Article 4(4) CPA). This should happen immediately when the suspect is deprived of his or her liberty (Article 4 (1) CPA). The information has to be provided by the police as it is the police that may deprive the person of liberty for the purposes of criminal investigations in line with Article 148(4) CPA.

The information about the following rights should be provided (in the mother tongue or in a language the suspect understands):

- of the reasons for deprivation of liberty;
- that he or she has is not bound to make any statements (right to remain silent);
- that he or she is entitled to the legal assistance of a lawyer of his/her own choice and have the lawyer present at his/her interrogation;
- that the competent body is bound to inform upon his or her request his other immediate family of his being deprived of freedom;
- that he or she has the right to interpretation and translation as provided by Article 8 of the CPA;
- If a suspect who has been deprived of freedom does not have the means to retain a lawyer by himself, the police shall, upon request of the suspect, appoint a lawyer for him at the expense of the state if this is in the interest of justice.

When in the course of information gathering the police establish that there are grounds to suspect that a particular person (the suspect) has perpetrated or participated in the perpetration of a criminal offence, they must inform that person, before starting to gather information from him or her:

- what criminal offence he is suspected of and the grounds for suspicion;
- instruct him/her that he/she is not obliged to give any statement or answer questions and that, if he/she intends to plead his case, he/she is not obliged

to incriminate him/herself or his/her fellow beings or to confess guilt;
- that he/she is entitled to have a lawyer of his choosing present at his/her interrogation, and that whatever he/she declares may be used against him in the trial;
- that he/she has the right to use his/her language in the proceedings and the right to interpretation and translation;
- that if he/she does not have the means to retain a lawyer by himself, the police shall, upon request of the suspect, appoint a lawyer for him at the expense of the state if this is in the interest of justice.[114]

As the right to information of persons deprived of their liberty is constitutionally protected, this right has been incorporated into the CPA since its adoption in 1994. The EU Directive on the right to information was transposed into the national legal system with the adoption of the 2014 the CPA-M amendment. The amendment introduced the obligation to provide information of the right to interpretation and translation and that all the rights must be conveyed to the suspect both in oral and written form. Additionally, the right to access to case materials and documents was added to the provision of Article 157 of the CPA, which contains the main provisions on deprivation of liberty by the police. Before the amendment, the police were obliged to inform the detained suspect by a written decision of the grounds on which he has been deprived of freedom only if the detention lasted more than six hours. With the adoption of the CPA-M, the police must in cases of detention shorter than 6 hours provide the detainee with a written official note, containing the information about the suspects, reasons for detention, the suspects rights and the exact time the detention started.[115]

3.1.2 How information on procedural rights is provided

The suspects receive the above listed (3.1.1) information from the police in writing.[116] CPA stipulates, that the written information must include the content of Appendix 1 to the CPA, which is an integral part of the law. The written information must be delivered in the language the suspect understands. The police for this purpose prepared a brochure for detained persons that apart from Slovenian version contains translation of information into 22 other languages.[117]

The suspects must sign that they received the information and the police officer who provided the information to the suspect also must sign. If the suspect does

114 Article 148(4) CPA.
115 Article 157(8) CPA.
116 Article 4(5) CPA.
117 https://www.policija.si/images/stories/Publikacije/PDF/obvestilo-o-pravicah-osebe.pdf

not want to sign, only the police officer signs and notes this on the minutes, together with the reason why the suspect refused to confirm receiving information with a signature.

As already mentioned, the law requires that the information has to be provided in writing. The law, however, provides for the possibility of conveying the information orally in a language the suspect understands, if the written information is not available in the appropriate language. Written information must still be provided later: the law stipulates that this should be done without undue delay.[118] Such case we observed at one of the police stations, where the suspect was informed of the rights in the moment of deprivation of liberty orally in English; and later provided with a written brochure in the suspect's mother tongue.

In the cases we observed at the police stations, the initial information was usually provided orally in the moment of deprivation of liberty (which in the observed cases usually took place outside of the police station premises). Providing written information in the form of a brochure usually followed later, when the suspect was brought to the police station or placed in detention facilities. The described order of events is based on the information we obtained from the police sources. But some of the suspects we spoke to, could not recall being informed of their rights orally in the moment of deprivation of liberty. One suspect mentioned, that the police only informed him that he is being arrested and told him the criminal offence he is suspected of but not of any other rights he has as a suspect. Another suspect similarly reported that the police only told him that he will be taken to the police station; later (but not immediately after he was brought to the police station) they handed him the brochure with written information. One suspect complained that he was only informed orally but it was done very quickly, and it was not very helpful for him.[119]

Previous research conducted on the topic of access to a lawyer and provision of information concerning this right, showed that in vast majority of cases, the police does provide information on suspect's rights.[120] This can particularly be attributed to the usage of standardized forms when drawing up written records of the interrogation/official note of the suspect's statement and preparing written decisions on the deprivation of liberty, which all include the content of the legal instruction.

118 Article 4(5) CPA:

119 Whether he was provided with the brochure could not be verified, however the suspect did keep with him the written decision on deprivation of liberty and a copy of the official note of the police questioning – both containing written information on the suspect's rights.

120 Katarina Vučko, Neža Kogovšek Šalamon, Majda Hrženjak, National Study on the Right to Access to a Lawyer and the Right to Legal Aid of Suspects and Accused Persons in Criminal Proceedings, The Peace Institute, 2018, p. 32; within the research the analysis of 150 criminal court case-files was performed - in 98% of the cases the suspects were informed of their right to of access to a lawyer before the police interrogation.

However, concern was raised that this form of informing the suspects of their rights is not very effective, as all the rights are quickly read out to them, not giving them much opportunity to truly understand the content of the rights.

Lawyers report that sometimes their clients do not really know what they signed.[121] The suspects' capability of understanding the rights provided or even remembering, that the rights were provided to them, is also affected by the stress of finding themselves deprived of liberty and facing police proceedings. The law does not require that suspects are entitled to keep a copy of the written information with them during police detention. However, in some of the cases we observed at the police stations, the suspects kept with them the brochure and/or the detention decision (which includes the list of their rights).

Concerns about the effectiveness of the information providing was also raised by the lawyers we interviewed. The majority of the lawyers interviewed deems the level of awareness of the rights among suspects quite low – particularly among the ones who are involved in police proceedings for the first time. Many suspects know of the rights very superficially but are not aware of details and how to exercise their rights. Their ability to fully understand and exercise the rights is further deteriorated by the aforementioned stress and shock they face when deprived of liberty. As a result, some of their clients claim that they never received the information in written form, although they signed to confirm the receipt of the written information. The lawyers believe that due to written formats containing the information the police easily comply with their duty to provide information – however in practice they do not always make sure the suspects understand their rights.

However, one lawyer reported that cases where the suspects were not informed of their rights are not that rare.[122] In later stages of the proceedings, no records could be found of the police providing information in a written form – although there is a possibility that information was provided orally, the fact remains that the law demands provision of written information.

Since the adoption of the 2003 amendment of the CPA,[123] the police are obliged to inform the person of his rights, if in the course of collecting information, they establish that there are grounds to suspect that this particular person had perpetrated or participated in the perpetration of a criminal offence.[124]

121 Katarina Vučko, Neža Kogovšek Šalamon, Majda Hrženjak, National Study on the Right to Access to a Lawyer and the Right to Lega Aid of Suspects and Accused Persons in Criminal Proceedings, The Peace Institute, 2018, p. 33

122 The lawyer mentioned that in as many as 25% of cases handled, the information was not provided to the clients.

123 Act Amending Criminal Procedure Act - E, 2003

124 Criminal Procedure Act 1994 and subsequent modifications, Article 148/4

The police are obliged to inform the person before they start to gather information from the suspect. Even if the police investigation has not yet concentrated on a particular person as a suspect, the police officer collecting information should stop the person and inform him of his rights, if he spontaneously confessed or if from his statement the police officer concluded that he might be the perpetrator of the criminal offence.[125] Previous research showed that such situations may be problematic in practice, namely that the police do not always stop the questioning and inform the suspect of the fact they are suspected and their rights.[126] One of the lawyers we interviewed in our research mentioned that the police sometimes talk to persons who they suspect, but do not inform them of this fact. They talk to them as persons who might have information on the matter (potential witnesses). During such contacts the police obtain information for further investigative actions against them, but the persons receive a suspect status only later.

If the information is not provided or not provided in a prescribed content and manner, no specific remedies apply. The same remedies are available as in ordinary cases (i.e. objection to the record on the hearing/interrogation of the suspect). The fact that the information was not provided can also be complained against in any of the regular remedies available in criminal proceedings.

3.1.3 The 'letter of rights'

The 'letter of rights' has to be provided by the police as it is the police that carries may deprive the person of liberty for the purposes of criminal investigations in line with Article 148(4) CPA.

The suspect must be informed about the rights immediately when deprived of his or her liberty (Article 4 (1) CPA).

In accordance with the law, the written information must be provided in the mother tongue of the suspect or in the language the suspect understands.[127]

There are no provisions in the law however, to ensure that the suspects understood their rights included in the brochure.

There is a standard brochure prepared by the police translated into 23 languages (Slovenia, Italian, Hungarian, English, German, French, Spanish, Serbian, Macedonian, Croatian, Romanian, Turkish, Bulgarian, Moldavian, Russian,

125 Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, komentar p.312

126 Katarina Vučko, Neža Kogovšek Šalamon, Majda Hrženjak, National Study on the Right to Access to a Lawyer and the Right to Lega Aid of Suspects and Accused Persons in Criminal Proceedings, The Peace Institute, 2018, p. 33.

127 Article 4(1) CPA.

Albanian, Roma, Chinese, Kurdish, Iraqi, Iranian, Afghanistani, Pakistani.[128] The information about the following rights is provided in the brochure: right to remain silent, right not to respond to questions, right not to say anything against him or herself or their close ones if the person would give a statement, right not to plead guilty, right to attorney of their own free choice, right to have attorney present at hearing, right to use their own language, right to have their closed ones informed about the fact that they have been deprived of liberty,[129] and the right to interpretation and translation.[130] There is also a right of attorney free of charge if the suspect can't afford one and that is required by the interest of justice.[131]

There are no explicit provisions in place to ensure that suspects who fully or partially cannot see or read receive the information in the brochure.

There is no special brochure available for suspects subject to EAW proceedings as laid down in the Framework Decision 2002/584/JHA. These suspects are informed about their rights with the same brochure as all other suspects who have been deprived of their liberty.

If the obligation to provide written information is not complied, no specific remedies apply for such cases. The same remedies are available as in ordinary cases (i.e. objection to the record on the hearing/interrogation of the suspect). The fact that the information was not provided can also be complained against in any of the regular remedies available in criminal proceedings.

3.2 Information about reason for arrest/detention, and suspected offence (accusation)

3.2.1 The normative framework in Slovenia

Detention by the police can take place when there are well-founded reasons for suspicion that the suspect committed a crime that is prosecuted *ex officio*, if detention is required for establishing identity of the person or for gathering

128 https://www.policija.si/images/stories/Publikacije/PDF/obvestilo-o-pravicah-osebe.pdf.
129 Article 148(4) CPA.
130 Article 8 CPA.
131 Article 4(4) CPA.

information and evidence about the crime. In these cases detention is allowed only if some of the conditions for pre-trial detention are met.[132] These conditions are:

- if the suspect is hiding, if it is not possible to establish the identity of the suspect or if there are other circumstances pointing at the danger that the suspect might escape;
- if there is a danger that the suspect might destroy the traces of the crime;
- if the gravity, the manner of commission of the crime and the circumstances of the crime and the personal characteristics, previous life, environment or the living conditions or other circumstances of the suspect indicate that there is a danger that the crime will be repeated, finish the attempted crime or commit another crime as threatened by the suspect.

The CPA provides for the right of suspects to be informed about reasons for arrest/detention, and suspected offence (accusation).

3.2.2 Information about the reasons for arrest/detention

In accordance with Article 4 (1), the police must immediately inform the suspect (in the mother tongue or in a language the suspect understands) of the reasons for deprivation of liberty.

As mentioned above, the information must be provided by the police in writing.[133] The written information must be delivered in the language the suspect understands. The police for this purpose prepared a brochure for detained persons that apart from Slovenian version contains translation of information into 22 other languages.[134]

Furthermore, if police detention lasts more than six hours the police are bound to inform the detainee by a written decision of the grounds on which he/she has been deprived of freedom.[135] Based on the amendment CPA-M, transposing the EU Directive on the right to information, the police must also in cases of detention shorter than 6 hours provide the detainee with a written official note, containing the reasons for detention.

In the cases we observed at the police station, the suspects always received the written decision on the deprivation of liberty. For drafting these written decisions,

132 Article 157 (2) of the Criminal Procedure Act in connection with Article 201 of the Criminal Procedure Act which defines conditions for pre-trial detention.
133 Article 4(5) CPA.
134 https://www.policija.si/images/stories/Publikacije/PDF/obvestilo-o-pravicah-osebe.pdf
135 Article 157(6) CPA.

the police use a standardised form that provides for a uniform structure of every written decision. The police officer handling the case then fills in the information pertaining to the individual case. Based on the standardised form, the written decision states that the suspect was deprived of his/her liberty at a specific time and place because there are well-founded reasons for suspicion that the suspect committed a crime that is prosecuted *ex officio*. This is followed by the statement of the suspected criminal offence and the Article of the Criminal Code defining the criminal offence. After the list of suspects rights the written record of the suspect's decision whether he/she will exercise his/her right to a lawyer is included. The written decision further lists the grounds for police detention (establishing identity of the person/ for gathering information and evidence about the crime/ checking the alibi) and which conditions for pre-trial detention are met (the suspect is hiding/ the suspects identity cannot be established/ danger that the suspect might escape/ danger that the suspect might destroy the traces of the crime/ danger that the suspect will repeat the crime, finish the attempted crime or commit another crime as threatened by the suspect). This is followed by the description of the crime the person is suspected. The written decision is signed by the responsible police officer and the suspect, confirming the receipt of the decision. The time when the suspect received the decision is also included in the decision.

However, the lawyers we consulted in our research reported that the information in the decision on the deprivation of liberty is very limited. The documents which are the basis for police detention usually are not presented in the decision. Additional information is usually presented only upon direct demands and persistent insistence of the lawyer; one lawyer even reported that sometimes even the decision on the deprivation of liberty is provided only upon explicit demands by the lawyer.

3.2.3 Information about the suspected offence (accusation)

In accordance with Article 148(4) of the CPA, when in the course of information gathering the police establish that there are grounds to suspect that a particular person (the suspect) has perpetrated or participated in the perpetration of a criminal offence, they must inform that person, before starting to gather information from him/her, what criminal offence he/she is suspected of and the grounds for suspicion, and shall instruct him that he is not obliged to give any statement or answer questions and that, if he intends to plead his case, he is not obliged to incriminate himself or his fellow beings or to confess guilt, that he is entitled to have a lawyer of his choosing present at his interrogation, and that whatever he declares may be used against him in the trial.

This means that before taking any statements from the suspect, the police must inform him/her about the suspected offence. When it comes to detained suspects,

the information about the suspected offence is also included in the written decision on the deprivation of liberty (see above, section 3.2.3).

The lawyers we interviewed in our research reported that the information on the Article of the Criminal Code (which criminal offence the detention pertains to) is always provided. But not also information about the grounds for suspicion, what exactly happened and what are the exact evidence that support the suspicion. One lawyer reported that often the presented information about the grounds for police detention in a particular case is only one part of the (entire) accusation. E.g. the lawyer receives information from the police and access to the decision on the deprivation of liberty ; based on this information the lawyer prepares for the interrogation before the investigating judge;[136] however at the hearing before the investigating judge the lawyer is presented with numerous documents not previously known to him and learns that in fact his client is suspected of a more serious criminal offence or several counts of the criminal offence.

3.3 Access to case materials and documents

3.3.1 The normative framework in Slovenia

Amendment CPA-M, transposing the EU Directive on the right to information, introduced into the national criminal procedure law the right to access the materials related to detention. In accordance with Article 157(6), only suspects in police detention have the right to access the materials related to their detention, if the detention exceeds 6 hours, in order to exercise their right to challenge the decision on detention. The CPA confers no right of non-detained suspects to access materials in the possession of the police. In these cases, any access to materials is in fact a matter of police discretion.

Access to relevant material can be refused, if it could pose a serious threat to the life or the rights of another person, or if the inspection would affect the course of pre-trial proceedings and/or investigation, or if this is dictated by specific reasons of the defence or security of the State.[137] Decision on refusing access to relevant materials is taken by the police and is a part of the decision on detention.[138] The decision may be subject to appeal under Art. 157(7) CPA. The appeal can be filed with the competent district court.

136 The police must take the detained person to the investigating judge without any delay.
137 Article 157(6) CPA.
138 FRANET, 2014, p. 53.

3.3.2 Access to case materials and documents is provided

The level of awareness about this right was low among the detained suspects we interviewed during our observations at police stations was low. When specifically asked about the right to access case materials they could not recall being informed about it, although they stated information on their rights as suspects was provided to them by the police.

The responses of the lawyers we interviewed in our research raise serious concern that the right to access case materials is not ensured in practice. It appears that the possibility to refuse access as stipulated in Article 157(6) is widely used by the police. The lawyers reported that this is a longstanding issue and there were debates with the authorities in which lawyers endeavoured to secure a wider access to police documents, however without success. The lawyers maintain that apart from the legal definition of the offence and the limited information contained in the decision on the deprivation of liberty, information available to them is very scarce. Key information is made available only before the investigative judge/ in court phase.

3.4 Conclusions

The EU Directive on the right to information was transposed into the national legal system with the adoption of the 2014 the CPA-M amendment. It appears that the legislative framework is for the most part in compliance with the EU Directive.

The law ensures the provision of information regarding all rights listed in the EU Directive. suspects receive the above listed (3.1.1) information from the police in writing. CPA stipulates, that the written information must include the content of Appendix 1 to the CPA, which is an integral part of the law. The written information must be delivered in the language the suspect understands. The police for this purpose prepared a brochure for detained persons that apart from Slovenian version contains translation of information into 22 other languages.

The suspects must sign that he or she received the information and the police officer who provided the information to the suspect also has to sign.

The police in practice informs all suspects of their rights, which can particularly be attributed to the usage of standardized forms when drawing up written records of the interrogation/official note of the suspect’s statement and preparing written decisions on the deprivation of liberty. These include the content of the legal instruction.

However, concerns were raised that this form of informing the suspects of their rights is not very effective, and that the suspects cannot truly understand the content of the rights and how to enact them. The lawyers reported that sometimes their clients do not really know or remember the information they received. The suspects' capability of understanding the rights provided or even remembering, that the rights were provided to them, is also affected by the stress of finding themselves deprived of liberty and facing police proceedings.

The law does not require that suspects are entitled to keep a copy of the written information with them during police detention as required by the Directive.

If the obligation to provide written information is not complied, no specific remedies apply for such cases.

There is no special brochure with information on rights available for suspects subject to EAW proceedings as laid down in the Framework Decision 2002/584/JHA.
In accordance with Article 4 (1) CPA, the police must immediately inform the suspect (in the mother tongue or in a language the suspect understands) of the reasons for deprivation of liberty.

The police must inform the suspect, before starting to gather information from him/her, what criminal offence he/she is suspected of and the grounds for suspicion. However, research findings show that sometimes the police interview persons they suspect as potential witnesses, without informing them of their rights.

Amendment CPA-M, transposing the EU Directive on the right to information, introduced into the national criminal procedure law the right to access the materials related to detention. In accordance with Article 157(6), only suspects in police detention have the right to access the materials related to their detention, if the detention exceeds 6 hours, in order to exercise their right to challenge the decision on detention. Access to relevant material can be refused, if it could pose a serious threat to the life or the rights of another person, or if the inspection would affect the course of pre-trial proceedings and/or investigation, or if this is dictated by specific reasons of the defence or security of the State. The possibility to refuse access is included in the EU Directive as well, however research findings raise serious concerns that the right to access case materials is not ensured in practice It appears that the possibility to refuse access as stipulated in Article 157(6) is widely used by the police.

4. The right of access to a lawyer

4.1 The normative framework in Slovenia

In Slovenia, suspects and accused persons have the right to access a lawyer in pre-trial criminal proceedings. The source of the right is Article 29 of the Constitution of the Republic of Slovenia, and is further determined with the provisions of the CPA.[139]

The pre-trial phase of criminal proceedings is based on the so-called 'thesis of separation' by which the police-run preliminary procedure is separated from the judicial pre-trial procedure.[140] The work of the police is guided by the state prosecutor, while the investigating judge is directing the phase of (judicial) investigation. Access to a lawyer is guaranteed in both phases of the pre-trial proceedings.

The suspects have the right to retain a defence counsel of their choosing, however, only lawyers may be retained as defence counsel but they may delegate articled clerks to deputise for them.[141] There is no specific criminal defence profession. All attorneys in Slovenia admitted to the bar (members of the bar association) may act as criminal defence lawyers. There are no specific training requirement for criminal defence lawyers compared to attorneys in general. The general rules of lawyers to become attorneys are a law degree, passed state legal exam, passed exam of the Bar Association and fulfilment of conditions to be admitted to the bar. The idea is that these standards should ensure the quality of legal representation by attorneys. To represent clients in criminal proceedings, there are no additional training requirements in place.

Article 4/2 of the CPA guarantees the right to access a lawyer from the moment of apprehension onwards.

There are very limited provisions in the law mentioning the defence lawyer during the police detention stage. Since the 2003 amendment of the CPA, the police are not only obliged to inform the suspect of his/her right to a lawyer when they place him/her in police custody, but also before they want to procure a statement

139 Criminal Procedure Act 1994 and subsequent modifications

140 Šugman K., Structural Changes in Slovenian Criminal Procedure over the Last 20 Years, Zbornik znanstvenih razprav – Year IXXV., 2015, p. 5

141 Criminal Procedure Act 1994 and subsequent modifications; Article 67/4

from the suspect. To ensure that suspects could exercise their right to access to a lawyer effectively, the CPA demands from the police to postpone the interrogation until the arrival of the lawyer, if the suspect declares that he/she wants to retain one.[142] The interrogation is postponed until the arrival of the lawyer or until the time determined by the police, which may not be shorter than two hours. Other acts of investigation, except for those which it would be unsafe to delay, are also put off until the arrival of the lawyer.

If the lawyer does not arrive until the time determined by the police, an official note of the statement of the suspect is made.[143] The note includes the legal instruction given to the suspect, the statement of the suspect and, if the suspect wants to declare him/herself on the offence, the essence of his/her statement and comments thereon. The process of acquiring the suspect's statement without a lawyer present is not considered a police interrogation under the CPA-interrogation can only take place in the presence of the suspect's lawyer. The official note of the suspect's statement in this case cannot be used as evidence in court.[144] To be able to use the suspect's statement in court, a lawyer needs to be present during interrogation. This means that these rules also apply if the suspect states that he/she does not want to retain a lawyer.

Apart from that, there are no rules on police station legal advice. There are circumstances where the CPA prescribes mandatory legal assistance.[145] However, these circumstances relate only to the judicial pre-trial phase of criminal proceedings, directed by the investigative judge. **For the preliminary (police) phase, the law does not prescribe mandatory legal assistance – not even for suspects deprived of their liberty.**

There are also very limited legal provision concerning legal aid in the police phase. In Slovenia, the national legal aid scheme is set up under the provisions of the Legal Aid Act which applies to all types of judicial proceedings, but not for police proceedings.[146]

142 Criminal Procedure Act 1994 and subsequent modifications, Article 148/5

143 Criminal Procedure Act 1994 and subsequent modifications Article 148/6

144 However, the official note of the statement remains in the case file and thus available to the presiding judge during trial.

145 In some cases, formal defence is obligatory from the very first interrogation before the court: If the suspect or the accused is deaf, mute or otherwise incapable of defending himself successfully, or if the criminal proceedings are conducted against the suspect or the accused for a criminal offence punishable by thirty years of imprisonment or life imprisonment, or if under Article 157 of the CPA, the suspect is brought from police detention before an investigating judge. The accused must also have a defence counsel at the time the charge sheet is served on him if the law prescribes the punishment of eight years imprisonment or a more severe punishment for the criminal offence he is charged with.

146 Legal Aid Act 2008

Since the 2011 amendment of the CPA, the police are bound to inform a suspect who has been deprived of freedom, that if he/she does not have the means to retain a lawyer by him/herself, the police will, upon request of the suspect, appoint a lawyer for him/her at the expense of the state if this is in the interest of justice.[147] In practice this possibility is almost never used. If a suspect requests a lawyer at the expense of the state, the police must consider both conditions – that the suspect does not have the means to retain a lawyer and that appointing a lawyer is in the interest of justice. The law does not offer any criteria for interpreting the latter. It is considered, that the police would appoint a lawyer in the most serious crimes, in very complicated cases and where personal circumstances of a suspect call for legal representation in the earliest stages of proceedings.[148] **Deprivation of liberty in itself is not considered as a circumstance that requires appointing a legal aid lawyer in the interest of justice.**

4.2 The arrangements for providing legal assistance, and legal aid, at the police station

If the detained person decides to exercise his/her right to access to a lawyer, the police must enable him/her to do so as soon as possible. Article 157(4) CPA stipulates that the police must assist the suspect to retain a lawyer if the suspects so requests. If the suspect names the lawyer he wishes to retain, the protocol is that the police officer facilitates the detainees first contact with the lawyer by making the phone call. After the contact is made, the police officer allows the detainee to talk to the lawyer over the phone.[149]

If the suspect does not know which lawyer to contact, the police provide him with the list of all lawyers, which is managed by the Bar Association of Slovenia.

Previous research showed that very few suspects are represented by a lawyer in the police phase of the proceedings.[150] In the research, 150 criminal case files were analysed. Out of the 150 cases, only six (6) suspects had legal representation during the police interrogation; all of them retained their lawyer on their own – in none of the cases the lawyer was provided through legal aid due to the suspect's inability to pay for a lawyer; in 19 cases suspects were placed in police custody prior to being brought before the investigating judge

147 Act Amending Criminal Procedure Act - K, 2011

148 Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p. 25

149 Rules on police powers 2014, Article 33/2

150 Katarina Vučko, Neža Kogovšek Šalamon, Majda Hrženjak, National Study on the Right to Access to a Lawyer and the Right to Lega Aid of Suspects and Accused Persons in Criminal Proceedings, The Peace Institute, 2018, p. 30

for pre-trial detention hearing, however none of them were represented by a lawyer during police custody. It seems that the suspects, if they wish to have a lawyer in police proceedings, must retain one and cover the costs of legal representation. Suspects that cannot afford legal representation, in fact cannot exercise their right to a lawyer in police proceedings.

The cited research revealed possible reasons why the suspects rarely hire a lawyer during the police phase of the proceedings:

- In many cases, the main problem is the suspect's capability to pay the defence counsel. Even if the suspects wish to have a lawyer present and the police contact the lawyer, the suspect and the lawyer sometimes cannot reach an agreement and the lawyer does not take the case;
- Some suspects are familiar with police proceedings, they are aware that the proceedings will continue regardless of the lawyer's presence and decide to exercise their right to remain silent during police questioning and retain a lawyer in later stages of the criminal proceedings.
- Case files do not reveal all possible communication between suspects and lawyers during preliminary police proceedings. Sometimes the defence counsel does not attend the police hearing as a part of the defence tactics. In preliminary police proceedings, a lawyer *de facto* does not have the right to inspect police case files and therefore does not have access to all relevant information, which hinders the possibility to provide effective defence. Some lawyers therefore advise their clients to attend the police questioning by themselves, since the record of police questioning, performed in the absence of a lawyer, cannot be used as evidence in court.

Some suspects underestimate the seriousness of their situation and believe that the matter will be resolved on its own.

Our research confirmed that mechanisms to support the detained suspects in exercising their right to a lawyer at police stations are minimum. Out of the twelve detention cases we observed at the police stations, only four suspects had contact/ were represented by a lawyer during police custody.

It seems that the right of access to a lawyer only functions well if the suspect already knows which lawyer to contact. In three cases the suspects already knew the lawyer from before or representation was arranged on their behalf by their relatives. In all these cases the suspects reported that the police called the lawyer on the phone immediately after their request. They were able to talk to the lawyer over the phone and make arrangements for the lawyer's presence at the interrogation and possible police investigative actions (e.g. house search) that followed.

If the suspect wants to retain a lawyer but does not know who to contact, the police offers him/her the list of all lawyers, which is managed by the Bar Association of Slovenia. In one of the cases we observed the suspect used this list to choose a lawyer. The suspect reported that he was present while the police officer attempted to reach the lawyer he chose from the list and that only the fourth lawyer the officer called agreed to represent the suspect. The first three lawyers responded that they cannot represent the suspect as they do not work in the field of criminal law and that they "do not know why they are on that list".

The problem is that the list provided by the Bar Association is a general one, listing all the lawyers admitted to the bar (members of the bar association) who in theory may act as criminal defence lawyers; but in fact, many of them do not practice criminal law. As this is just a general list of all Slovenian lawyers and there is no system of duty lawyers at the police stations,[151] there is no guarantee that the suspect will be able to reach a lawyer willing to represent him/her. This issue was also pointed out by one of the police officers we spoke to during the observations at the police stations. The police officer commented that reaching a lawyer outside of regular working hours (evenings, nights and weekends) is almost impossible. Reaching a lawyer is only possible if the suspect already knows a lawyer and has the lawyer's mobile phone number. The police officer also confirmed the above described experience of the suspect: lawyers often respond that they are not handling criminal cases, or they name a price of their services,[152] which the suspect cannot afford.

Our research confirmed that if the suspect cannot afford to pay for the services of a lawyer, he/she will not be able to exercise the right to a lawyer while in police custody. Although the CPA bounds the police to inform a suspect who has been deprived of freedom, that if he/she does not have the means to retain a lawyer by him/herself, the police will, upon request of the suspect, appoint a lawyer for him/her at the expense of the state if this is in the interest of justice, the police almost never appoints one. In the last few years the police appointed a lawyer at the expense of the state only in about ten cases. Precise statistics are not available as the police does not have the legal basis to systematically collect statistics on the number of cases in which it has appointed the attorney to the suspect on the costs of the police.[153] In the observed cases at the police stations,

151 The system of duty lawyers is only in place at the courts, e.g. for ensuring mandatory legal representation in proceedings and hearings before the investigating judge; the law does not prescribe mandatory representation by a lawyer for the police phase of the proceedings.

152 The officer mentioned the amount of 4000 EUR for the police custody, hearing before the investigating judge, pre-trial detention, 10 court hearings, etc.

153 Katarina Vučko, Neža Kogovšek Šalamon, Pravica do odvetnika v kazenskem postopku – stanje in izzivi (The right to a lawyer in criminal proceedings – current situation and challenges), Pravna praksa, Ljubljana, 10 May 2018, pp. 13-15.

four suspect reported that they requested from the police to have an ex officio lawyer/ lawyer appointed at the expense of the state, since they cannot afford to hire one themselves. Their requests were not recorded in any of the police documents. In three cases the police officer responded to their request by explaining that an ex officio lawyer will be appointed to them once they are brought to the investigating judge, since representation by a lawyer is mandatory at that stage. One suspect stated that the police officer told him the police appoint a lawyer only if that is in the interest of their investigation. The suspect then commented that the information he received from the police about the option of a police provided lawyer is deceiving.

One of the suspects stated in our interview that he expected the ex officio lawyer to visit him already in the police custody so that he can consult with the lawyer and prepare for the hearing before the investigating judge. In practice this never happens. Previous research showed that the suspect is brought by the police to the court only 10 or 15 minutes before the hearing by the investigating judge, together with the documentation related to the case.[154] This the suspect's first opportunity to meet his/her appointed lawyer and the time for consultation and the review of the available documents by the lawyer is extremely limited. The situation is even worse if the client is a foreign national that does not speak or understand Slovenian language, as the conversation must be interpreted which leaves even less time for consultation. The consulted lawyers stressed that in such circumstances it is impossible for a lawyer to gather all relevant information and to make a constructive decision on the best type of defence.

The lawyers we consulted in our research generally agreed that the system of police informing the lawyers chosen by the suspects functions well. They stated that the police usually respect any agreements with the lawyer and postpone the interrogation until their arrival at the police station.

However, the absence of effective legal aid mechanism in the police proceedings and the absence of mandatory legal assistance was widely criticised by the lawyers we interviewed. First suspects' statements are gathered in this phase and it affects further course of criminal proceedings significantly. Any damage to the suspect's best interest is difficult to mitigate in later stages. In the lawyers' opinion, the law should therefore establish the criteria in which legal assistance is mandatory – similarly as the law provides in criminal proceedings before courts. None of the lawyers had the experience of being appointed by the police as legal aid lawyers. In their opinion the current system is not functioning,

154 Katarina Vučko, Neža Kogovšek Šalamon, Majda Hrženjak, National Study on the Right to Access to a Lawyer and the Right to Lega Aid of Suspects and Accused Persons in Criminal Proceedings, The Peace Institute, 2018, p. 36.

since the provision in the law does not provide for clear criteria and procedure of appointing a legal aid lawyer by the police. The decision to appoint is in the complete discretion of each individual police officer, without the possibility of an appeal or judicial review. The lawyers also suggested that a system of duty lawyers should be established so that the police can contact them if the suspect requires legal aid and/or does not have a chosen lawyer.

4.3 The suspect's decision regarding access to a lawyer

The CPA requires that the suspect's statement regarding his or her right to a lawyer is always obtained and recorded. Article 148.a(3) CPA stipulates that if the suspect has not been informed of his or her rights as prescribed by the law, or the instruction and the statement of the suspect in respect of his right to a lawyer have not been noted down in the record, or the suspect was interrogated without a lawyer being present,[155] or the interrogation was conducted contrary to the provisions of the eighth paragraph of Article 227 (prohibition of force, threats or any similar means of extorting a statement or confession) of this Act, the court may not base its decision on the statement of the suspect.

Since the law does not prescribe mandatory legal assistance in the police phase of the proceedings, the suspect can always waive his or her right to an attorney.

As explained in the Section 3.2.2. of this study, the police use for drafting written decisions on the deprivation of liberty and also written records of interrogation/ official notes of the suspect's statement a standardised form that provides for a uniform structure of every written decision/written record. One of the sections of the standardised form is intended for the written record of the suspect's decision whether he or she will exercise his or her right to a lawyer is included.

In our research we did not observe any violations of the described legal requirement. Since the law does not prescribe mandatory legal assistance in the police phase of the proceedings, the suspect can always waive his or her right to an attorney. As described in Section 4.2. of this study, the waiver is not always entirely voluntary, since the suspects who do not have sufficient means to hire and pay for the lawyer's services, usually have no other option but to waive their right of access to a lawyer.

155 About the difference between police interrogations conducted in the presence and without a presence of a lawyer, please see Section 4.6 - Police interrogations, legal advice and the right to silence.

4.4 How legal advice and assistance is provided

As explained in the previous section of this study, if the suspect names the lawyer he/she wishes to retain, the police officer facilitates the detainees first contact with the lawyer by making the phone call. After the contact is made, the police officer allows the detainee to talk to the lawyer over the phone.[156] In the cases we observed at the police stations, the suspects who retained a lawyer were always allowed to speak to the lawyer over the phone. However, one of the lawyers we interviewed stated that the police almost never allows her to speak to the suspect on the phone, so it is possible that the practice varies in different police stations.

Some of the lawyers we interviewed expressed reluctance to discuss over the phone with their client in detail. Namely, the suspect has the right to private and unsupervised consultation with his or her lawyer, but the lawyer can never be sure of the level of privacy when the call is made by the police. Since the lawyer cannot be sure who is present during the conversation, the lawyers usually limit this type of communication to explaining the rights, the procedure that will follow and whether the suspect should sign individual documents offered to him or her by the police.

Based on the telephone conversation, the decision is made, whether the lawyer should visit the suspect in the police custody or attend the interrogation. The attorney has the right to visit the client in detention – this is enshrined in the right of the suspect to call the attorney and the duty of the police to wait for attorney to come to detention before interrogation starts for maximum of two hours. In all four cases we observed in the police stations, where suspects decided to retain the lawyer, the lawyer visited their client at the police station. In three cases the lawyers also attended the police interrogation. In one case the lawyer did not attend the interrogation, but advised to his client to remain silent, and the client decided to follow the lawyer's advice.

From the interviews with lawyers we conducted in our research it can be seen that the lawyers consider several factors when deciding if their presence at the police station is necessary or not. The lawyers stated that if the suspect explicitly expresses the wish for them to be present, they go to the police station. Also, if the case involves a serious criminal offence, however even in cases of minor criminal offences if the suspect is in a state of great stress and needs support. One of the lawyers mentioned that sometimes his visit is not so much about legal than psychological support since sometimes the lawyer is the only person on the suspect's side. The impact of the lawyer's presence is substantial since the suspect as an individual is standing alone against the entire law enforcement apparatus.

156 Rules on police powers 2014, Article 33/2

Two of the interviewed lawyers however mentioned that they refrain from attending police interrogations as much as possible. Namely, if the questioning is performed in the lawyers presence, it is formally considered an interrogation under the CPA and the written record of the interrogation can be used as evidence in court (for more details, please see section 4.6 Police interrogations, legal advice and the right to silence). As already described in the chapter on the right to information, lawyers in the police proceedings are provided with very limited information on the basis for the accusation and have almost no access to police file. Providing effective legal defence in such circumstances is not possible and the lawyers therefore do not wish to contribute to the suspect's statement being used as evidence in court. Furthermore, the suspect will within 48 hours most probably be taken before the investigating judge where he or she will be interrogated again, but this time with the mandatory presence of a lawyer who will be entitled to inspect the entire case file.

4.5 The initial lawyer/client consultation

The attorney has the right to visit the client in detention – this is enshrined in the right of the suspect to call the attorney and the duty of the police to wait for attorney to come to detention before interrogation starts for maximum of two hours. This arrival of the attorney to detention already qualifies as visit. There are no further provisions on visits, however, the police are also not authorized to prohibit the attorney from visiting the suspect again, apart from the hearing he or she might attend.

According to the information we gathered in our research, after the arrival of the lawyer at the police station, the suspect has the opportunity for a private consultation in a separate room that may only be visually supervised. Visual supervision (either through a glass door or video surveillance systems – depending on the equipment available at each police station) is provided for the personal safety of the suspect and the lawyer and also to prevent any illicit exchange of items etc.

The law does not prescribe any limits in terms of the duration of the consultation and according to the police sources, they never limit the time available for consultation.

Neither the suspect nor the lawyers we interviewed in our research raised any concerns regarding the privacy or the duration of the lawyer/client consultation.

4.6 Police interrogations, legal advice and the right to silence

In Accordance with Article 148.a(1) CPA the (formal) police interrogation of a suspect may only be conducted in the presence of a lawyer.[157] Since the 2003 amendment of the CPA, the police are not only obliged to inform the suspect of his right to a lawyer when they place him in police custody, but also before they want to procure a statement from the suspect. To ensure that suspects could exercise their right to access to a lawyer effectively, the CPA demands from the police to postpone the interrogation until the arrival of the lawyer, if the suspect declares that he wants to retain one.[158] The interrogation is postponed until the arrival of the lawyer or until the time determined by the police, which may not be shorter than two hours. Other acts of investigation, except for those which it would be unsafe to delay, are also put off until the arrival of the lawyer.

If the lawyer does not arrive until the time determined by the police, an official note of the statement of the suspect is made.[159] The note includes the legal instruction given to the suspect, the statement of the suspect and, if the suspect wants to declare himself on the offence, the essence of his statement and comments thereon. The process of acquiring the suspect's statement without a lawyer present is not considered a police interrogation under the CPA - interrogation can only take place in the presence of the suspect's lawyer. The official note of the suspect's statement in this case cannot be used as evidence in court. To be able to use the suspect's statement in court, a lawyer needs to be present during interrogation. This means that these rules also apply if the suspect states that he does not want to retain a lawyer.

However, previous research confirmed that the official note of the suspect's statement (made without a lawyer) is kept in the case file through the entire criminal proceedings, including trial. The content of the suspect's statement is therefore available to the presiding judge, and although the content cannot be formally used as a basis of the judgement, the judge is acquainted with the statement. Furthermore, the official note of the statement often provides the basis for further police investigative action and therefore has an important impact on the course and the outcome of criminal proceedings.

Consequently, above described shortcomings in providing legal aid during police proceedings and police detention cannot be mitigated by formally excluding such suspect statements from evidence, as they *de facto* still have important effect.

157 This provision does not constitute mandatory defence in police proceedings.
158 Criminal Procedure Act 1994 and subsequent modifications, Article 148/5
159 Criminal Procedure Act 1994 and subsequent modifications Article 148/6

Having this in mind, the defence tactics that lawyers sometimes use (see Section 4.4.) by not attending their client's police interview so that his/her statement cannot be used as evidence in court, may not be beneficial for the suspects.

4.6.1. The right to silence

The information about the right to silence is provided to suspects both at the time of deprivation of liberty (that the suspect is not bound to make any statements) as well as before any interrogation or taking statements from the suspect (he or she is not obliged to give any statement or answer questions and that, if he or she intends to plead his case, he or she is not obliged to incriminate him/herself or his or her fellow beings or to confess guilt).

Previous research in which 150 criminal case files were analysed, showed that in 77% of cases, the suspects made their statement to the police, 23% of the suspects decided to remain silent. As many as 53% of the suspects that made a statement, confessed or partially confessed the offence to the police. At the time of the confession, the lawyer was present only in one case.[160]

In the twelve cases we observed at the police station during this research, five suspects decided to exercise their right to remain silent and did not give any statements nor they answered any questions. Two of them were advised so by their lawyers, the others decided to remain silent due to the fact that they did not have a lawyer present. All of them reported that their decision was fully respected by the police officers and they did not attempt to influence their decision. One suspect gave a statement but as per his lawyer's advice did not answer any additional police questions.

One suspect was advised by the lawyer to answer questions, unless there was something unusual to which he would not feel comfortable answering. The lawyer was present during the interrogation and the suspect reported that he did not feel any particular pressure from the officers.

Two suspects provided their statements to the police without a lawyer present. In three cases we were not able to determine whether the suspects exercised their right to remain silent during the police questioning.

The lawyers we interviewed in our research generally believed that the level of awareness about the right to remain silent is rather low. In their opinion,

160 Katarina Vučko, Neža Kogovšek Šalamon, Majda Hrženjak, National Study on the Right to Access to a Lawyer and the Right to Lega Aid of Suspects and Accused Persons in Criminal Proceedings, The Peace Institute, 2018, p. 31.

the suspects in general understand this right when informed by the police, but they feel obliged to answer and explain. Many suspects fear that they will appear guilty to the police if they choose not to speak to them. In their opinion, it is very important that the suspects have the lawyer's support at this stage, to clarify the meaning of the right to them and to assure them that exercising the right to remain silent should not have any negative effect on their legal position as suspects. The lawyers stated that they mostly advise the clients to remain silent and not provide any statements to the police because the suspects and their lawyers at this stage have very limited knowledge of the case the police has against them. The lawyers stated that only rarely it is sufficiently clear, that it would be beneficial for their client to explain certain facts and circumstances to the police and that would not be used against them in later stages; in such cases they would advise the client to provide such clarifications and explanations to the police.

4.7 The role played by lawyers during police interrogations

There are no limitations in the law as to what the attorney may do at the interrogation. Hence, they can pose questions to their client, make remarks, ask for timeout, check the record etc. The attorney's role during the interrogation is not regulated by the law.

The role of attorneys is formulated very generally in Attorneys Act, Article 2(1): the attorneys provide legal advice, represent and defend clients before courts and other state bodies, compose documents and represent clients in their legal relationships. The rules generally in place for all attorneys are those in the Code of Ethics of the Slovenian Bar Association. These rules are very general and do not specifically mention the role of the attorney in police detention.

The general rules on the role of the attorney in criminal proceedings prohibit assistance of one attorney to two or more suspects in the same criminal case.[161]

Many of the lawyers we interviewed in our research believe that their presence at the police station generally leads to more formal proceedings, and the manner of communication with the suspect is more respectful. They believe that the police are more aware that their actions are observed by the lawyer who will object and appeal against any misconduct.

161 Article 68(2) CPA.

4.8 Police and lawyers' perspectives on the right of access to a lawyer

The general feedback we received from the police during our research was that appropriate implementation of the right to a lawyer is beneficial for all parties involved. They believe that the presence of a lawyer in a way protects the police as well, particularly in the case of any later appeals as the lawyer is acquainted with police actions in the case.

The lawyers we interviewed generally believed that the police officers are professionals that very well understand the role of other professions involved in the criminal proceedings, and they include the lawyer, however sometimes at the bare minimum. Some of the lawyers reported that the attitude of the police towards them still varies from the police station to police station, from one officer to another, and that sometimes it is very clear that they consider their presence not necessary and they view it as pressure on their work.

4.9 The quality of legal advice and assistance

Since we were not able to observe police custody proceedings by accompanying lawyers, the research did not result in any further insights in the quality of legal advice and assistance. Because there is also no mechanism for ensuring legal assistance or legal aid set up at police stations, the research could not result in any general assessment of the functioning of such a mechanism.

4.10 Conclusions

No amendments to the national legislation was introduced with the purpose of transposing the EU Directive on the right of access to a lawyer – the general opinion among professional stakeholders was that the national legislation is already in compliance with the EU Directive.

Indeed, it appears that the national legislation pertaining to the right to access to a lawyer in police proceedings/ proceedings related to police custody is in line with the EU Directive.

Article 4/2 of the CPA guarantees the right to access a lawyer from the moment of apprehension onwards. Since the 2003 amendment of the CPA, the police are not only obliged to inform the suspect of his/her right to a lawyer when they place him/her in police custody, but also before they want to procure a statement from

the suspect. To ensure that suspects could exercise their right to access to a lawyer effectively, the CPA demands from the police to postpone the interrogation until the arrival of the lawyer, if the suspect declares that he/she wants to retain one.

However, it seems that the right of access to a lawyer only functions well if the suspect already knows which lawyer to contact and has the means to pay for the legal representation. Research shows that very few suspects are represented by a lawyer in the police phase of the proceedings. Namely, certain characteristics of the Slovenian criminal system significantly hinder the access to a lawyer for many suspects – particularly those who cannot afford to pay for the lawyer's services.

For the preliminary (police) phase of the proceedings, the law does not prescribe mandatory legal assistance – not even for suspects deprived of their liberty or vulnerable suspects such as children and person with intellectual or psychosocial disabilities. There are also very limited legal provision concerning legal aid in the police phase. Research shows that in practice this possibility is almost never used. Deprivation of liberty as such is not considered as a circumstance that requires appointing a legal aid lawyer in the interest of justice.

There is also no scheme of duty lawyers that could be contacted in case the suspect who wishes to exercise his/her right to a lawyer does not know which lawyer to call. Such suspect often encounters difficulties when trying to retain a lawyer.

Suspects without legal representation seem to be protected by the fact that CPA does not consider police interviews without a lawyer present as formal police interrogations (and in such case the official note of the suspect's statement cannot be used as evidence in court). However, the official note of the suspect's statement (made without a lawyer present) is kept in the case file through the entire criminal proceedings, including trial and the presiding judge is acquainted with the statement. Furthermore, the official note of the statement often provides the basis for further police investigative actions and therefore has an important impact on the course and the outcome of criminal proceedings. This confirms the importance of the lawyer's involvement in the police stage of the proceedings and underlines the need to establish an effective legal aid and mandatory defence system for detained suspects. It is important to emphasise that the current system is not in compliance with the EU Directive on Legal Aid 2016/1919 with the transposition date of 5 May 2019.

5. Conclusions and recommendations

5.1 Major issues

5.1.1. The right to interpretation and translation

The right to use one's language is protected by the Constitution of the Republic of Slovenia. The right to interpretation and translation has been incorporated into Article 8 of the CPA from its adoption in 1994. In 2014, the EU Directive in the right to interpretation and translation was transposed into the national Criminal Procedure Act. As a result, CPA now contains more detailed provisions on how the right to translation and interpretation is ensured, compared to the previous regulations.

Detained suspects have the right to interpretation and the police inform suspects on this right. The suspects receive the information from the police also in writing (a brochure delivered in the language the suspect understands). The suspects must sign that he or she received the information and the police officer who have the information to the suspect also has to sign.

The CPA stipulates that translation and interpretation is provided by court interpreters. In practice, the police use interpreters with whom the Ministry of the Interior has concluded a contract and are not (necessarily) court interpreters. This means that the procedure and conditions for the accreditation of court interpreters and guarantees regarding the quality of the services of court interpreters are not applicable to the interpreters used by the police.

Also, in the national law there are no specific provisions on how the need for an interpreter is determined. The law simply states that interpreters are needed if the procedures are not conducted in the language that the parties to the procedure understand. The responsibility to assess the need lies on the police officer conducting police actions. If the officer finds the conversation impossible or that the level of understanding on the suspect's part is not sufficient, the officer will engage an interpreter. In practice appropriate assessment appears to be problematic when the suspect speaks one of the languages of the former Yugoslavia (Croatian/Serbian) or speaks English – languages usually spoken and understood by police officers. It appears that the police too often decides not to engage an interpreter if they are able to communicate with the suspect without assistance - even if the level of communication is too basic to meet the communication skills needed to appropriately conduct the interrogation,

particularly taking into consideration the importance of the suspects statements for the outcome of the criminal proceedings.

The main provision of Article 8 of the CPA does not explicitly mention the right to interpretation of private lawyer/client consultation. For the purposes of legal clarity, it would be much more appropriate if the right to free-of-charge interpretation of lawyer/client consultations was clearly incorporated in the text of Article 8 of the CPA.

Internal guidelines of the police direct towards an oral translation of all documents related to the decision on detention. As a result, in practice mostly oral translation of essential documents related to police detention is provided. In the cases we observed, written translation of the decision on the deprivation of liberty was not provided.

It is also problematic, that the same interpreter is used both for the police communication with the suspect and the lawyer/client consultation, which might affect the interpretation and possibly expose information the suspect and his/her lawyer decided to keep confidential.

5.1.2. The right to information

As the right to information of persons deprived of their liberty is constitutionally protected, this right has been incorporated into the CPA since its adoption in 1994. The EU Directive on the right to information was transposed into the national legal system with the adoption of the 2014 the CPA-M amendment. It appears that the legislative framework is for the most part in compliance with the EU Directive.

The suspect must be informed about the rights immediately when deprived of his or her liberty and they receive information in writing.

It is important to underline that the police in practice informs all suspects of their rights, which can particularly be attributed to the usage of standardized forms when drawing up written records of the interrogation/official note of the suspect's statement and preparing written decisions on the deprivation of liberty. However, concerns were raised that this form of informing the suspects of their rights is not very effective, and that the suspects cannot truly understand the content of the rights and how to exercise them.

If the obligation to provide written information is not complied, no specific remedies apply for such cases.

The law also does not require that suspects are entitled to keep a copy of the written information with them during police detention as required by the Directive. There is no special brochure available for suspects subject to EAW proceedings as laid down in the Framework Decision 2002/584/JHA.

Amendment CPA-M, transposing the EU Directive on the right to information, introduced into the national criminal procedure law the right to access the materials related to detention. Access to relevant material can be refused, if it could pose a serious threat to the life or the rights of another person, or if the inspection would affect the course of pre-trial proceedings and/or investigation, or if this is dictated by specific reasons of the defence or security of the State. Research findings raise serious concerns that the right to access case materials is not ensured in practice. It appears that the possibility to refuse access as stipulated in Article 157(6) is widely used by the police.

5.1.3. The right to a lawyer and to legal aid

In Slovenia, suspects and accused persons have the right to access a lawyer in pre-trial criminal proceedings. The source of the right is Article 29 of the Constitution of the Republic of Slovenia, and is further determined with the provisions of the CPA.[162]

The law guarantees the right to access a lawyer from the moment of apprehension onwards.

Since the 2003 amendment of the CPA, the police are not only obliged to inform the suspect of his/her right to a lawyer when they place him/her in police custody, but also before they want to procure a statement from the suspect. To ensure that suspects could exercise their right to access to a lawyer effectively, the CPA demands from the police to postpone the interrogation until the arrival of the lawyer, if the suspect declares that he/she wants to retain one.[163]

Although the national legislation pertaining to the right to access to a lawyer in police proceedings/ proceedings related to police custody is in line with the EU Directive, certain characteristics of the Slovenian criminal system significantly hinder the access to a lawyer for many suspects – particularly those who cannot afford to pay for the lawyer's services.

For the preliminary (police) phase of the proceedings, the law does not prescribe mandatory legal assistance – not even for suspects deprived of their liberty or vulnerable suspects such as children and person with intellectual or psychosocial

162 Criminal Procedure Act 1994 and subsequent modifications
163 Criminal Procedure Act 1994 and subsequent modifications, Article 148/5

disabilities. There are also very limited legal provision concerning legal aid in the police phase. Research shows that in practice this possibility is almost never used. Deprivation of liberty as such is not considered as a circumstance that requires appointing a legal aid lawyer in the interest of justice.

There is also no scheme of duty lawyers that could be contacted in case the suspect who wishes to exercise his/her right to a lawyer does not know which lawyer to call. Such suspects often encounter difficulties when trying to retain a lawyer.

Lawyers are also sometimes reluctant to attend interrogations at the police stations, as they believe that the lack of information and access to police files prevents them from providing effective defence. They believe that in such circumstances, it is not in the client's best interest that their presence allows for the written record of the interrogation to be used as evidence later in court. However, even the official note of the suspect's statement (made without a lawyer) is kept in the case file through the entire criminal proceedings, including trial and the presiding judge is acquainted with the statement. Furthermore, the official note of the statement often provides the basis for further police investigative action and therefore has an important impact on the course and the outcome of criminal proceedings. This confirms the importance of the lawyer's involvement in the police stage of the proceedings and underlines the need to establish an effective legal aid and mandatory defence system for detained suspects.

5.2 Recommendations

Based on our research findings we make the following recommendations:

To the Government and the State Assembly:

- To amend the CPA so that the right to free-of-charge interpretation of private lawyer/client consultation is clearly included in the relevant legal provisions;
- To amend the CPA to extend mandatory legal assistance to police proceedings, similarly as this is arranged in the court phase of the proceedings;
- To amend the CPA ensuring suspects and accused persons have effective access to legal aid, with clear pathways and conditions from the time they are suspected of having committed a criminal offence, including police detention proceedings;
- To set up a scheme of duty lawyers that could be contacted by the police to assist the suspect to retain a lawyer if the suspects so requests;

- To set up a requirement and to ensure training for lawyers that provide representation at the police stage of the proceedings.
- To clarify in the law that suspects have the right to keep the Letter of Rights with them, while they are detained.

To the Police

- to provide clear guidelines to police officers assessing the need for an interpreter in police proceedings to widely ensure professional interpretation to all suspects who do not speak or understand the official language of the proceedings;
- To provide the suspects with written translation of essential documents related to police detention;
- To introduce mechanisms for checking whether the suspect understood the information provided by the police; e.g. asking the suspect to repeat the information in his/her own words and providing additional explanations;
- To ensure access to police documents and materials to suspects and their lawyers for the purpose of effective defence.

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