

IMPAIR

Enhancing Procedural Rights of Persons with Intellectual and/or Psychosocial Impairments in Criminal Proceedings

Key Findings of the Slovenian National Report

Slovenia
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1. National policies and legal framework

1.1. Legal framework

1.1.1. General overview of criminal proceedings

Slovenian criminal proceedings are accusatory proceedings which can take form as general criminal proceedings, summary criminal proceedings and criminal proceedings against minors. General criminal proceedings are initiated for all criminal offences punishable by deprivation of liberty for more than 3 years. Summary criminal proceedings take place in case of criminal offences punishable by deprivation of liberty for under 3 years. The below description refers to general criminal proceedings against adults that are suspected to have committed a criminal offence for which a perpetrator is prosecuted *ex officio*.

The general proceedings evolve through several stages, each having its own purpose, actors and procedural safeguards. The first stage is the pre-trial procedure, which begins with a criminal report by the victim, third person, the police or the state prosecutor. Criminal reports are submitted to the competent public prosecutor – criminal reports submitted to the court or the police should always be forwarded to the competent public prosecutor.¹ The law defines cases, where failure to report a crime is itself a criminal offence.² The main stakeholders of the pre-trial procedure are the police, the state prosecutor and the investigating judge. If grounds exist for suspicion that a criminal offence liable to public prosecution has been committed, the police has the obligation to take steps necessary for discovering the perpetrator, ensuring that the perpetrator does not escape, detecting and preserving traces of crime or objects of value as evidence, and collecting all information that may be useful for the successful conducting of criminal proceedings.³

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. Whenever the police establish that there are grounds to suspect that a person has perpetrated a criminal offence, they must immediately inform the person (suspect) what criminal offence he is suspected of and of the grounds for the suspicion, and instruct him that he has the right to remain silent and refuse to answer questions; if he chooses to answer questions, he is not obliged to incriminate himself 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 a trial.⁴ The police may deprive a suspect of freedom if any of the grounds for pre-trial detention exist, but should take the suspect to the investigating judge without any delay. Police detention may last for 48 hours at the longest. After that, the police are obliged to either release the suspect or take him to the investigating judge. After this point, deprivation of liberty (pre-trial detention) can only be ordered by the investigating judge at the proposal of the state prosecutor. The detention may last one month from the day he was arrested at the longest. After that, the suspect may be kept in custody only under a ruling ordering the extension of detention (for 2 more months and in some cases, another 3 months).

¹ Criminal Procedure Act 1994 and subsequent modifications, Article 147/1 and 3

² Criminal Procedure Act 1994 and subsequent modifications, Article 146/2

³ Criminal Procedure Act 1994 and subsequent modifications, Article 148/1

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

The state prosecutor is directing and supervising the pre-trial procedure and deciding on its course and termination.⁵ The state prosecutor also submits the request for opening a judicial investigation to the investigating judge. With the decision of the investigating judge to conduct the judicial investigation, the criminal proceedings formally begin. In the investigation, the investigating judge preserves the evidence that would be difficult to collect at a later stage, interrogates the suspect, witnesses, appoints court experts, carries out inspections, orders pre-trial detention at the proposal of the public prosecutor, etc. And at the same time the investigating judge acts as a guarantor of the procedural rights of suspects.

After the conclusion of the judicial investigation, proceedings before court may only be conducted on the basis of the criminal charge filed by the public prosecutor.⁶

After the criminal charge becomes final, the presiding judge schedules a pre-trial hearing, where the defendant can declare himself guilty or not guilty and make proposals for evidence (defendants may only propose evidence at a later stage if they present valid reasons why they did not propose evidence at the pre-trial hearing).⁷

After the pre-trial hearing the main hearing begins. Cases of criminal offences carrying a sentence of fifteen or more years of imprisonment are heard by panels of two professional judges and three lay judges; criminal offences carrying less severe sentences are tried by panels of one professional judge and two lay judges.⁸

Upon completion of the hearing of evidence, the court pronounces its judgement. After announcing the judgement, the presiding judge instructs the parties of their right to appeal.⁹

The appeal is an ordinary legal remedy, which is decided upon by a higher court. It can be filed on the ground of substantial violation of provisions of the criminal procedure; violation of criminal law; and on the ground of erroneous or incomplete determination of the factual situation.

Criminal proceedings may also be reopened after a final ruling or a final judgement. Extraordinary legal remedies are decided upon the Supreme Court of the Republic of Slovenia. Two types of extraordinary legal remedies are possible: reopening of criminal proceedings and request for protection of legality; each allowed under the conditions prescribed by the law.

For persons with intellectual and/or psychosocial impairments one special subtype of criminal proceedings could be particularly important: proceedings for the application of security measures. In accordance with Slovenian Criminal Code, the perpetrator, who at the time of committing a criminal offence was not capable to understand the meaning of his act or to control his because of mental disorder or mental underdevelopment, cannot be held responsible for his actions.¹⁰ In such cases the public prosecutor makes a motion to the court to order compulsory psychiatric treatment and custody of such perpetrator in a medical institution, or compulsory psychiatric treatment of the perpetrator at liberty, if grounds for such measure exist as provided by the provisions of the Criminal Code.¹¹ In such criminal proceedings, representation of the defendant by an attorney is mandatory.

1.1.2. Relevant national legislation concerning procedural safeguards for persons with intellectual and/or psychosocial impairments

⁵ Criminal Procedure Act 1994 and subsequent modifications, Article 158.a/3

⁶ Criminal Procedure Act 1994 and subsequent modifications, Article 268/1

⁷ Criminal Procedure Act 1994 and subsequent modifications, Article 285.a/1

⁸ Criminal Procedure Act 1994 and subsequent modifications, Article 25/1

⁹ Criminal Procedure Act 1994 and subsequent modifications, Article 362/1

¹⁰ Criminal Code 2008 with subsequent modifications

¹¹ Criminal Procedure Act 1994 and subsequent modifications, Article 491/1

- a) Outline the national definitions that cover this group of persons and specify their differences with regard to the international definition agreed upon for the IMPAIR project.
- b) List the provisions relevant for procedural rights in criminal law.
- c) Explicitly indicate whether and legislative measures were adopted as a result of the Recommendation or not. Indicate the measures.
- d) Eventually shortly outline the content of a political discussion that has taken place.

The most relevant piece of national legislation concerning procedural safeguards for persons with intellectual and/or psychosocial impairments is the Criminal Procedural Act (hereinafter: CPA).¹² The CPA defines the course of proceedings, the role, powers and duties of the law enforcement and judicial authorities. The procedural rules of the CPA refer to all suspects and accused persons.

Regarding the position of persons with psychosocial and/or intellectual impairments as suspects and the accused in Slovenian criminal proceedings, the CPA is mostly focusing on the capacity of the accused to participate in the criminal proceedings. Apart from that, special needs of vulnerable persons do not seem to be emphasised particularly. Legislation changes, reflecting the Recommendation were not introduced. The CPA not only does not provide for a legal definition of vulnerability, it also does not use this term in its provisions. Although many pieces of Slovenian legislation (particularly in the field of social and health care and anti-discrimination) use the term “vulnerable” or “vulnerable groups”, the definitions are almost never provided.

Neither the CPA nor the Criminal Code provide for these definitions.¹³ Slovenian legislation terminology does not use the term intellectual disability/impairment.

Slovenian Mental Health Act provides the following definition that relates to the term psychosocial impairment:¹⁴ Mental disorder [*duševna motnja*] is a temporary or permanent disorder in the functioning of brain, which is reflected in altered thinking, feeling, cognition, behaviour and perception of oneself and one’s environment. Within this definition, the law emphasises that deviation from the moral, social, political or other values of the society in and of itself does not account for a mental disorder.

For intellectual impairment, Slovenian legislation is using the term mental development impairment [*motnja v duševnem razvoju*].¹⁵

1.2. Policies and programmes targeting procedural rights of persons with intellectual and/or psychosocial impairments in criminal proceedings

There are no policies and programmes targeting procedural rights of persons with intellectual and/or psychosocial impairments in criminal proceedings.

There are no specialised courts or law enforcement units and there seems to be a shortage in the field of special training as well.

Part of the mandatory programme at the Police College is a 3-year course of psychology. Training courses are also available to police officers after the conclusion of the education. One

¹² Criminal Procedure Act 1994 and subsequent modifications

¹³ Criminal Code 2008 and subsequent modifications

¹⁴ Mental Health Act 2008

¹⁵ Placement of Children with Special Needs Act 2011 and subsequent modifications

example is the 2014 training for all duty police officers on recognising the risk of suicide and symptoms of psychosocial impairments.¹⁶ The training was a police reaction to several cases of suicides that took place during police custody.

According to the information of the Judicial Training Centre, responsible for continuous training of judges, state prosecutors, state attorneys as well as for training of other court personnel, they have not organised specific training programmes for judges or state prosecutors on the subject of procedural rights or treatment of persons with intellectual and/or psychosocial impairments in criminal proceedings. In 2015, they have organised a consultation concerning implementation of the Mental Health Act and mutual cooperation among state agencies. Participation in trainings provided by the Judicial Training Centre is always optional.

2. Implementation of the Recommendation in the national context

2.1. Appropriate assessment mechanisms (by police, judiciary and medical experts) for identifying vulnerabilities

Neither legislative acts, nor internal guidelines of the competent authorities provide for any formalised mechanism for initial assessment before medical experts are involved in the proceedings.

No specific rules on assessment mechanisms of the police are contained in the legislation. Some guidelines concerning assessment pertain only to detained persons and their right to medical assistance.¹⁷ The Police Handbook on Implementation of Police Custody provides guidelines to the police officers on the assessment of the detainee's health condition.¹⁸ Before placing the person in custody, the police officer must, in addition to his own observations (visible physical injuries, symptoms), attempt to obtain from the detainee as much information as possible. As it is important for further treatment of the detained person, the police officer should ask him questions concerning physical injuries, chronic illness, sickness, medication the person is taking and possible diet restrictions. The Handbook underlines the importance of information on possible psychosocial impairments that affect methods of supervision of the person while in police custody. If medical assistance is necessary, the police officer must take into consideration the doctor's opinion on whether the detainee is capable of remaining in police custody. The final decision, however is in the hands of the police officer.¹⁹ If the police officer decides not to suspend police custody, it can also be carried out at the health institution, where the detainee can receive further medical treatment.

During the entire proceedings before courts (during judicial investigation under the investigative judge and during trial), the judicial authorities have the obligation to *ex officio* inquire into whether the defendant is capable of performing procedural acts - is capable of effective participation in the procedure. If there are serious doubts that the defendant lacks the

¹⁶ Interview with representative of the General Police Directorate

¹⁷ Police Tasks and Powers Act 2013, Article 68

¹⁸ Ministry of the Interior, Republic of Slovenia, Ljubljana, The Police Handbook on Implementation of Police Custody, Ljubljana, 2011, p. 25.

¹⁹ Rules on police powers 2014, Article 35

procedural capacity due to the state of his mental health, the court may order a psychiatric examination.²⁰

The latter is also possible if there are grounds to suspect that the defendant was not capable of understanding the meaning of his act or was not able to control his actions due to a psychosocial and/or intellectual impairment,²¹ as in such case the defendant cannot be held responsible for the criminal offence and only a ruling on safety measures may be imposed.

Psychiatric examination is performed by a court expert in the field of psychiatry. The expert opinion is ordered by a written decree of the judicial authority which conducts the procedure.²²

To ensure the impartiality of the court expert, the law prohibits appointment of certain categories of persons as court experts, such as the defendant's close relative, his spouse or a person who lives with him in a long-term partnership, the defendant's religious confessor or counsel, doctor, social worker, psychologist, etc.²³ In general, court experts are appointed for indefinite duration by the Minister of Justice - upon the fulfilment of conditions provided by the law they are included in the list of court experts from which the courts may appoint in each individual case.²⁴ The court expert needs to be a citizen of the Republic of Slovenia or an EU Member State, with active knowledge of the Slovenian language, of suitable personal qualities, who is without previous criminal record that would render him morally inappropriate for performing tasks as a court expert, has at least university degree education, expert knowledge and practical competences and at least 6 years of experience in the field of his expertise and must not perform other activities that are incompatible with the role of a court expert.²⁵

When the court expert establishes a psychosocial and/or intellectual impairment of the defendant, he also determines its nature, type, degree and its anticipated duration, and provides the opinion as to how such impairment affected and still affects the perception and behaviour of the defendant, as well as whether and in which degree the mental disorder existed at the time of commission of criminal offence. If the impairment affects the capacity of the defendant to effectively participate in the proceedings, the expert also provides the opinion on the estimated duration of such incapacity.²⁶

The main goal of acquiring expert opinion is therefore not necessarily assessment of vulnerability, but to determine whether the defendant can be held responsible for his actions and whether he can effectively participate in the proceedings. In the first case only a ruling on safety measures may be imposed (if there are no grounds for imposing safety measures, the criminal charge is rejected)²⁷. The defendant's incapability of active participation in the proceedings can be addressed by appointing a defence counsel ex officio for further course of criminal proceedings until the finality of the judgement.²⁸ However, may also result in suspension of the proceedings (either of the judicial investigation,²⁹ or the main hearing during trial phase³⁰) or rejection of the criminal charge by the court as this circumstance prevents criminal prosecution and therefore criminal proceedings.³¹

²⁰ Criminal Procedure Act 1994 and subsequent modifications, Article 265/1(2)

²¹ Criminal Procedure Act 1994 and subsequent modifications, Article 1 (1)

²² Criminal Procedure Act 1994 and subsequent modifications, Article 249/1

²³ Criminal Procedure Act 1994 and subsequent modifications, Article 251

²⁴ Courts Act 2007 and subsequent modifications, Article 84

²⁵ Courts Act 2007 and subsequent modifications, Article 87/1

²⁶ Criminal Procedure Act 1994 and subsequent modifications, Article 265/3

²⁷ Criminal Procedure Act 1994 and subsequent modifications, Article 277/1 (2)

²⁸ Criminal Procedure Act 1994 and subsequent modifications, Article 70/1

²⁹ Criminal Procedure Act 1994 and subsequent modifications, Article 179

³⁰ Criminal Procedure Act 1994 and subsequent modifications, Article 310/1

³¹ Criminal Procedure Act 1994 and subsequent modifications, Article 277/2 and 352/1(3)

2.1.1. Identified gaps and shortcomings

2.1.1.1. Police and judiciary

There is no presumption of vulnerability in Slovenian criminal justice system for persons with intellectual and psychosocial impairment. The assessment is focusing on the capacity of the accused to participate in the criminal proceedings and to apply measures to ensure his participation (such as appointing a lawyer *ex officio*).

In general, both the police and the judiciary have recourse to a medical examination. The question is, whether they are capable to efficiently perform their own initial assessment, before involving a medical expert. Identification of defendants with intellectual and/or psychosocial impairments relies on each official handling the case, but without providing them with necessary guidelines or training.

Usually the police will learn of existing diagnosis or previous psychosocial hospitalisation either from the suspect himself or his close relatives or neighbours and convey the information to the state prosecutor.³² But if there are no such information and there is no initial assessment mechanism in place to assist identification of vulnerability by the police and the judiciary, vulnerability may remain undetected. Stakeholders report of cases where psychosocial impairment of the defendant was not identified before the trial phase of the criminal proceedings,³³ and also cases where the courts decided to appoint court experts in the field of psychiatry very late in the proceedings. The consulted stakeholders report that there were also cases where the courts did not acquire the expert opinion on the state of the suspect's mental health, even when the suspect has been committed to a psychosocial hospital.³⁴

Representatives of the police themselves pointed out the lack of clear guidelines or mechanisms for assessment.³⁵ At the same time they underlined that the police have many tasks to perform in the 48 hours (maximum time of police detention) and therefore any assessment mechanism should not overburden the police or exceed their competency to perform assessment.³⁶

2.1.1.2. Medical experts

The system of appointment of court experts in the field of psychiatry does not take into consideration the fact that psychiatry is a very wide field and that all experts are not competent in all its areas. Court experts are appointed to the list of experts in the field of psychiatry in general, which does not allow the courts to choose the most competent expert in each individual case.³⁷ Several stakeholders underlined that in Slovenia, as a small country, "all experts know each other" and when a second expert opinion is requested in a particular case, there is often a professional connection between the first and the second appointed court expert and impartiality due to conflict of interest is an issue.³⁸ The consulted stakeholders also pointed out the insufficiency of examinations performed by court experts, as the interviews

³² Interview with the representatives of the General Police Detective

³³ Interview with the judge at the District Court of Ljubljana

³⁴ Interview with the court expert in the field of psychiatry

³⁵ Interview with representatives of the General Police Directorate

³⁶ Statement by the representative of the Police at the National Roundtable.

³⁷ Interview with the court expert in the field of psychiatry

³⁸ Interview with the court expert in the field of psychiatry

sometimes last only 20 minutes.³⁹ They also underlined cases when the court expert based the expert opinion on old records and did not sufficiently explore the current situation of the defendant.

2.1.2. Good practices and case studies

2.1.2.1. Police and judiciary

A defendant was prosecuted for robbery. The case was brought before a court without any of the authorities, involved in the pre-trial phase (the police, the prosecutor, the investigating judge) suspecting any kind of vulnerability of the defendant. Before the court hearing took place, the defendant began to write letters to the judge that raise the suspicion of possible psychosocial impairment. The judge ordered the social work centre to visit the defendant, check his living conditions and report back to the court. The social work centre reported back that the defendant might have a serious mental illness and that application of security measures might be necessary. The suspicion was further confirmed at the court hearing, as the defendant claimed he was tied up and pushed into water and then electrocuted. The judge ordered an expert opinion of a court expert in the field of psychiatry that confirmed paranoid schizophrenia that was never treated. The state prosecutor responded by making a motion to the court to order a safety measure of compulsory psychiatric treatment and custody.

2.1.2.2. Medical experts

No good practices or case studies could be identified.

2.1.3. Recommendations

2.1.3.1. Police and judiciary

- Adoption of guidelines for assessment of vulnerability;
- Provision of training for the police and the judiciary on identification of persons with intellectual and/or psychosocial impairment;
- The authorities should consider establishing police units or police officers, appropriately trained to respond to cases of suspects with intellectual and/or psychosocial impairment;
- Initial assessment performed by the police might be facilitated by granting them access to data on possible guardianship over the suspect (however, this recommendation could only be considered if implemented in a manner that would not violate the suspect's right to privacy).

2.1.3.2. Medical experts

- The list of court experts in the field of psychiatry should enable further subcategories so that the courts may appoint the most competent court expert for the case.

³⁹ National roundtable, 28.3.2017, Statement made by a psychologist

- Effective mechanisms to prevent and resolve conflicts of interests should be put in place (when appointing a second court expert)

2.2. Appropriate safeguards during pre-trial phase (arrest, police custody, pre-trial detention, court hearings)

2.2.1. Identified gaps and shortcomings

2.2.1.1. Police

- **Right to information**

The CPA stipulates the obligation of the police to inform the suspect what criminal offence he is suspected of, the grounds for suspicion and of his right not to give any statement or answer questions, that 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 and that he has the right to use his language.⁴⁰ These information has to be provided to the suspect before the police starts to gather information from him – immediately when they establish that there are grounds to suspect that a particular person has perpetrated a criminal offence. If the suspect is deprived of freedom, the police must inform him that if he does not have means to retain a lawyer by himself, the police will, upon his request, appoint a lawyer to him at the expense of the state, if this is in the interest of justice.⁴¹ A detained suspect must be informed of his rights in a written format in a language that he understands.⁴²

The CPA therefore provides the list of information that should be provided to a suspect and that it should be provided in a language that he understands. However, it does not directly stipulate any obligation for it to be provided in an accessible format to vulnerable groups of suspects.

This gap could be amended by interpreting the CPA in the light the Constitution of the Republic of Slovenia and the provisions of the Equalisation of Opportunities for Persons with Disabilities Act⁴³ (obligation of authorities to provide information in understandable format to ensure equal access to proceedings).⁴⁴ However, the absence of clear legal provisions or guidelines leaves the decision whether and how to make any adaptation to the format in which information is generally provided, to each individual official that is handling the case.

The fact remains that, while the police use standard forms for providing information to suspects (e.g. in request to attend a police questioning, before the questioning or when they deprive the suspect of his liberty), the forms are not available in specific formats for suspects with intellectual and/or psychosocial impairment.⁴⁵ The police will ask the suspect if he understands the information and will further explain if necessary.⁴⁶

⁴⁰ Criminal Procedure Act 1994 and subsequent modifications, Article 148/4

⁴¹ Criminal Procedure Act 1994 and subsequent modifications, Article 4/4

⁴² Criminal Procedure Act 1994 and subsequent modifications, Article 4/5

⁴³ Statement by the representative of the Law Faculty, University of Ljubljana at the National Roundtable.

⁴⁴ Equalisation of Opportunities for Persons with Disabilities Act 2010, Article 7

⁴⁵ Interview with representatives of the General Police Directorate

⁴⁶ Statement by the representative of the Police at the National Roundtable.

The CPA also does not require including a legal representative or an appropriate adult to be present at the police questioning. Therefore, there is no legal obligation for the law enforcement authorities to involve these persons in the proceedings with suspects with intellectual and/or psychosocial impairments. However, the law does not prevent the presence of third persons during police questioning. If the police recognised the need to include a third person or a legal representative as this would facilitate the communication, they would act to do so.⁴⁷ The final decision is in the discretion of the police officer who is handling the case. As the main purpose is to gather information regarding the offence and the perpetrator and to secure evidence, the police would not allow such presence, if that would hinder the investigation or if it was against the best interest of the suspect.⁴⁸

- **Right to access to a lawyer**

In this phase, there are no procedural safeguards that would prevent a suspect with intellectual and/or psychosocial impairment to waive his right to a lawyer.

There is no obligatory presence of a lawyer in this procedural phase. All suspects have the right to have a lawyer present at the police questioning of which they must be informed by the police.⁴⁹ However, the suspect himself needs to decide to retain a lawyer. If a suspect does so, the police must postpone the hearing until the arrival of the lawyer or until a time determined by the police, which should not be shorter than two hours.⁵⁰ To facilitate access to a lawyer, the police provides a list of lawyers, from which the suspect can choose. If the suspect is in detention, the police officer will make the initial call to the lawyer of the suspect's choosing and then enable the suspect to talk to the lawyer.⁵¹ There are no specialized lawyers who are primarily contacted in cases of suspects with intellectual and/or psychosocial impairment – the list of lawyers available at each police station is a general one, listing all lawyers from the local area.

If the suspect states that he does not want a lawyer, an official note of his statement is made.⁵² In this case, the police will not make a record of the interrogation which could later be used as evidence in court, but only make an official note of the suspect's statement.⁵³

During this phase, legal aid is only available to suspects placed in police custody. If a suspect without the means to retain a lawyer, makes a request, the police appoints a lawyer to him at the expense of the state if this is in the interest of justice. When is the appointment of a legal aid lawyer in the 'interest of justice' is not very clear. The existing case law is not very specific, but it states that the suspect's personality, gravity of the offence, the complexity of the matter and other specific circumstances should be taken into consideration.⁵⁴

- **Right to medical assistance**

Legal provisions concerning the right to medical assistance pertain to persons that are deprived of their liberty. Suspects in police custody have the right to emergency medical assistance in accordance with the regulations governing emergency medical service,

⁴⁷ Interview with representatives of the General Police Directorate

⁴⁸ Interview with representatives of the General Police Directorate

⁴⁹ Criminal Procedure Act 1994 and subsequent modifications, Article 148/4

⁵⁰ Criminal Procedure Act 1994 and subsequent modifications, Article 148/5

⁵¹ Rules on police powers 2014, Article 33/2

⁵² Criminal Procedure Act 1994 and subsequent modifications, Article 148/6

⁵³ Criminal Procedure Act 1994 and subsequent modifications, Article 148/6

⁵⁴ Supreme Court of the Republic of Slovenia, judgement no. I Ips 241/2006

irrespective of whether the suspect requests it or not.⁵⁵ Emergency medical assistance is provided by a local Urgent Medical Assistance service, organised within the national public health service network. A detained person also has the right to be examined by a doctor of his choice, however this is done at his own expense.⁵⁶ As described above (2.1.1. Assessment mechanisms), before placing the person in custody, the police officer must attempt to obtain from the detainee as much information as possible, including information on possible psychosocial impairments.⁵⁷ Police officers should also determine which medication the suspect is taking. According to the Police Handbook on Implementation of Police Custody, police officers must immediately ensure emergency medical assistance if the detained person is unconscious, visibly injured, the person is claiming to have a health condition is requesting medical assistance, if the person is not feeling well, if there are grounds to suspect he has a contagious disease and if his behaviour indicates psychosocial impairment. As examples of such behaviour, the Handbook lists aggressiveness, delusions, depression and similar conditions and threats to commit suicide. Based on the information provided by the police, the doctor decides whether he will examine the detained person at the detention facility or should the police bring the detained person to the health institution. Upon examination, the doctor decides on further medical treatment of the suspect and if he should continue to take medication he was taking prior to detention. The Handbook requires the police officers to consult with the doctor on the possibility of confinement in a psychosocial hospital of a detained person who is demonstrating risk of self-harm or suicide or is threatening to commit suicide.

- **Recording of questioning**

The CPA stipulates that the suspect's statement may be recorded police questioning may be recorded by an audio and video recording device, of which the suspect must be informed in advance.⁵⁸ It does not provide for an obligation to record the questioning of suspects with intellectual and/or psychosocial impairment. In practice, only around 15% of police interrogations are recorded and the majority of the police stations does not have the proper equipment to perform the recording.⁵⁹

- **Deprivation of liberty**

The police may arrest and bring a person to police premises when there are grounds for police detention or the person is not responding to police requests to attend a questioning or the person's identity cannot be established in any other way. The arrested person has the right to inform a third person of the arrest. The police are not allowed to arrest and take the person to the police premises if the arrest could cause the person's health to deteriorate.⁶⁰

The police can place a suspect in police custody only if reasonable grounds for suspicion that he has committed a criminal offence for which the perpetrator is prosecuted ex officio if there is a ground for detention (risk of flight, risk of repeating a criminal offence, risk of obstruction

⁵⁵ Police Tasks and Powers Act 2013, Article 68/1

⁵⁶ Police Tasks and Powers Act 2013, Article 68/2

⁵⁷ Ministry of the Interior, Republic of Slovenia, Ljubljana, The Police Handbook on Implementation of Police Custody, Ljubljana, 2011, p. 25.

⁵⁸ Criminal Procedure Act 1994 and subsequent modifications, Article 148/6 and 148a/2

⁵⁹ Interview with representatives of the General Police Directorate

⁶⁰ Rules on police powers 2014

of criminal proceedings) and 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.⁶¹

No alternatives to police custody are foreseen in the legislation – neither in general nor for vulnerable persons. As described above (section on the right to medical assistance), only when the detained person needs urgent medical treatment, the police officer must take into consideration the doctor's opinion on whether the detainee is capable of remaining in police custody. The final decision, however is in the hands of the police officer.⁶² If the police officer decides not to suspend police custody, it can also be carried out at the health institution, where the detainee can receive further medical treatment.

Under the provisions of the law, a suspect that has been arrested or has been placed in police custody has the right to request that his immediate family is informed of his deprivation of liberty.⁶³ The police will only inform a third person only if the suspect requests so and names the person he wishes to be informed on his deprivation of liberty, since acting against the suspect's wishes can violate his right to privacy.⁶⁴

- **Privacy**

Specific rules to protect the privacy, personal integrity and data of persons with intellectual and/or psychosocial impairments do not exist. In general, the police are obliged to respect and protect the right to life, human personality and dignity and other human rights and fundamental freedoms. They should be particularly considerate in treating victims and persons who need additional attention, assistance and care, such as children, minors, the elderly, persons with disabilities, pregnant women and victims of domestic abuse.⁶⁵

Protection of personal data is a fundamental right protected under the Constitution. Rights of the individuals may be restricted by the law for the purpose of exercising of the responsibilities of the police.⁶⁶ The police, like all other data controllers and data processors, are bound to ensure the protection of personal data by using appropriate organisational, technical and logical-technical procedures and measures to protect personal data.⁶⁷

If grounds exist for suspicion that a criminal offence liable to public prosecution has been committed, the police must take steps necessary for discovering the perpetrator, ensuring that the perpetrator or his accomplice do not go into hiding or flee, detecting and preserving traces of crime or objects of value as evidence, and collecting all information that may be useful for the successful conducting of criminal proceedings.⁶⁸

In practice this means conducting interviews and collecting information from suspects and other persons who might have any information on the subject of police proceedings; and collecting information from police and other official records.

On the basis of collected information the police submit a criminal report to the state prosecutor, containing evidence discovered in the process of gathering information: items, sketches, photographs, reports received, records of the measures and actions undertaken, official annotations, statements and other material which may be useful for the successful conducting of proceedings.⁶⁹

⁶¹ Criminal Procedure Act 1994 and subsequent modifications, Article 201/1

⁶² Rules on police powers 2014, Article 35

⁶³ Criminal Procedure Act 1994 and subsequent modifications, Article 4/1 ZKP and 57/4 ZPPol

⁶⁴ Interview with representatives of the General Police Directorate

⁶⁵ Police Tasks and Powers Act 2013

⁶⁶ Personal Data Protection Act 2007, Article 36/1

⁶⁷ Personal Data Protection Act 2007, Article 25/1

⁶⁸ Criminal Procedure Act 1994 and subsequent modifications, Article 148/1

⁶⁹ Criminal Procedure Act 1994 and subsequent modifications, Article 148/9

The police in general does not access medical data of the suspect nor the data on possible guardianship over the suspect. Only if medical data of the suspect were essential for the investigation, the police would have a valid reason to acquire them.⁷⁰ This information they will usually receive by collecting information from the suspect or persons close to him. The police may also acquire information from the competent social work centre.⁷¹ If the police acquire information on possible psychosocial and/or intellectual impairment of the suspect, they will usually convey this information to the state prosecutor.⁷²

2.2.1.2. *Prosecutor*

- **Privacy**

The state prosecutor's office has the authority to request the national authorities, local self-government authorities and other bearers of public authority to transmit to it the relevant data, documents, files, objects or notifications that are required for the detection or prosecution of criminal acts.⁷³ There are no specific rules or internal guidelines to protect the privacy, personal integrity and data of persons with intellectual and/or psychosocial impairments.⁷⁴

The State Prosecutor's Office usually receives the information on the personal data (such as medical condition or guardianship) from the information gathered by the police and information that was submitted by the suspect himself.⁷⁵

If necessary for the protection of the personal or family life of the defendant, the state prosecutor may also propose to the court to exclude the public from the trial or a part thereof.⁷⁶

2.2.1.3. *Investigative Judge*

- **Right to information**

Before the first interrogation, the investigative judge will inform the suspect of the offence he is charged with and of the grounds for the charge. The suspect must be instructed that he is not obliged to plead and answer questions, that if he pleads he is not obliged to incriminate himself or to confess guilt, that he is entitled to retain a lawyer of his choosing that may be present at the interrogation.⁷⁷ The investigative judge will read out these information to the suspect in a standard manner and **there are no special formats for suspects with intellectual and/or psychosocial impairments.** As a rule, the investigative judge will ask whether the suspect understood the information.⁷⁸ If the suspect states that he did not understand, the judge will adapt the wording of the information and further explain the information. The inability to understand the procedural rights and effective participation in the criminal proceedings can also be addressed by appointing to the suspect a defence counsel *ex officio*.⁷⁹

⁷⁰ Interview with representatives of the General Police Directorate

⁷¹ Interview with the state prosecutor at the State Prosecutor's Office Ljubljana

⁷² Interview with the state prosecutor at the State Prosecutor's Office Ljubljana

⁷³ State Prosecutor Act 2011, Article 184/1

⁷⁴ Interview with the state prosecutor at the State Prosecutor's Office Ljubljana

⁷⁵ Interview with the state prosecutor at the State Prosecutor's Office Ljubljana

⁷⁶ Criminal Procedure Act 1994 and subsequent modifications, Article 295

⁷⁷ Criminal Procedure Act 1994 and subsequent modifications, Article 227/2

⁷⁸ Interview with the judge at the District Court of Ljubljana

⁷⁹ Interview with the state prosecutor at the State Prosecutor's Office Ljubljana

Consulted stakeholders raised the concern regarding the effectiveness of a specific format prepared in advance for persons with intellectual and/or psychosocial impairment as there are different types of impairment and therefore each individual defendant has different needs in terms of accessible formats.⁸⁰

Similar to police proceedings, the law does not instruct towards the presence of a legal representative or an appropriate adult at the court. However, the law also does not prevent it and all the consulted stakeholders stated that there are no obstacles for such presence at court (but it is important that such person will not be heard as a witness in proceeding later on).⁸¹ But as a result, there is no standard procedure for guaranteeing the presence of such persons.

- **Right of access to a lawyer**

Suspects have a right to have a lawyer present at the interrogation before the investigative judge, of which they must be informed before the interrogation. From this phase of the criminal proceedings onwards (pre-trial and trial phase before the court), the CPA stipulates the possibility of mandatory defence from the very first interrogation: if criminal proceedings are conducted against the accused for a criminal offence punishable by thirty years of imprisonment; if the accused is brought before the investing judge by the police after the accused has been deprived of his liberty; or if the state prosecutor proposes to the investigative judge to order pre-trial detention (remand in custody).⁸² Defence is also mandatory if the accused is deaf, dumb or otherwise incapable of defending himself successfully. The latter is particularly important for persons with intellectual and/or psychosocial impairment who are not able to understand and to effectively participate in criminal proceedings. If there are reasons to believe that the person is not capable of defending himself successfully due to intellectual and/or psychosocial impairment, the investigating judge may order an opinion of a court expert in the field of psychiatry to determine whether conditions for mandatory defence exist.⁸³

If in the cases of mandatory defence the accused fails to retain defence counsel by himself, the president of the court will appoint defence counsel ex officio for the further course of criminal proceedings until the finality of the judgement; if the accused has been sentenced to thirty years in prison or is deaf, mute or otherwise incapable of successfully defending himself, the defence counsel is appointed for him for the extraordinary judicial review as well. In such case the presiding judge will issue a decision on mandatory defence but the individual lawyer will be appointed by the president of the court from a list of mandatory defence counsels. **There are no lists of specialized lawyers who are primarily contacted in cases of persons with intellectual and/or psychosocial impairments. The lawyers do not receive any training in terms of specifics of representing vulnerable persons and their specific needs.**⁸⁴

If there are no grounds for mandatory defence the accused may apply for legal aid with the Legal Aid Service organised at the local district court (however, cases that do not qualify for mandatory defence might not fall within the scope of IMPAIR project, focusing on adult vulnerable persons who- due to their intellectual and/or psychosocial impairments- are not able to understand and to effectively participate in criminal proceedings; persons unable to effectively participate in the proceedings are incapable of defending themselves successfully and therefore qualify for mandatory defence). The Legal Aid Service will test whether the applicant meets financial (the income and the assets of the applicant and his family must not

⁸⁰ Interview with the judge at the District Court of Ljubljana

⁸¹ Interview with the judge at the District Court of Ljubljana

⁸² Criminal Procedure Act 1994 and subsequent modifications, Article 70

⁸³ Interview with the state prosecutor at the State Prosecutor's Office Ljubljana

⁸⁴ Statement by a lawyer at the National Roundtable.

exceed the census set by the law).⁸⁵ and substantive (the applicant has a substantial chance to succeed in the case and the case is relevant for the applicant's personal and social-economic situation or the outcome of the proceedings is of great importance for the applicant and his family) criteria for awarding legal aid in terms of legal representation in criminal proceedings. Exceptional legal aid may be awarded to persons exceeding the financial census, if they are burdened with costs of necessary medical care due to their disability or psychosocial impairment, if these costs are not covered by the compulsory health insurance. Exceptional legal aid is also possible for persons who were placed under guardianship after they were declared legally incompetent.⁸⁶

In cases of mandatory defence, waiver of the right to a lawyer is not possible. Otherwise, the CPA stipulates general conditions, under which the suspect can be interrogated without the presence of a lawyer: if the person was instructed about his right to a lawyer, if he has explicitly waived that right and defence is not mandatory, or if the lawyer is not present although he was notified of the interrogation (and defence is not mandatory).⁸⁷

Exercising of the right to a lawyer, particularly in cases of mandatory defence, is hindered by the insufficient time available for client-lawyer consultation. Many times, the lawyers have even as little as 10 minutes to consult with the client which is a problem as such, but in cases of vulnerable clients with particular needs it is impossible to provide proper support and prepare the client for the hearing that follows.⁸⁸

- **Right to medical assistance**

In accordance with the CPA, the right to medical assistance only comes into play in cases of deprivation of liberty.

All persons placed into pre-trial detention are examined by a doctor within 48 hours after being brought to the detention facility.⁸⁹ Health care is provided by the detention facility's infirmary.⁹⁰ If medical treatment in another health care institution is necessary, such treatment is ordered by the competent court upon the proposal of a detention facility's doctor. In such case the director of the detention facility must immediately inform a close relative or another person previously appointed by the detainee. With the permission of the competent court, a detained person, at his costs, may also be examined by a doctor of his choosing.⁹¹

However, in practice complaints concerning accommodation conditions, health care and the way the detained persons are treated by the detention facilities' personnel are numerous.⁹² The Human Rights Ombudsman of the Republic of Slovenia in its annual reports often underlines the importance of psychiatric examination and mental health assessment of detainees in terms of possible risk of suicide, as persons at risk are in need of constant psychiatric treatment and regular attention of a psychologist. There are no guidelines on the treatment of detainees that are at risk of suicide. The Ombudsman has handled cases where accommodation of detainees was inappropriate and did not provide for sufficient supervision of persons at risk of suicide, relying mostly on the supervision of other detainees. Detention facilities and prisons in general are overpopulated and adequate accommodation standards

⁸⁵ Legal Aid Act 2001

⁸⁶ Legal Aid Act 2001, Article 22/2

⁸⁷ Criminal Procedure Act 1994 and subsequent modifications, Article 227/9

⁸⁸ Statement by a lawyer at the National Roundtable

⁸⁹ Rules on the implementation of remand, Article 31/1

⁹⁰ Rules on the implementation of remand, Article 32/1

⁹¹ Rules on the implementation of remand, Article 33/1

⁹² Human Rights Ombudsman of the Republic of Slovenia, Annual report for 2015, Ljubljana, 2016, p.76.

are not provided to persons with psychosocial and/or intellectual impairment; psychiatrists are not present in detention facilities every day and consequently the queues are long and detainees need to wait for treatment for a very long time.⁹³

- **Recording of questioning**

The investigating judge may order that the interrogation is recorded by a sound or video recording device.⁹⁴

However, there are no guidelines on mandatory recording of questioning of vulnerable persons. Although the recording is quite common, the decision remains in the discretion of each investigating judge.⁹⁵

- **Deprivation of liberty**

The CPA provides for several measures which may be used to ensure the presence of the accused, to prevent reoffending and to ensure successful conduct of the criminal proceedings: summons, compulsory appearance or promise by the accused not to leave his residence, prohibition on approaching a specific place or person, attendance at a police station, bail, house arrest and detention. In deciding on which of the measures to apply to ensure the presence of the accused, the court must take account of the conditions stipulated for individual measures. In selecting the measures, it must also ensure that it does not apply stricter measures if less strict measures would suffice.⁹⁶ Although there are no rules or guidelines on using alternatives to detention in cases of persons with intellectual and/or psychosocial impairments, in each case the court must perform a strict proportionality test between the public right to safety and the right to personal freedom of an accused person and always use the most lenient measure possible. If the judge orders detention, persons with psychosocial impairments are usually placed in the Forensic Hospital that implements the detention and at the same time provides the necessary psychiatric treatment.⁹⁷

In terms of accommodation standards, the authorities are obliged to treat the detained person in a humane manner and his physical and mental health must be protected.⁹⁸ The detention facility keeps record of the general health condition of the detained person. When placing the detainee into accommodation space of the detention facility, the personality and health condition of the detainee must be taken into consideration.⁹⁹ However, in practice complaints concerning accommodation conditions, health care and the way the detained persons are treated by the detention facilities' personnel are numerous.¹⁰⁰ **Detention facilities and prisons in general are overpopulated and adequate accommodation standards are not provided to persons with psychosocial and/or intellectual impairment.**¹⁰¹

⁹³ Statement by a psychologist at the National Roundtable.

⁹⁴ Criminal Procedure Act 1994 and subsequent modifications, Article 84/1

⁹⁵ Interview with the judge at the District Court of Ljubljana

⁹⁶ Criminal Procedure Act 1994 and subsequent modifications, Article 192

⁹⁷ Interview with the judge at the District Court of Ljubljana

⁹⁸ Criminal psychosocial Procedure Act 1994 and subsequent modifications, Article 209/1

⁹⁹ Rules on the implementation of remand, Article 23/1

¹⁰⁰ Human Rights Ombudsman of the Republic of Slovenia, Annual report for 2015, Ljubljana, 2016, p.76.

¹⁰¹ Statement by a psychologist at the National Roundtable.

- **Privacy**

All personal data controllers must submit to the court, at the request the personal data from the filing system also without a personal consent of the individual whom the data refer to if the court states that the data are required for conducting a criminal procedure.¹⁰² The court keeps the obtained data confidential, if stipulated by law. The investigative judge therefore does have the possibility to access to personal data of the suspect (e.g. medical data), however if there are grounds to believe that the impairment of the suspect might prevent effective participation of the suspect in the proceedings, they will engage a court expert qualified to appropriately interpret medical data.¹⁰³ To determine personal circumstances of the suspect, the court can also rely on the competency of social work centres that can also provide information on possible guardianship.

2.2.1.4. European Arrest Warrant

There are no specific regulations concerning procedural rights and the right to information linked to vulnerability related to EAW. The only potentially relevant provision stipulates that the surrender of a requested person may exceptionally be temporarily postponed for serious humanitarian reasons, in particular if it is possible that the surrender will manifestly seriously threaten the life or health of the requested person. This provision also extends to mental health of persons in procedures concerning European Arrest Warrant.

2.2.2. Good practices and case studies

2.2.2.1. Police

- **Right to information**

No good practices were identified.

- **Right to access to a lawyer**

Recently, the police handled a case where the person was suspected of murdering two family members in a very cruel manner. The way in which the offence was committed and the behaviour of the suspect when the police arrived at the site gave the police grounds to believe that the suspect might be having mental health issues and was having doubts of his capability to participate in the proceedings and exercise his rights without appropriate support. The suspect was informed of his rights but did not state that he wished to retain a lawyer neither did he request the police to do so for him. The CPA stipulates that if a suspect without the means to retain a lawyer, makes a request, the police appoints a lawyer to him at the expense of the state if this is in the interest of justice. In this case, the police appointed a lawyer *ex officio* at its discretion, although the suspect did not make such a request.¹⁰⁴

- **Right to medical assistance**

The Police Handbook on Implementation of Police Custody provides for clear guidelines to police officers on the assurance of medical assistance to persons in police custody.

¹⁰² Criminal Procedure Act 1994 and subsequent modifications, Article 143/1

¹⁰³ Interview with the judge at the District Court of Ljubljana

¹⁰⁴ Interview with representatives of the General Police Directorate

2.2.2.2. Investigative Judge

- **Right of access to a lawyer**

The rules on mandatory defence for persons that are unable to defend themselves successfully seem to provide efficient legal framework for ensuring the right to access to a lawyer for persons with intellectual and/or psychosocial impairments.

- **Deprivation of liberty**

.At the hearing where the investigative judge was to decide on the prosecutor's motion for detention, the suspect who was a younger adult threatened to commit suicide if he was placed in detention again and complained on the situation at the detention facility. The prosecutor, the judge and the defendant's lawyer put all of their effort to prevent a situation where the defendant's life would be at risk. As a result, the defendant was placed in house arrest at his aunt's apartment.

2.2.3. Recommendations

2.2.3.1. Police

- **Right to information**

- Special formats informing on procedural rights accessible to criminal suspects or accused with intellectual and/or psychosocial impairments should be provided; police officers could check the accessibility of provided information by asking the suspect control questions, making sure that the suspect understood the information provided.
- Mechanisms for ensuring assistance by a person of trust should be implemented; in such case the person of trust should be bound by confidentiality and should not be heard as a witness in further proceedings.

- **Right to access to a lawyer**

- For persons with intellectual and/or psychosocial impairment that are not able to understand and effectively participate in the proceedings, mandatory defence should be extended to police proceedings

- **Right to medical assistance**

- Doctors providing medical assistance during the police proceedings (including police custody) should have adequate expertise on intellectual and psychosocial disabilities.
- Persons with intellectual and/or psychosocial disabilities should be ensured specialised psychological and psychiatric assistance from the moment of their arrest and the police custody onwards.

- **Recording of questioning**

- Questioning of persons with intellectual and/or psychosocial impairments should be audio or visually recorded.

- **Deprivation of liberty**

- A lawyer should be notified about the police custody.
- Persons with intellectual disabilities/psychosocial impairments should be afforded the right to call personally their relatives or important others when they are deprived of liberty. The implementation of this right should be ensured in practice.
- The mental condition of every person brought to police custody should be assessed by adequately trained doctors. The assessment should be thoroughly done ensuring the necessary time to grasp the situation of the person.

2.2.3.2. *Investigative Judge*

- **Right to information**

- Special formats informing on procedural rights accessible to criminal suspects or accused with intellectual and/or psychosocial impairments should be provided;
- Mechanisms for ensuring assistance by a person of trust should be implemented; in such case the person of trust should be bound by confidentiality and should not be heard as a witness in further proceedings.

- **Right of access to a lawyer**

- When a suspect is brought before the investigative judge by the police from police custody, sufficient time for client-lawyer consultation.

- **Right to medical assistance**

- The mental condition of every person brought to detention should be (again) assessed by adequately trained doctors. The assessment should be thoroughly done ensuring the necessary time to grasp the situation of the detainee.
- In detention, adequate medical assistance to persons with intellectual and/or psychosocial disabilities should be ensured.

- **Recording of questioning**

Questioning of persons with intellectual and/or psychosocial impairments should be audio or visually recorded.

- **Deprivation of liberty**

- In cases of suspects with intellectual and/or psychosocial impairments, alternatives to detention should be used as widely as possible, guidelines on using alternatives to detention should be provided.
- Prisons and forensic medical institutions should provide for adequate capacities and *up to date standards (hygiene, activities, etc.)* to accommodate women, men and juveniles separately.
- When persons with intellectual and/or psychosocial disabilities are detained in pre-trial detention facilities, regular monitoring of places of detention, and preventive detention should be performed by independent institutions, e.g. National Human Rights Institutions, Ombudsman institutions or human rights NGOs. Monitoring visits should include confidential private talks with detainees.

2.3. Safeguards during the trial phase (hearings, judgement)

2.3.1. Identified gaps and shortcomings

2.3.1.1. Court

- Right to information

The rules concerning the right to information in the trial phase are identical to the ones in the pre-trial phase before the investigating judge.

There are no special formats for suspects with intellectual and/or psychosocial impairments. After reading the information about the procedural rights, the judge will ask the defendant if he understood the instruction. If the defendant does not understand, the judge will further explain in plain language until the defendant understands the content of the information.¹⁰⁵ The judge will therefore adapt to each individual situation. Consulted stakeholders raised the concern regarding the effectiveness of a specific format prepared in advance for persons with intellectual and/or psychosocial impairment as there are different types of impairment and therefore each individual defendant has different needs in terms of accessible formats.¹⁰⁶

The main hearing is held in open court, meaning that all adult persons may be present at the hearing.¹⁰⁷ The public may also be excluded from the trial or part thereof if so required by the interests of protecting secrets, maintaining law and order, by moral considerations, the protection of the personal or family life of the defendant or the injured party, protection of the interests of minors, and if in the opinion of the panel a public trial would be prejudicial to the interests of justice.¹⁰⁸ Even in such case, the court may grant on request of the defendant permission to attend to the spouse of the defendant or the person with whom he lives in domestic partnership and his close relatives.¹⁰⁹

- Right to access to a lawyer

The rules concerning the right to a lawyer in the trial phase are identical to the ones in the pre-trial phase before the investigating judge.

- Right to medical assistance

The rules concerning the right to medical assistance in the trial phase are identical to the ones in the pre-trial phase before the investigating judge.

- Recording of questioning

The rules concerning the recording of questioning in the trial phase are identical to the ones in the pre-trial phase before the investigating judge.

- Privacy

The rules concerning the right to privacy in the trial phase are identical to the ones in the pre-trial phase before the investigating judge.

¹⁰⁵ Interview with the judge at the District Court of Ljubljana

¹⁰⁶ Interview with the judge at the District Court of Ljubljana

¹⁰⁷ Criminal Procedure Act 1994 and subsequent modifications, Article 294

¹⁰⁸ Criminal Procedure Act 1994 and subsequent modifications, Article 295

¹⁰⁹ Criminal Procedure Act 1994 and subsequent modifications, Article 296/3

For protection of privacy, personal integrity and personal data of defendants with psychiatric and/or intellectual impairments during trial there is a possibility to exclude the public from the main hearing or part thereof.¹¹⁰ However, it seems that this possibility is not used often in cases of defendants with intellectual and/or psychosocial impairment – not even for the hearing of the court expert when providing the expert opinion concerning the mental state of the defendant, unless there was at the same time a need to protect the personal integrity of the victim.¹¹¹ The publicity of the hearing is protected by the Constitution and unjustified exclusion of the public is considered an infringement of an essential procedural requirement.

- **Shortcomings in communication of the judgement (e.g. communicated in an understandable format)**

The CPA provides for rules on the formal content of the judgement's introductory part, the enacting terms and a statement of grounds and the instruction on the right to appeal. There are no rules on accessible formats of communication to vulnerable defendants and there are no guidelines or practices in that sense.

2.3.2. Good practices and case studies

2.3.2.1. Court

- Right to information
- Right to access to a lawyer
- Right to medical assistance
- Recording of questioning
- Privacy
- Judgement

2.3.3. Recommendations

2.3.3.1. Court

- Right to information
- Special formats informing on procedural rights accessible to criminal suspects or accused with intellectual and/or psychosocial impairments should be provided;
- Mechanisms for ensuring assistance by a person of trust should be implemented; in such case the person of trust should be bound by confidentiality and should not be heard as a witness in further proceedings.
- Right to access to a lawyer
- The legal representation of persons with intellectual and/or psychosocial disabilities, who due to their disability have difficulties in participating in criminal proceedings, should be mandatory. Court hearings should not be held without a presence of a lawyer. All statements obtained without the presence of a lawyer (in pre-trial or trial phase) should be null or void.

¹¹⁰ Criminal Procedure Act 1994 and subsequent modifications, Article 295

¹¹¹ Interview with the judge at the District Court of Ljubljana

- The presence of a person of trust to support the accused person and help him/her understand and cope with the proceedings should be ensured during the trial.

Questioning of persons with intellectual and/or psychosocial impairments should be audio or visually recorded.

- Privacy
 - For protection of privacy, personal integrity and personal data of defendants with psychosocial and/or intellectual impairments the exclusion of the public at the main hearing should be considered – for the hearing of the court expert when providing the expert opinion.
- Judgement
 - The judgment should be explained in an understandable way for the accused person. The judge should ensure that the accused person understood the essential information (e.g. by asking him/her to repeat in their own words).

2.4. Remedies

2.4.1. Identified gaps and shortcomings

The record of the police questioning may be used as evidence in further proceedings only if it was conducted in the presence of the suspect's lawyer.¹¹² If the suspect has not been informed of his rights (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), 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, or if force, threats or any similar means of extorting a statement or confession was used during the questioning, the court may not base its decision on the statement of the suspect.

A judgement may be challenged if there was a substantial violation of provisions of the criminal procedure. Among others, substantial violations exist, where the judgement rests on evidence obtained in violation of constitutionally granted human rights and basic freedoms – e.g. if the defendant was not properly informed of his rights before giving a statement.¹¹³

Substantial violation of provisions of the criminal procedure can also exist if the court omitted to apply a provision of the CPA or applied it incorrectly, or if the court in the course of the main hearing violated the rights of the defence (e.g. if there were grounds for mandatory defence and the defendant was not represented by a lawyer), but only if such conduct influenced or might have influenced the legality and regularity of the judgement.

As the CPA does not establish the right to assistance of a person of trust, the decision cannot be challenged on the grounds of absence of such assistance.

¹¹² Criminal Procedure Act 1994 and subsequent modifications, Article 148.a

¹¹³ Criminal Procedure Act 1994 and subsequent modifications, Article 37171

The court of second instance will annul the judgement of the court of first instance and return the case for retrial if it finds that there exists a substantial violation of provisions of the criminal procedure.¹¹⁴

2.5. RECOMMENDATIONS

In general, the Slovenian criminal law system does not pay much attention to vulnerable suspects and defendants. That procedural rights of suspects and accused persons with intellectual and/or psychosocial impairment is not an area of priority is also shown by the absence of any policies and programmes.

The current Criminal Procedure Act only recognises the specific needs of vulnerable victims. Although with correct interpretation of the legal framework, many of the procedural rights of the Recommendation could already be provided. However, relying on appropriate interpretation leaves the procedural safeguards for vulnerable persons at the discretion of the official who is handling each individual case. To provide the safeguards to all vulnerable suspects and defendants, the procedural rights addressed by the Recommendation need to be appropriately incorporated into legislation.

At least during proceedings before courts, the right to a lawyer seems to be adequately protected. However, mandatory defence counsels are offered no training on specific needs of persons with intellectual and/or psychosocial impairments. Establishing a list of specialised lawyers who are primarily contacted in such cases might benefit the quality of provided legal representation.

An important shortcoming was identified in providing adequate accommodation standards to persons with intellectual and/or psychosocial impairments who are deprived of liberty. Accommodation should take into consideration their vulnerability; appropriate measures should be available for preventing risks of suicide and they should be provided with appropriate psychological and psychiatric treatment.

¹¹⁴ Criminal Procedure Act 1994 and subsequent modifications, Article 392/1