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SLOVENIAN NATIONAL STUDY ON THE RIGHT TO ACCESS TO A LAWYER AND THE RIGHT TO LEGAL AID OF SUSPECTS AND ACCUSED PERSONS IN CRIMINAL PROCEEDINGS[1]

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[1] Throughout the thesis, gender-specific terms *may* be used in order to ease the text flow.

Whenever a gender-specific term is used, it should be understood as referring to both genders, unless explicitly stated. This is done solely for the purpose of making the text easier to read.

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A. About the project, aim and methodology of the research

This Study was produced within the EU funded project "Strengthening procedural rights in criminal proceedings: effective implementation of the right to a lawyer/legal aid under the Stockholm Programme".

The project is coordinated by the Bulgarian Helsinki Committee. The Peace Institute is the Slovenian national partner of the project. Other project partners the Hungarian Helsinki Committee (Hungary), Helsinki Foundation for Human Rights (Poland) and Human Rights Monitoring Institute (Lithuania).

The project objectives are to:

- Increase knowledge of Directive 2013/48/EU and Recommendation C(2013) 8179/2 in 5 EU countries;
- Monitor the proper implementation of the Directive/Recommendation in domestic law and practice;
- Increase understanding on the shortcomings and dysfunctions in each national criminal law on the issues addressed in the Directive/ Recommendation;
- To build and strengthen capacity of stakeholders (lawyers, judges, other professionals) on international and EU standards on the right to access to a lawyer/ legal aid of suspects and accused persons as vital elements of the right to fair trial;
- Facilitate communication and coordination between lawyers and other legal practitioners, law enforcement agents thus fostering the fulfilment of procedural rights of suspects and accused persons;
- Identify and promote good practices.

Our research was designed as perform a national multi-stakeholder evidence-based study to establish the scope of the practical implementation of the right to access to a lawyer and right to legal aid in criminal proceedings. The study will also identify the gaps in provision of these rights and will serve as a starting point for the design of the domestic capacity-building events and development of a capacity-building handbook.

Project partners designed questionnaires based on which we conducted case file analysis, interviews with stakeholders and focus groups with defence counsels.

Researchers surveyed 150 case files per country to gather information relevant to the standards of Directive 2013/48/EU and Recommendation C(2013) 8179/2. In Slovenia, we successfully approached five different courts (two district and three local courts) and acquire the permission to conduct research.

After the case file analysis was completed, we conducted stakeholder interviews which included representatives of the police, judiciary and convicted inmates.

We organised two focus groups with legal aid and *ex officio* lawyers that provided qualitative input on the practicalities in the provision of legal aid.

All the gathered information was analysed and incorporated in the evidence-based country report on access to a lawyer and right to legal aid in Slovenia. The report focuses on the general situation, gaps and domestic challenges in the implementation of the right to access to a lawyer and the right to legal aid.

B. Introduction

I. Brief description of national criminal justice system and process

The most relevant piece of national legislation concerning procedural rules and safeguards is the Criminal Procedural Act (hereinafter: CPA).[6] 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.

Slovenian criminal proceedings are based on the traditional continental European mixed model of criminal procedure. The major characteristics are: (1) a principle of searching for the (material) truth with the judge playing an active part of a truth-finder with the authority to produce evidence; (2) a pretrial phase of the procedure organised in two sub-phases (preliminary procedure and phase of investigation), and (3) an ancillary understanding of the role of criminal proceedings.[7] Thee criminal proceedings 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.[8] The law defines cases, where failure to report a crime is itself a criminal offence.[9] 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.[10]

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

[6] Criminal Procedure Act 1994 and subsequent modifications
[7] Šugman K., Structural Changes in Slovenian Criminal Procedure over the Last 20 Years, Zbornik znanstvenih razprav – IXXV, 2015, p. 5
[8] Criminal Procedure Act 1994 and subsequent modifications, Article 147/1 and 3
[9] Criminal Procedure Act 1994 and subsequent modifications, Article 146/2
[10] Criminal Procedure Act 1994 and subsequent modifications, Article 148/1

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.[11] 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).
The state prosecutor is directing and supervising the pre-trial procedure and deciding on its course and termination.[12] 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.[13]
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).[14]
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.[15]
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.[16]
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.

The right of an accused person to conduct his/her own defense in criminal proceedings or to defend him/herself by the expert assistance of a lawyer, is a fundamental human right protected

[11] Criminal Procedure Act 1994 and subsequent modifications, Article 148/4
[12] Criminal Procedure Act 1994 and subsequent modifications, Article 158.a/3
[13] Criminal Procedure Act 1994 and subsequent modifications, Article 268/1
[14] Criminal Procedure Act 1994 and subsequent modifications, Article 285.a/1
[15] Criminal Procedure Act 1994 and subsequent modifications, Article 25/1
[16] Criminal Procedure Act 1994 and subsequent modifications, Article 362/1

by the Constitution of the Republic of Slovenia, which was adopted in 1991.[17] Further, the Constitution ensures the right of detainees to be informed in his mother tongue, or in a language which he understands, of the reasons for being deprived of his liberty. Within the shortest possible time thereafter, he must also be informed in writing of why he has been deprived of his liberty. He must be instructed immediately that he is not obliged to make any statement, that he has the right to immediate legal representation of his own free choice and that the competent authority must, on his request, notify his relatives or those close to him of the deprivation of his liberty.[18] The right to a lawyer was also implemented in the CPA, which was adopted in 1994 and has since been amended 13 times.

The 1994 CPA guaranteed the right to a lawyer from the moment of apprehension onwards. Only in the case of deprivation of liberty, the police were obliged to inform the suspect of his rights (including the right to a lawyer). However, when conducting interviews with the suspect, there was no such obligation and all statements of the suspect to the police were excluded from the documents before a criminal charge was filed.[19] With the 2003 amendment, the concept of collecting information from suspects was changed significantly.[20] Since 2003, the police are obliged to inform suspects of their rights not only upon deprivation of liberty, but every time they want to obtain a statement from a person whom they suspect to have perpetrated or participated in the perpetration of a criminal offence.

The right to legal aid was also included in the provisions of the 1994 CPA: in the police phase of the proceedings and in the proceedings before the court. With the 2008 amendment of the Legal Aid Act, the CPA rules on free legal aid in criminal court proceedings were terminated and legal aid in criminal proceedings has since been governed by the general legal aid scheme.[21] However, legal aid in police proceedings remains in the scope of the CPA, as the general national legal aid scheme only covers court proceedings.

Both the Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings and the Directive 2012/13/EU on the right to information in criminal proceedings are considered transposed into Slovenian national legislation. Both Directives were transposed with the amendment of the CPA, which was adopted on 19 June 2014 and entered into effect on 20.12.2014 (after the transposition deadlines).[22]

II. The role of international human rights bodies on the development of the rights of suspects and accused persons to a lawyer and to legal aid in criminal proceedings

European Court of Human Rights has found that Slovenia has violated Article 6 of the Convention in 243 cases. However, most of the case law pertains to fair trial within reasonable time. Before ECtHR, there were no cases against Slovenia regarding the right to a lawyer or legal aid in criminal proceedings.[23]

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) performed a periodic visit in 2017 but the report has not been published yet.

[17] Constitution of the Republic of Slovenia 1991, Article 29
[18] Constitution of the Republic of Slovenia 1991, Article 19
[19] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, Article 148, p.312
[20] Act Amending Criminal Procedure Act – E 2003, amendments to Article 148 and introduction of Article 148a
[21] Legal Aid Act, Amendment B, 2008
[22] Act Amending Criminal Procedure Act – M, 2014
[23] HUDOC

In the 2012 Report CPT found that in general, the practical operation of fundamental safeguards against ill-treatment (in particular, the rights of notification of custody and of access to a lawyer) did not pose major difficulties.[24] The vast majority of interviewees confirmed that they had been able to exercise their right of notification of deprivation of liberty and their right to a lawyer shortly after apprehension. However, the delegation heard a few allegations that persons were not allowed to have their relatives or diplomatic/consular representation informed of their situation or had been denied the right to a lawyer for part, if not all, of the period of police custody. The CPT recommended that the Slovenian authorities take the necessary steps to ensure that, in practice, all detained persons effectively benefit from the right of access to a lawyer from the very outset of their deprivation of liberty.
In its response, the Government merely explained the legal rules concerning the rights of notification of custody and of access to a lawyer.[25]

The report also states that the visiting delegation as not able to ascertain what criteria were used by the police to determine whether, in practice, appointment of an ex officio lawyer was in the interests of justice (a general principle for appointing an *ex officio* lawyer in police proceedings). The CPT considered that, in the interest of the prevention of police ill-treatment, anyone detained by the police who requests a lawyer but who is not able to pay for one should be granted prompt access to an ex officio lawyer and asked the Slovenian authorities that this is indeed the case.
The Slovenian Government repeated both criteria for appointing a counsel at the expense of the state: (1) an apprehended suspect does not have the means to hire a legal counsel, and (2) this is in the interests of justice. The Government stated that the second condition follows Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, but did not clarify the criteria for determining whether appointment is 'in the interest of justice', nor it confirmed to the CPT that all detainees who are not able to pay for a lawyer are granted access to one at the expense of the state.

The 2011 Concluding observations the UN Committee Against Torture (CAT) did not include recommendations concerning access to a lawyer or legal aid.[26]

III. Brief description of the national organisation of lawyers' profession

Under the Constitution of the Republic of Slovenia, attorneyship is an independent service within the system of justice administration, and is regulated by the law.[27] The main legal sources governing the lawyers' profession are the Attorneys Act and the Attorneys' Code of Ethics.[28] In accordance with the law, membership in the Bar Association of Slovenia is mandatory for all attorneys performing the profession in Slovenia.[29] The Bar Association is organised in 11 local chambers to ensure membership in accordance with the principle of territoriality. The Bar Association administers the register of all attorneys and also the lists of ex officio lawyers and

[24] Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Slovenian Government on the visit to Slovenia 2012, available at: https://rm.coe.int/1680697db3
[25] Response of the Slovenian Government to the Report of the CPT 2012, available at: https://rm.coe.int/1680697db4
[26] Concluding observations of the UN Committee Against Torture – Slovenia, 2011
[27] Constitution of the Republic of Slovenia 1991, Article 137
[28] Attorneys Act 1993 and Attorneys' Code of Ethics
[29] Attorneys Act 1993, Article 41

legal aid lawyers (within the 11 local chambers). The Bar Association submits the lists to all Slovenian courts and also notifies them regularly of any changes of the lists of attorneys.

IV. Results from "Mapping national transposition" activity: Process of transposition of Directive 2013/48 and the Recommendation on legal aid in the national legislation; debates in the legal theory and/ or practice, related to the transposition

The transposition of the Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings did not stir much discussion in public – neither general nor expert. In the few publicly available sources there seemed to be a consensus that the Slovenian legislation is in line with the Directive.[30]

Since the adoption of the Directive, relevant Slovenian legislation (the CPA) has only been amended once – in June 2014.[31] Each draft law the Government sends to the legislative procedure at the National Assembly, is accompanied by a statement of reasons for its adoption; including possible transposition of EU law into national legislation. The stated amendment of the CPA transposed provisions of the Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings and the Directive 2012/13/EU on the right to information in criminal proceedings, however, no provisions related to the subject matter of the Directive 2013/48/EU. Slovenian Government notified the European Commission that all the necessary measures for the transposition of the Directive were adopted – listing a number of measures that were introduced prior to the adoption of the Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings.[32] Regardless, the European Commission infringement procedure against Slovenia seems to be pending.[33]

RESULTS FROM DESK RESEARCH

B. Scope of application of Directive 2013/48 and the Recommendation on the right to access to legal aid

I. Suspects and accused persons in the national legislation

The CPA contains definitions of suspects [*osumljenci*], accused persons [*obdolženci*] and defendants [*obtoženci*].[34]

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.

[30] Šugman K., Criminal Law of EU, Revija Odvetnik- Year XVII, 2015, p. 23
[31] Act Amending Criminal Procedure Act – M, 2014
[32] National transpositions by Member State, available at http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32013L0048
[33] Government oft he Republic of Slovenia, Infoemation on the transposition oft he directive and pendinf infringement proceedings, July 2017
[34] Criminal Procedure Act 1994 and subsequent modifications, Article 144

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.[35] 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.

II. Persons who, in the course of questioning by the police or by another law enforcement authority become suspects

The right to access to a lawyer applies from the moment when the suspicion concentrated to a particular person (suspect).[36] Since the adoption of the 2003 amendment of the CPA,[37] 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.[38] 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.[39]

III. Classification of criminal offences in national legislation

The CPA determines rules whereby the perpetrators of criminal offences are sentenced only under the conditions provided by the criminal law and within a lawfully conducted procedure.[40]

The definition of criminal offences is within the scope of another law – the Criminal Code.[41] In accordance with the law, a criminal offence is unlawful conduct, that is, due to urgent protection of legal values, determined by law as a criminal offence, while defining the elements thereof and the sentence of the guilty perpetrator.[42] Criminal offences can only be defined as such by the law.

Apart from the law, minor offences can also be prescribed by a government decree and an ordinance of a self-governing local community: minor offences are actions that violate the law, government decrees and self-governing local communities' ordinances, which are as minor offences and a sanction for them is prescribed.[43]

[35] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p. 299
[36] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p. 312
[37] Act Amending Criminal Procedure Act - E, 2003
[38] Criminal Procedure Act 1994 and subsequent modifications, Article 148/4
[39] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, komentar p.312
[40] Criminal Procedure Act 1994 and subsequent modifications, Article 1/1
[41] Criminal Code 2008
[42] Criminal Code 2008, Article 18
[43] Minor Offences Act 2011, Article 6

In criminal matters, cases of criminal offences are heard by panels of judges or single judges in local and district courts.[44] Minor offences are decided upon by minor offence authorities (administrative and other state bodies, and self-governing local communities' bodies); and also local courts as minor offence courts of 1st instance (although deciding upon minor offences is organised within separate departments / by different judges than deciding upon criminal offences).

The proceedings regarding minor offences is prescribed by the Minor Offences Act.[45] This act too provides for the right to access to a lawyer. Before the first interrogation, the defendant in the minor offences proceedings must be informed of the right to take a lawyer that can be present at the hearing.[46]

IV. Criminal proceedings in the national legislation

Criminal proceedings are a set of rules to guarantee that no innocent person is convicted and the perpetrator of a criminal offence is only sentenced under the conditions provided by criminal law and within a lawfully conducted procedure.[47] It is the entirety of actions, systematically performed by state authorities in the case of a well-grounded suspicion that a criminal offence has been committed, to determine whether it was committed, whether it was committed by the accused person and whether conditions are fulfilled to impose a criminal sanction.

The CPA is built on the concept of separating the informal police (pre-trial) proceedings from the formal judicial proceedings. Hence, in accordance with the law, only judicial proceedings are considered criminal proceedings.[48] In accordance with Article 19 of the CPA, the criminal procedure begins upon the request of an authorised prosecutor. However, several provisions of the CPA prove that that criminal proceedings begin with a ruling on investigation or some other procedural act of the court, showing that it agrees with the prosecutor's request to initiate proceedings.[49]

In the general criminal proceedings before district courts, criminal proceedings begin with the court's ruling on (judicial) investigation. If the investigating judge consents to the motion of the public prosecutor that no investigation is to be conducted, criminal proceedings begin when the indictment becomes final.[50] In summary proceedings before local courts (which take place without prior judicial investigation), criminal proceedings begin with the first procedural act of the court (after the prosecutor's filing of a charge sheet).

As mentioned, for most actions of the police in the pre-trial phase, the law does not provide strict procedural formalities and are not part of the criminal proceedings. This includes police custody that takes place before the formal start of criminal proceedings.

V. Forms of legal assistance in criminal proceedings

The CPA provides for both voluntary (authorised) and mandatory (appointed) form of legal assistance. The suspect or the accused person may retain a lawyer himself, however the law

[44] Criminal Procedure Act 1994 and subsequent modifications, Article 25
[45] Minor Offences Act 2011
[46] Minor Offences Act 2011, Article 90
[47] Criminal Procedure Act 1994 and subsequent modifications, Article 1/1
[48] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p. 54
[49] *Ibid.*
[50] *Ibid.*

allows also his closest family members to do that for him: his spouse, or the person with whom he lives in domestic partnership, by his relatives by blood in direct line, the adopter, the adoptee, brother, sister and foster parent.[51] The lawyer must submit the power of attorney to the body which conducts the proceedings. The accused may also give the power of attorney to his lawyer orally, to be recorded in the minutes of the body conducting the procedure.[52] Each accused person may retain more than one lawyer at the same time, but in the same criminal case, one lawyer may not defend two or more defendants.[53]

Formal defence with the assistance of a lawyer is a right of each defendant, which he decides to exercise or not. In some cases, due to special personal circumstances on the defendant's part, gravity of the criminal offence or other special circumstances, the law prescribes mandatory formal defence.[54] If the conditions for mandatory defence are fulfilled and the defendant does not retain a lawyer himself, the president of the court appoints a defence counsel ex officio for the further course of criminal proceedings.

C. Access to a lawyer and legal aid

I. Access to a lawyer and legal aid in pre-trial proceedings

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.[55]

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.[56] The *dominus litis* of the preliminary phase is the police, while the investigating judge is directing the phase of (judicial) investigation. This subchapter includes information on the national legal framework for both parts of the pre-trial proceedings – preliminary police proceedings and judicial pre-trial proceedings. Access to a lawyer is guaranteed in both phases of the pre-trial proceedings. Legal provisions, relevant for access to a lawyer in the judicial pre-trial procedure, are relevant also for trial proceedings.

As mentioned above (Chapter B of this Study), the right to access to a lawyer applies also to persons, other than suspects or accused who, in the course of questioning by the become suspects. 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.[57] 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

[51] Criminal Procedure Act 1994 and subsequent modifications, Article 67/3
[52] Criminal Procedure Act 1994 and subsequent modifications, Article 67/5
[53] Criminal Procedure Act 1994 and subsequent modifications, Article 68
[54] Criminal Procedure Act 1994 and subsequent modifications, Article 70
[55] Criminal Procedure Act 1994 and subsequent modifications
[56] Šugman K., Structural Changes in Slovenian Criminal Procedure over the Last 20 Years, Zbornik znanstvenih razprav – Year IXXV., 2015, p. 5
[57] Criminal Procedure Act 1994 and subsequent modifications, Article 148/4

confessed or if from his statement the police officer concluded that he might be the perpetrator of the criminal offence.[58]

The suspects and accused persons have the right to retain a defence counsel of their choosing, however this does not mean that they can hire just any person to defend them in criminal proceedings. Only lawyers may be retained as defence counsel but they may delegate articled clerks to deputise for them.[59] Before the supreme court only a lawyer may act as counsel for the defence. The law therefore prevents suspects and the accused to have a defender, other than a lawyer.

The right to choose their own lawyer is ensured also in procedures for appointment of a lawyer within the national legal aid scheme. When filing an application for free legal aid, the applicant may name the lawyer to be appointed as his legal aid lawyer. However, he may only propose a lawyer that is already on the list of free legal aid lawyers, submitted to the competent court by the local chamber of the Bar Association.[60]

The situation is different in the case of lawyers appointed ex officio in cases of mandatory defence. The accused does not have the right to request which lawyer is to be appointed to him *ex officio*. Lawyers are appointed in the order of the list of *ex officio* lawyers in the territorial jurisdiction of the court.[61]

Article 67/1 of the CPA stipulates that the accused have the right to a lawyer during the entire duration of the criminal proceedings. The wording of this provision is not entirely accurate, as this would mean that the right to a lawyer applies only when the criminal proceedings formally begin. As described above, criminal proceedings in its basic form, begin with the court's ruling on (judicial) investigation. However, several other provisions of the CPA clearly stipulate the right to a lawyer also in earlier stages of the pre-trial proceedings, including the preliminary police procedure.

Article 4/2 of the CPA guarantees the right to access a lawyer from the moment of apprehension onwards. What is considered the moment of apprehension is not only important in relation to the right to access a lawyer, but also in relation to the suspect's privilege against self-incrimination.[62] In accordance with the law, apprehension is any deprivation of liberty that involves forced detention.[63] It includes arrest, police detention and detention on remand.

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.[64] The interrogation is

[58] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p.312
[59] Criminal Procedure Act 1994 and subsequent modifications; Article 67/4
[60] Legal Aid Act 2004, Article 32/5
[61] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p. 163
[62] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p.24
[63] Criminal Procedure Act 1994 and subsequent modifications, Article 4/3
[64] Criminal Procedure Act 1994 and subsequent modifications, Article 148/5

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.[65] 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.

If the detained person decides to entertain his right to access to a lawyer, the police must enable him to do so as soon as possible. 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.[66] A list of lawyers, provided by the Bar Association of Slovenia, is available to detainees to choose from.

Suspects and accused persons have the right to access a lawyer when they have been summoned to appear before a court having jurisdiction in criminal matters. The presence of suspects and the accused are ensured by serving them a summons.[67] In accordance with Article 193/3 of the CPA, when summoned for the first time, the summons must include a legal instruction of the suspect's or the accused's right to retain a lawyer, allowing them access to a lawyer in due time before they appear before the court.

When deprived of their liberty, suspects and accused persons are immediately informed of their rights. They are orally, in their mother tongue or a language they understand, informed of: (1) reasons for deprivation of liberty; (2) that he is not bound to make any statements; (3) that he is entitled to the legal assistance of a lawyer of his own choice; (4) that the competent body is bound to inform upon his request his immediate family of his being deprived of freedom; (5) that he has the right to use their own languages in investigative and other judicial actions and at the main hearing; and (6) if he 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.[68]

Under the law, suspects and accused persons, who are deprived of their liberty, must be informed of these rights also in writing. The written information must be provided in the suspect's or the accused's mother tongue or a language he understands. If written information is not available in a language the suspect understands, information is first provided orally and then, without undue delay, also in writing.[69]

[65] Criminal Procedure Act 1994 and subsequent modifications Article 148/6
[66] Rules on police powers 2014, Article 33/2
[67] Criminal Procedure Act 1994 and subsequent modifications, Article 193/1
[68] Criminal Procedure Act 1994 and subsequent modifications , Article 4/1
[69] Criminal Procedure Act 1994 and subsequent modifications Article 4/5

Before starting to gather information from a suspect, the police must inform the suspect: (1) what criminal offence he is suspected of and the grounds for suspicion; (2) that he is not obliged to give any statement or answer questions; (3) and that, if he intends to plead his case, he is not obliged to incriminate himself or his fellow beings or to confess guilt; (4) that he is entitled to have a lawyer of his choosing present at his interrogation; and (5) that whatever he declares may be used against him in the trial. [70]

When the investigating judge in the course of judicial investigation, summons the accused person for the first time, the (written) summons must include the instruction of his right to retain a lawyer and of the right of the lawyer to attend the interrogation.[71] The same legal instruction must again be provided to the accused orally, before the interrogation begins.[72]

If the suspect was deprived of his liberty, is brought before the investigating judge, the judge must immediately provide the legal instruction orally.[73]

The legal instruction to the suspect and his statement, whether he will or will not take a lawyer, must be recorded in the official note [*uradni zaznamek*] of the suspect's statement (if he states that he will not retain a lawyer) and the written record [*zapisnik*] the interrogation (if the suspect retains a lawyer and the latter is present during interrogation).[74]
It is not sufficient that it is noted in the official note/ written record that the legal instruction was provided – the entire instruction that was given to the suspect, needs to be written down in these two documents, together with the suspect's statement whether he will take a lawyer or not.[75] If the suspect or the accused person retains a lawyer, his presence at the questioning is recorded in the written record, as is the lawyer's (if the suspect retained one) failure to attend.

Mandatory Legal Assistance
There are circumstances where the CPA prescribes mandatory legal assistance. 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.**

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, he is brought before an investigating judge.[76] The latter applies in cases when the police deprive a person of freedom, provided any of the grounds for detention exist, but are bound to take the person to the investigating judge without any delay.

[70] Criminal Procedure Act 1994 and subsequent modifications, Article 148/4
[71] Criminal Procedure Act 1994 and subsequent modifications, Article 193/3
[72] Criminal Procedure Act 1994 and subsequent modifications, Article 203/1 and 227/2
[73] Criminal Procedure Act 1994 and subsequent modifications, Article 203/1
[74]Criminal Procedure Act 1994 and subsequent modifications, Articles 148/6 and 227/10
[75] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p. 156
[76] Criminal Procedure Act 1994 and subsequent modifications, Article 70/1

Another circumstance for mandatory legal assistance is detention hearing before the investigating judge – the accused is required to have a defence counsel during the hearing and for as long as he is subject to a detention order.[77] The investigating judge should, if necessary, help the arrested person to find a lawyer.[78] If the person who has been deprived of freedom fails to retain defence counsel within twenty-four hours of being informed of such right or declares that he will not retain defence counsel, the court ex officio appoints defence counsel for him.[79]

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.[80]

Further, a special case of mandatory formal defence is prescribed in Article 120 of the CPA: if the accused who has not retained defence counsel is to be served with the judgement by which he is sentenced to imprisonment and the judgement cannot be delivered to his address, the court will appoint defence counsel ex officio to perform that function until the new address of the accused is obtained.[81]

As described above, the law prescribes which information should be provided to suspects and accused persons by the police and the courts, however information on grounds for mandatory legal assistance is not among them.[82]

If in cases of mandatory defence, the accused fails to retain defence counsel by himself, the court will appoint one to him. The grounds for mandatory legal assistance will be determined by the (investigating) judge, ruling on the case. However, the formal decision on the appointment of the lawyer will be issued by the president of the court.[83] The president of the court selects the appointed lawyer in the order of the list of *ex officio* lawyers in the territorial jurisdiction of the court, which means that suspects and accused persons do not have the right to choose their *ex officio* lawyer.[84]

Ex officio lawyer is appointed 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 life imprisonment, or is deaf, mute or otherwise incapable of successfully defending himself, the defence counsel will remain appointed for him for the extraordinary judicial review as well.[85] If in the case where defence is mandatory the accused remains without defence counsel and fails to retain one by himself, the president of the court before which the proceedings are conducted will appoint defence counsel ex officio.

[77] Criminal Procedure Act 1994 and subsequent modifications, Article 70/2
[78] Criminal Procedure Act 1994 and subsequent modifications, Article 203/1
[79] Criminal Procedure Act 1994 and subsequent modifications, Article 203/3
[80] Criminal Procedure Act 1994 and subsequent modifications, Article 70/3
[81] Criminal Procedure Act 1994 and subsequent modifications, Article 120/3
[82] Criminal Procedure Act 1994 and subsequent modifications, Article 4
[83] Criminal Procedure Act 1994 and subsequent modifications; Article 70/4
[84] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p. 163
[85] Criminal *Ibid.*Procedure Act 1994 and subsequent modifications, Article 70/4

In general, a lawyer may delegate another lawyer (substitute) or an articled clerk or to deputise for them;[86] however, an ex officio lawyer is appointed by the court and therefore has no authorisation to delegate his rights as defence counsel onto other lawyers or articled clerks. The latter cannot be appointed as ex officio defence counsels by the court. [87] Mandatory legal assistance does not automatically mean, that it is free of charge for the defendant.[88] If defence counsel has been appointed and the payment of the fees and necessary expenses of defence counsel would imperil the sustenance of the accused or of persons whom he is bound to support, these expenses are reimbursed from budgetary funds.[89]

If the grounds for compulsory defence cease or if the accused takes another defence counsel, the appointed defence counsel is dismissed.[90] The appointed defence counsel may request to be withdrawn from the case only with good cause.[91] These can be of legal nature – if the appointed lawyer is at the same time the injured party in the case, or the spouse of the injured party or the prosecutor, or is summoned as a witness, etc.[92] But there may be also other grounds for withdrawal, such as illness, overload with other cases, and also conflicts among the defendant and the appointed lawyer and absence of mutual trust.[93]

Dismissal of the appointed lawyer and replacement with a new one can also be performed upon the request or with the consent of the accused if the appointed lawyer does not discharge his duty properly (e.g. omission of communication with the defendant, passivity at court hearings, poor knowledge of the casefile, missing a deadline and other violations of Attorneys' code of ethics). In such case, the dismissal is considered by the president of the court and is reported to the Bar Association.[94]

Communication between suspects/ accused persons and their lawyer

The CPA stipulates that if the accused is in pre-trial detention, defence counsel may communicate with him in writing or orally without supervision.[95] The law therefore protects the defendant's right to confidential communication with his lawyer. This provision only addresses the right of a detained defendant, as communication between defendants who are not detained and their lawyers is free and unsupervised.[96] This provision also applies to suspects in police custody and the custody ordered by the investigating judge. Namely, the position of the Constitutional Court is that all persons deprived of their liberty have a constitutionally guaranteed right to free and unsupervised communication with their lawyer, since the Constitution does not differentiate between different types of deprivation of liberty (police custody, pre-trial detention); the Constitution also does not differentiate between the role of the

[86] Criminal Procedure Act 1994 and subsequent modifications; Article 67/4
[87] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p. 163
[88] Administrative Court of the Republic of Slovenia, Judgement No. I U 842/2010, 18.08.2010.
[89] Criminal Procedure Act 1994 and subsequent modifications, Article 97/1
[90] Criminal Procedure Act 1994 and subsequent modifications; Article 72/1
[91] Criminal Procedure Act 1994 and subsequent modifications, Article 72/2
[92] Criminal Procedure Act 1994 and subsequent modifications, Article 68
[93] Higher Court in Ljubljana, Decision No. II Kp 24167/2015, 22.9.2016
[94] Criminal Procedure Act 1994 and subsequent modifications, Article 72/4
[95] Criminal Procedure Act 1994 and subsequent modifications, Article 74/1
[96] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004,, p. 172

lawyer of a suspect who is detained before criminal proceedings formally begin and the role of the lawyer of a suspect detained during criminal proceedings.[97]

The Rules on the implementation of remand stipulate that the detainee and his lawyer should be allowed to speak in a separate and appropriate room, freely and without supervision.[98] The lawyer can communicate with the detainee at all times, except during meals, when he is exercising his right to spend time outdoors (2 hours per day) and during night's rest.[99] The right of the detainee to free and unsupervised communication with his lawyer does not exclude the right of the authorities to visual supervision of their conversation, with the aim to prevent possible exchange of illicit items. Visual supervision must be performed in a way that prevents listening to their communication. The same applies to telephone conversations.[100] If the investigating judge orders supervision of letters and other packages as well as other contacts of the detainee, the supervision does not apply to letters exchanged between the detainee and his lawyer.[101]

Attending all investigative and evidence-gathering acts

As explained above, suspects and accused persons have the right to a lawyer during the entire duration of the criminal proceedings and also in earlier stages of the pre-trial proceedings, including the preliminary police procedure.[102] This includes the right of their lawyer to attend all investigative and evidence-gathering acts, which the suspects and accused persons are required or permitted to attend during the judicial pre-trial proceedings. In the preliminary police procedure, the lawyer may submit evidence, suggest to the police to establish certain facts, files an appeal against police detention and participate in all investigative acts performed by the police. However, the lawyer may not be present during informal police activities that are not considered formal investigative acts prescribed by the CPA, such as gathering information from witnesses.[103]

Identity parades are not considered specific investigative acts, but a specific form of examining witnesses, as it takes place within the judicial investigation. The CPA stipulates, that both the accused and his defence counsel may attend the examination of a witness.[104] The same applies to confrontations. The accused may be confronted with a witness or another accused if their statements diverge on important facts. It is considered a specific form of interrogation or examination, and since the lawyer is allowed to be present both during examination of witnesses and interrogation of the accused, he can also be present during confrontations.[105] The lawyer may also attend reconstruction of the scene of a crime, performed within the judicial pre-trial proceedings.[106] The investigating judge must in an appropriate manner inform the accused and his defence counsel when and where the investigative acts which they are entitled to attend will

[97] Constitutional Court of the Republic of Slovenia, Judgement No. Up-101/96, 1.10.1998
[98] Rules on the implementation of remand, Article 49
[99] *Ibid*.
[100] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p. 172
[101] Criminal Procedure Act 1994 and subsequent modifications, Article 213.b/4
[102] Criminal Procedure Act 1994 and subsequent modifications, Article 67/1
[103] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p. 24
[104] Criminal Procedure Act 1994 and subsequent modifications, Article 178/4
[105] Criminal Procedure Act 1994 and subsequent modifications, Article 178/1 and 178/4
[106] Criminal Procedure Act 1994 and subsequent modifications Article 178/2

take place, except where there is a danger in delay. If the accused has a defence counsel the investigating judge shall as a rule notify only the latter.[107]

Temporary derogations

The CPA does not allow any temporary derogations of the right of suspects and accused persons to a lawyer. The right to be defended by a legal representative is a constitutionally guaranteed human right, listed among legal guarantees in criminal proceedings of Article 29 of the Slovenian Constitution.[108] Human rights and fundamental freedoms provided by this Constitution may exceptionally be temporarily suspended or restricted during a war and state of emergency. This is possible only for the duration of the war or state of emergency, and only to the extent required by such circumstances and inasmuch as the measures adopted do not create inequality based solely on race, national origin, sex, language, religion, political, or other conviction, material standing, birth, education, social status, or any other personal circumstance.[109] However, the Constitution stipulates that this provision does not allow (among others) any temporary suspension or restriction of the legal guarantees in criminal proceedings of Article 29.

Remedies

The law contains a general provision, prohibiting the court to base its decision on evidence obtained in violation of human rights and basic freedoms provided by the Constitution, nor on evidence which was obtained in violation of the provisions of criminal procedure and which under the CPA may not serve as the basis for a court decision, or which were obtained on the basis of such inadmissible evidence.[110]

In relation to police interrogation of suspects, the law stipulates that 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, the court may not base its decision on the statement of the suspect.[111] There is a similar provision for interrogation of an arrested suspect, performed by the investigating judge: if the investigating judge fails to inform an arrested person of his rights or the information is not entered in the record, the court is not allowed to base its decision on the testimony of the arrested person.[112] Similar provision

[107] Criminal Procedure Act 1994 and subsequent modifications, Article 178/5

[108] Constitution of the Republic of Slovenia 1991, Article 29: »Anyone charged with a criminal offence must, in addition to absolute equality, be guaranteed the following rights:

- the right to have adequate time and facilities to prepare his defence;
- the right to be present at his trial and to conduct his own defence or to be defended by a legal representative;
- the right to present all evidence to his benefit;
- the right not to incriminate himself or his relatives or those close to him, or to admit guilt.

[109] Constitution of the Republic of Slovenia 1991, Article 16/1

[110] Criminal Procedure Act 1994 and subsequent modifications, Article 18/2

[111] Criminal Procedure Act 1994 and subsequent modifications, Article 148.a/4

[112] Criminal Procedure Act 1994 and subsequent modifications, Article 204

is again repeated in Article 227, laying down the rules for all interrogations of accused persons before the court – in pre-trial and trial phase of the proceedings: If the defendant was not instructed about his rights under the second paragraph of Article 227 (that he is not obliged to plead and answer questions, that if he pleads he is not obliged to incriminate himself or his fellow beings or to confess guilt, that he is entitled to retain a lawyer of his choosing, and that the lawyer may be present at the interrogation), or the instruction and the statement of the defendant concerning the right to a lawyer are not entered in the record, the court may not base its decision on the statement of the defendant.[113] Article 227 also stipulates the circumstances, under which accused persons may be interrogated in the absence of 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.[114]

Under the law, violations of the rights of the defence can be considered as a substantial violation of provisions of the criminal procedure, which is one of the grounds for challenging a judgement of the court of first instance in an appeal procedure.[115] The law differentiates between absolute substantial violations and relative substantial violations. The first are exhaustively listed in the law and there is a legal assumption that, if they occurred, they affected the legality of the judgement.[116] Relative substantial violations are only generally characterised by the CPA and in each individual case, the appellant must prove the causal link between the violation and the legality of the judgement.[117]

Absolute substantial violations that could occur in relation to the right of the lawyer are the following:

- If the main hearing was conducted in the absence of persons whose presence at the main hearing is obligatory under law:[118] in cases, where legal representation of the defendant is mandatory, the main hearing can never be conducted in the absence of the defendant's lawyer. The same applies even where legal assistance is not mandatory and the defendant's lawyer was not duly summoned to the hearing;
- where the judgement rests on evidence obtained in violation of constitutionally granted human rights and basic freedoms, or on evidence on which under the provisions of CPA a judgement may not rest, or on evidence obtained on the basis of such inadmissible evidence:[119] as described above, the court may not base its decision on the statement of the suspect who was not informed of his right to a lawyer prior to giving the statement.

In this respect, improper discharge of duties by the *ex officio* appointed lawyers may not only present grounds for their dismissal (as discussed above), but also substantial violation of provisions of the criminal procedure. Namely, mere passive presence of the lawyer could be considered as his absence.[120]

Legal Aid

[113] Criminal Procedure Act 1994 and subsequent modifications, Article 227/10
[114] Criminal Procedure Act 1994 and subsequent modifications, Article 227/9
[115] Criminal Procedure Act 1994 and subsequent modifications, Article 370
[116] Criminal Procedure Act 1994 and subsequent modifications; Article 371/1
[117] Criminal Procedure Act 1994 and subsequent modifications, Article 371/2
[118] Criminal Procedure Act 1994 and subsequent modifications, Article 371/1(3)
[119] Criminal Procedure Act 1994 and subsequent modifications, Article 371/1(8)
[120] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p. 163

Since the 2011 amendment of the CPA, the police are bound to inform a suspect who has been deprived of freedom, that if he does not have the means to retain a lawyer by himself, the police will, upon request of the suspect, appoint a lawyer for him at the expense of the state if this is in the interest of justice.[121] In practice this possibility is not used often. If a suspect requests a lawyer at the expense of the state, the police must consider both conditions - 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.[122]

Since 2008, legal aid in judicial pre-trial (and trial) phase of the criminal proceedings, is no longer determined by the CPA, but by the Legal Aid Act that prescribes the national legal aid scheme for all judicial proceedings.[123] In Slovenian legal system, the mechanism for guaranteeing mandatory legal assistance is separate from the legal aid scheme. As described above, the provisions concerning mandatory legal assistance, remain within the scope of the CPA. Mandatory legal assistance does not in itself provide representation free of charge, but the court may rule for reimbursement of these expenses from budgetary funds (if defence counsel has been appointed and the payment of the fees and necessary expenses of defence counsel would imperil the sustenance of the accused or of persons whom he is bound to support).[124] Under the described conditions, mandatory legal assistance becomes free legal aid and the application of the Legal Aid Act is thus excluded.[125]

Granting of legal aid in accordance with the Legal Aid Act is only possible for proceedings before courts, therefore suspects cannot acquire legal aid under this law for the preliminary police proceedings. The courts, however, are not bound by the law to provide information to the suspects/ accused persons on possibility to request legal aid, if they do not have means to afford a lawyer, how and where to apply for such legal aid, and the criteria on when a person is eligible for legal aid.[126] To provide these information, is at the sole discretion of each judge.

In accordance with the law, eligible persons who may apply for legal aid are: the citizens of the Republic of Slovenia with permanent residence in the Republic of Slovenia; foreigners holding a permit for permanent or temporary residence in the Republic of Slovenia and stateless persons residing legally in the Republic of Slovenia; other foreigners subject to the condition of reciprocity or under the conditions and in cases laid down in international treaties; not-for-profit non-governmental organizations and associations that operate in the public interest and that are entered in the appropriate register pursuant to the valid legislation, in relation to disputes involving the performance of activities in the public interest or activities for the purpose of which they were founded; and other persons determined by law or an international treaty binding the Republic of Slovenia to be persons eligible for legal aid.[127] Eligible persons may apply for legal aid in any stage of the proceeding (e.g., upon commencement of a proceeding

[121] Act Amending Criminal Procedure Act - K, 2011
[122] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p. 25
[123] Legal Aid Act 2008
[124] Criminal Procedure Act 1994 and subsequent modifications, Article 97/1
[125] Administrative Court of the Republic of Slovenia, Judgement No. I U 842/2010, 18.08.2010.
[126] Criminal Procedure Act 1994 and subsequent modifications, Article 4
[127] Legal Aid Act 2004, Article 10

in court, as well as in any stage of a proceeding that already is in progress). The adoption of a decision on the application for regular legal aid includes the determination of the financial position of the applicant (means test) and circumstances and assessment of the facts on the matter in relation to which the applicant has filed an application for legal aid (merits test).[128]

Legal aid may be granted to persons who, given their financial situation and the financial situation of their families, are not able to meet the costs of the judicial proceeding without causing harm to their social position and the social position of their families. It is deemed that the social position of the applicant and his family is put at risk by the costs of the judicial proceeding if the monthly income of the applicant (personal income) or average monthly income per family member (personal family income) does not exceed the amount of two basic amounts of minimum wage.[129] Since 1 July 2017, the basic amount of minimum wage is 297,53 EUR.[130]

The financial situation of the applicant and his family is determined by the Legal Aid Service. For this purpose, the Legal Aid Service acquires ex officio the necessary personal data obtainable from existing public data bases. If information, necessary for determining the financial situation of the applicant, cannot be obtained from public data bases, the applicant is obliged to provide the necessary information to the Legal Aid Service.[131]

When assessing the application, circumstances and facts on the matter in relation to which the applicant has filed an application for legal aid approval, are taken into consideration (merits test), particularly:
• the matter is not manifestly unreasonable or the matter is likely to succeed and it is reasonable to institute it or defend it or complain in the proceeding using legal remedies with respect to the outcome of the matter; or
• the matter is important for the applicant's personal and socioeconomic status or the expected outcome of the matter is of vital importance for the applicant or applicant's family.[132]

A matter is considered manifestly unreasonable if the applicant's expectations or demands are clearly disproportionate with the actual situation, if it is clear that the party is abusing the possibility of applying for legal aid in a matter for which the party would not resort to legal services even if the party had an adequate financial position to do so, or if the applicant's expectations or demands are clearly in contrast to the outcomes in matters with similar actual situations and legal bases, or if the person's expectations or demands plainly contradict the principles of fairness and morality.[133]

The law does not contain a presumption that where a person is suspected or accused of an offense, that carries a custodial sentence as a possible penalty, the granting of legal aid is in the

[128] Legal Aid Act 2004, Articles 11 and 24
[129] Legal Aid Act 2004, Article 13/2
[130] Order on the adjusted minimum wage as of July 2017
[131] Legal Aid Act 2004, Article 20
[132] Legal Aid Act 2004, Article 24/1
[133] Legal Aid Act 2004, Article 24/3

interest of justice. However, case law of the Supreme Court is particularly relevant for this issue.

In relation to granting legal aid in criminal matters, the position of the Supreme Court of the Republic of Slovenia is, that the seriousness of the offence, the severity of the potential penalty and the complexity of the case are key circumstances to be considered.[134] The court states that the law cannot be interpreted in a way that a legal aid application of an accused person, who could potentially be imprisoned, is considered manifestly unreasonable. The Court refers to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, stating that potential imprisonment is in itself a circumstance that demands legal aid for an accused person without the sufficient means to retain a lawyer by himself. Further, the Court states that legal aid is possible also in other criminal matters (where the accused is not at risk of imprisonment), if the complexity of the case and personal circumstances of the accused so require. The Court states that the application of Article 24 of the Legal Aid Act may be different in different types of court proceedings, particularly due to the specific nature of criminal proceedings and the need to ensure the right to defence, as prescribed by the Constitution and the Convention.

The law does not require that the accused persons, who have been granted legal aid on the basis of a merits test, have to recover the cost of the legal aid in the event of a final conviction. Recipients of legal aid must recover only the costs of unjustifiably received legal aid. Under the law, unjustifiably received legal aid is already paid legal aid granted to the eligible person based on false statements or concealment of data or changed data, which affects eligibility for legal aid.[135]

Applications for legal aid approval are decided upon by the Legal Aid Authority organised at the district court based in the region where the applicant has permanent or temporary residence. The Legal Aid Authority conducts the procedure in accordance with the General Administrative Procedure Act, that requires that all the decisions are reasoned.[136] The applicant for legal aid is a party to procedure and therefore receives a copy of the decision. Against decisions issued by the Legal Aid Authority administrative dispute before the Administrative Court may be instituted.[137]

Applicants may choose the attorney, authorised to perform legal aid, and name the attorney in the application.[138] If the applicant does not choose the lawyer, the Legal Aid Authority does so *ex officio* – it appoints a lawyer in the alphabetical order from the list submitted to it by the regional chamber of the Bar Association.[139] At the eligible person's request or on the basis of the eligible person's approval, the Legal Aid Authority may decide to discharge an appointed attorney who fails to perform his or her function properly. The Legal Aid Authority will then replace the discharged attorney with a new attorney. The Bar Association of Slovenia is notified of the discharge.[140]

[134] Supreme Court of the Republic of Slovenia, Judgement No. X Ips 226/2014, 11 November 2015.
[135] Legal Aid Act 2004, Article 43/1
[136] Legal Aid Act 2004, Article 34/2 and General Administrative Procedure Act, Article 210/2
[137] Legal Aid Act 2004, Article 34/4
[138] Legal Aid Act 2004, Article 30/1
[139] Legal Aid Act 2004, Article 30/2
[140] Legal Aid Act 2004, Article 30/9

II. Access to a lawyer and legal aid in trial proceedings

Legal provisions relevant for access to a lawyer in the judicial pre-trial procedure described in the previous subchapter, are relevant also for judicial proceedings.

Article 67/1 of the CPA stipulates that the accused have the right to a lawyer during the entire duration of the criminal proceedings.
Suspects and accused persons have the right to access a lawyer when they have been summoned to appear before a court having jurisdiction in criminal matters. In accordance with Article 193/3 of the CPA, when summoned for the first time, the summons must include a legal instruction of the accused's right to retain a lawyer, allowing them access to a lawyer in due time before they appear before the court.

Before any interrogation, identically as in pre-trial judicial proceedings, the accused must be instructed that he is entitled to retain a lawyer of his choosing, and that the lawyer may be present at the interrogation. The instruction and the statement of the defendant concerning the right to a lawyer must be entered in the record, otherwise the court may not base its decision on the statement of the defendant.[141]

Circumstances where legal assistance is mandatory, are identical to the ones described in relation to judicial pre-trial proceedings. For the trial proceedings it is particularly relevant, that the accused must 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.[142] Namely, other grounds for mandatory legal assistance (as described in the previous sub-chapter), will usually come into play already in the earlier stages of criminal proceedings.

The recording procedure of the lawyer's participation is identical to the one described in the previous subchapter.

The right of the accused's lawyer to attend evidence-gathering acts, identity parades, confrontations and reconstruction of the scene of a crime is as described for the judicial pre-trial proceedings.

Identically as for pre-trial proceedings, the law does not allow for temporary derogations of the right of the accused to a lawyer.

Remedies for protection of the right to access to a lawyer are as described in the previous subchapter.

Legal aid is provided to defendants in the scope of the Legal Aid Act – identically as within the judicial pre-trial proceedings.

[141] Criminal Procedure Act 1994 and subsequent modifications, Article 227/10
[142] Criminal Procedure Act 1994 and subsequent modifications, Article 70/3

III. Access to a lawyer in proceedings which the ECtHR and the Directive under Article 2, para.4 define as criminal but the national legislation does not classify as such

Slovenian local courts that have the jurisdiction in cases of criminal offences, carrying as principal penalty a fine or a prison term of up to three years, also have the jurisdiction in cases of minor offences as courts of first instance, judicial review of minor offence decision, issued by minor offence authorities (administrative and other state bodies, and self-governing local communities' bodies), appeals against their decisions, etc.[143] Higher courts that are competent for appeal procedures against first instance courts in criminal matters, also have the jurisdiction in appeal procedures in minor offence cases.[144]

The proceedings regarding minor offences is prescribed by the Minor Offences Act.[145] Article 67 of the Minor Offences Act stipulates application by analogy of the provisions of the CPA concerning submissions and records (which includes recording of the request for a lawyer, the lawyer's presence during hearings, etc.), deadlines, interrogation of the suspect / accused person, examination of witnesses, search of premises, etc.

Minor Offences Act too provides for the right to access to a lawyer. Before the first interrogation, the defendant in the minor offences proceedings must be informed of the right to take a lawyer that can be present at the interrogation.[146] Similarly as in criminal proceedings, accused persons have the right to retain a defence counsel of their choosing, however only lawyers may be retained as defence counsels, but they may delegate articled clerks to deputise for them.[147]

The law also provides the judge with the possibility to order detention, if that is necessary to ensure the accused person's presence during the proceedings or if the accused was caught while he was committing the offence and detention is necessary to establish his identity or he might flee or repeat the offence or destroy evidence. Detained accused persons must be immediately, in the language they understand, informed about the grounds for detention, and instructed about the right to remain silent and to immediate legal assistance of a lawyer of their choosing and that the authorities are obliged to inform upon their request a third person.[148] If the accused is detained for more than three hours, the authorities must issue a written decision to inform him of the grounds for detention. If the accused is not informed of his rights or the instruction is not recorded, the court may not base its decision on the statement he made during deprivation of liberty.[149]

Minor Offences Act stipulates application by analogy of the provisions of the CPA concerning pre-trial detention.[150] The above described provisions concerning communication between the

[143] Criminal Procedure Act 1994 and subsequent modifications, Article 210/1
[144] Minor Offences Act, Article 212/1
[145] Minor Offences Act 2011.
[146] Minor Offences Act 2011, Article 90/2
[147] Minor Offences Act 2011, Article 90/2
[148] Minor Offences Act 2011, Article 110/2
[149] Minor Offences Act 2011, Article 110/4
[150] Minor Offences Act, Article 108/5

accused person and his lawyer during detention, therefore also apply to detention under Minor Offences Act.

The accused persons lawyer has the right to inspect the files and evidence related to the case and to be present during court hearings, however if the lawyer was duly summoned but does not attend the hearing, the hearing can be conducted regardless.[151]

The law does not prescribe mandatory legal assistance in minor offence proceedings. Legal aid in minor offence proceedings before courts is ensured by the Legal Aid Act under the same conditions as described in section I of this chapter.

D. Waiver of the right to access to a lawyer

The CPA mentions waiver of the right to a lawyer only in relation to the interrogation of a suspect or accused person by a judge (in pre-trial and in trial phase of the proceedings). In this respect, the CPA stipulates that the defendant may be interrogated in the absence of a lawyer only 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.[152] Suspects and accused persons may only waive their right to a lawyer if formal defence by a lawyer is not obligatory.

If the defendant's statement concerning the right to a lawyer (whether he will waive the right to a lawyer) is not entered in the record, or the interrogation was conducted in violation of the provisions concerning admissibility of interrogation in the absence of a lawyer, the court may not base its decision on the statement of the defendant.[153] Violation of this provision is an absolute substantial violation of provisions of the criminal procedure.[154]

Although the law does not provide for any restrictions concerning the withdrawal of the waiver (at any stage of the proceedings), it also does not require from the court to provide any information about the consequences of a waiver or that withdrawal of the waiver is possible at any stage of the proceedings.

E. Other rights, envisaged by the Directive

In accordance with CPA, a person deprived of freedom must immediately be instructed that the competent body must inform upon his request his immediate family of his being deprived of freedom.[155] The police or the court will upon the request by the arrested person be bound to inform his family of his arrest within twenty-four hours. The arrest is also reported to the

[151] Minor Offences Act, Article 126
[152] Criminal Procedure Act 1994 and subsequent modifications, Article 227/9
[153] Criminal Procedure Act 1994 and subsequent modifications, Article 227/10
[154] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p. 533
[155] Criminal Procedure Act 1994 and subsequent modifications, Article 4/1

competent social welfare agency to attend, if necessary, to children and other family members whom the arrested person supports.[156]

The right of the defendant to have a third person informed upon deprivation of liberty is a constitutionally guaranteed human right.[157] The CPA additionally prescribed the deadline of 24 hours in which the court must notify the defendant's family. If the deprivation of liberty lasts less than 24 hours, informing a third person is not mandatory.

The CPA does not set out the exact procedure for informing a third person. About the provided instruction, the defendant's response and the manner in which the third person was informed, the police makes an official note and the investigating judge includes it in the record of the defendant's interrogation.[158] If the police orders police detention and brings the detained person to the investigating judge who then orders pre-trial detention, they both must inform a third person if the defendant so requests.[159]

The CPA does not provide for any specific provision for the realisation of this right in case the suspect/ accused person is a child. However, the Police Tasks and Powers Act stipulates that if the detained person is a minor the police must without undue delay orally inform his parent or legal guardians. If the police establish that informing the parents or legal guardians is against the best interests of the child, the police does not inform them – but they must inform the competent social welfare agency.[160]

The only derogation of the right to the suspects/ accused persons to have a third person informed about the deprivation of liberty the national legislation allows is delaying the notification for up to 24 hours.

During 48-hour police detention, the law does not provide for the right of detainees to communicate with third persons, only their lawyers. Visiting a defendant in pre-trial detention is possible with the permission of the investigating judge who is conducting the investigation. Under the judge's supervision or the supervision of someone appointed by him, close relatives, and at his request also a doctor and others, may visit the detainee in accordance with the house order of the detention institution. Individual visits may be prohibited if this could cause harm to the proceedings. Detainees may correspond or have other contacts with persons outside the prison. If dictated by the reasons for which detainment was ordered, the investigating judge, following a proposal by the public prosecutor may order supervision of letters and other packages as well as other contacts a detainee has with persons outside the prison (which does not apply to the communication with his lawyer). The investigating judge may prohibit sending and receiving letters and other packages or from establishing contacts which are harmful to the procedure.[161]

[156] Criminal Procedure Act 1994 and subsequent modifications, Article 208
[157] Constitution of the Republic of Slovenia 1991, Article 19/2
[158] Horvat Š., Criminal Procedure Act with commentary, Ljubljana, 2004, p. 494
[159] *Ibid*.
[160] Police Tasks And Powers Act, Article 59/1
[161] Criminal Procedure Act 1994 and subsequent modifications; Article 213.b

When the person deprived of freedom is a foreign citizen, the person must be informed that, on the basis of his or her request, the body responsible must notify the consulate of the country in question about the person's deprivation of freedom.[162] Diplomatic and consular representatives of foreign countries have the right, with the knowledge of the investigating judge performing the investigation, to visit and to talk unsupervised with detainees who are citizens of their country.[163]

F. The right to access to a lawyer and legal aid in practice. Problems of implementation and factors related to it

I. Numbers from Case File Analysis

The analysis included 150 case files from five Slovenian courts – three local courts and two district courts. From the local courts we selected 100 case files and from the district courts 50 case files as such distribution reflects the approximate number of criminal cases that are annually initiated before local courts in relation to the number of cases annually initiated before district courts. For example, in 2015 69 % of all criminal cases were initiated before Slovenian local courts and 31% were initiated before district courts.[164]

a. Demographic data

The chart below presents the age and gender distribution of suspects and accused persons included in the case file analysis. The sample included 128 male and 22 female accused persons. The majority of male suspects were between 18 and 35 years old when the criminal proceedings began. The age group between 36 and 50 years of age is also strongly represented with 53 male suspects and accused persons. In both mentioned age groups, there are 10 female suspects. The number of suspects and accused persons that were older than 51 is significantly lower.

[162] Criminal Procedure Act 1994 and subsequent modifications, Article 157/3
[163] Criminal Procedure Act 1994 and subsequent modifications; Article 213.b/2
[164] Republic of Slovenia, Ministry of Justice, Judicial Statistics 2015

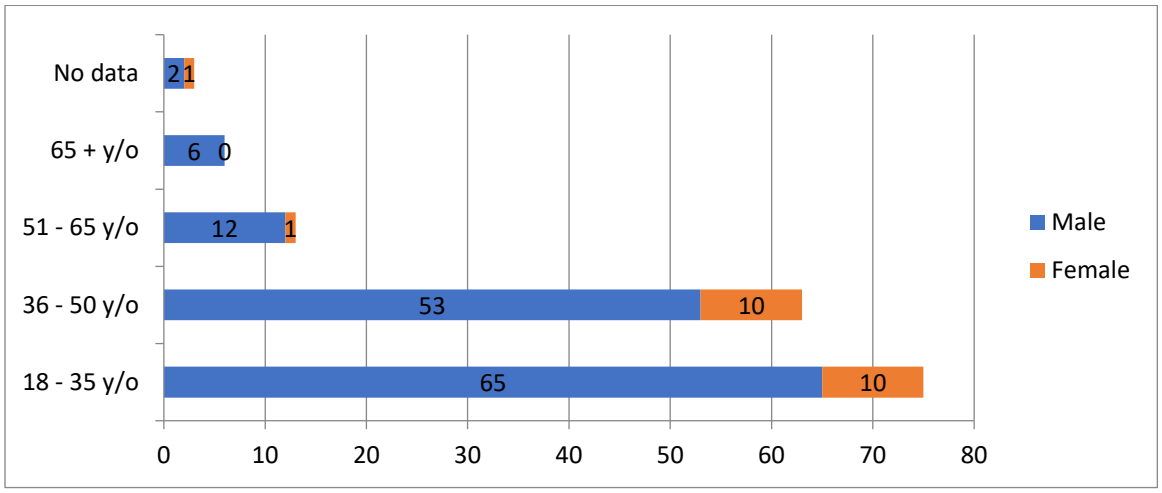

Chart 1 Age and Gender

Out of 150 suspects/ accused persons, 137 were Slovenian nationals and 140 had permanent residence in Slovenia; 143 understood Slovenian language and communicated with the authorities in Slovenian language. Thirteen (13) persons were foreign nationals; 7 required interpretation. Countries of nationality of foreign nationals were as follows: Bosnia and Herzegovina (4), Italy (3), Syria (2), Albania (1), Croatia (1), Iraq (1) and Kosovo (1)

The majority of suspects/ accused persons completed high school education (68); 55 completed primary education or a few years of primary education; 14 completed higher education and 13 case files did not include information on the suspect's/ accused person's education.

Out of 150 suspects/ accused persons 79 were unemployed; 53 were employed, 7 were retired and 11 case files were without information on the person's employment status.

The majority of suspects/ accused persons were single (70), 12 were divorced, 27 were married, 28 lived in long term partnership, one (1) was widowed; and 12 case files lacked information on the suspect's/accused's personal status.

National statistics: Number of suspects per year

	Number of suspects		
Year	**Male**	**Female**	**Total**
2011	4.330	1.091	**5.421**
2012	4.171	1.142	**5.313**
2013	4.239	1.280	**5.519**
2014	4.320	1.240	**5.560**
2015	3.836	1.205	**5.041**
2016	3.597	1.104	**4.701**

Source: Annual Reports, published by the Republic of Slovenia, Ministry of Interior

b. Criminal offences

In the case file analysis at the local and district courts, the 150 accused persons were prosecuted for 33 different criminal offences. Criminal offences against property were the most common (73 cases). This included criminal offences such as larceny and grand larceny, fraud, robbery, etc. The second largest group were criminal offences against life and limb. In 31 cases, accused persons were tried for bodily harm, aggravated bodily harm and in one case, for attempted homicide. There were 13 cases of criminal offences against marriage, family and youth, which included cases of domestic violence, neglect and maltreatment of a child, abduction of a minor and non-payment of child support. Six (6) cases pertained to Criminal offences against public order and peace, such as obstructing the performance of official acts or revenge upon an official or attack on an official, while exercising security tasks. In five (5) cases accused persons were tried for criminal offences against public health such as unlawful manufacture and trade of narcotic drugs, illicit substances in sport and precursors to manufacture narcotic drugs and rendering opportunity for consumption of narcotic drugs or illicit substances in sport. There were two (2) cases of criminal offences against sexual integrity: sexual violence and sexual assault on a person below fifteen years of age. Other criminal offences (20 cases) included criminal offences against honour and reputation, criminal offences against the safety of public traffic, criminal offences against official duties (abuse of office or official duties), etc.

Table 1 Criminal Offences

Criminal offences against property	73
Criminal offences against life and limb	31
Criminal offences against marriage, family and youth	13
Criminal offences against public order and peace	6
Criminal offences against public health	5
Criminal offences against sexual integrity	2
Other criminal offences	20
Total	**150**

c. Legal Representation

In 105 cases suspects and accused persons had legal representation by a lawyer, while 45 suspects had no legal representation throughout the entire criminal proceedings.

The majority of the 105 suspects retained their lawyer (54); 27 suspects/accused persons were represented by an ex officio lawyer and 22 were represented by a legal aid lawyer. The majority of suspects/accused persons had only one lawyer during the proceedings, only 4 were represented by more than one retained lawyer (however, not simultaneously); 2 were appointed more than one ex officio lawyers; and 6 were represented by different types of lawyers (e.g. both retained and legal aid lawyer or retained and ex officio lawyer).

Only six (6) suspects have retained a lawyer already during the police stage of the proceedings. In all these cases, the lawyer was retained by the suspect and they continued to represent their clients until the final judgement.

During judicial investigation, 25 suspects were represented by lawyers. In 2 cases, the lawyers were appointed ex officio; 1 suspect was represented by a legal aid lawyer; and 22 suspects retained their lawyer to represent them during judicial investigation.

Twenty (20) suspects were remanded in custody (pre-trial detention). As legal representation of suspects during the detention hearing and the entire duration of detention is mandatory, all

20 suspects were represented by a lawyer during the detention hearing. The majority (18) was appointed ex officio lawyers; and 2 suspects chose to retain their lawyer.

National statistics: Number of persons detained on remand

Year	Number of persons detained on remand in pre-trial stage			Numbers of persons detained on remand in the course of trial stage		
	District Courts	**Local Courts**	**Total**	**District Courts**	**Local Courts**	**Total**
2011	483	67	**550**	280	48	**328**
2012	664	22	**686**	86	47	**133**
2013	610	38	**648**	65	56	**121**
2014	631	43	**674**	67	48	**115**
2015	517	25	**542**	67	43	**110**
2016	512	60	**572**	50	51	**101**

Source: Annual Judicial Statistics, published by the Republic of Slovenia, Ministry of Justice

During trial on the first instance, 101 accused persons were represented by a lawyer. For 54 suspects, this was the first time a lawyer was engaged in the proceedings. Apart from one (1), all suspects that had legal representation in the pre-trial phase, kept a lawyer during the trial phase as well. The majority of accused persons were represented by a retained lawyer (53); 26 accused persons were represented by ex officio appointed lawyers due to mandatory defence; 22 were represented by legal aid lawyers.

In all 29 cases that were tried in the second instance accused persons were represented by a lawyer. In three (3) cases, the accused retained a lawyer for the first time. In 29 cases appeals were filed by either the defence or the prosecution; and only in 3 cases extraordinary legal remedies were filed before the Supreme Court.

National statistics: Number of suspects and accused persons, not represented by a lawyer

Year	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Investigation	2649	2292	1928	1916	1558	940
Trial	3417	2317	2063	2176	1610	798

Source: Data submitted by the Supreme Court of the Republic of Slovenia upon request

National statistics: Number of appointments of *ex officio* lawyers to suspects in criminal proceedings (mandatory defence)

Year	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Investigation	127	159	157	143	144	136
Trial	654	642	543	568	553	458

Source: Data submitted by the Supreme Court of the Republic of Slovenia upon request

National statistics: Between 2011 and 2016 the courts issued 18 decisions on punishing lawyers in criminal proceedings for failure to appear before the court hearing

2011	2012	2013	2014	2015	2016
4	3	2	3	5	1

Source: Data submitted by the Supreme Court of the Republic of Slovenia upon request

d. Outcome and sentencing

Most of the cases were resolved on the 1st instance (121), 29 cases were appealed by either by the defence or the prosecution; and only in three (3) cases extraordinary legal remedies were filed before the Supreme Court.

At 1st instance, 121 accused persons were found guilty, 10 were acquitted, in 14 cases criminal proceedings were terminated (e.g. if the act charged is not a criminal offence, circumstances exist which exclude criminal liability, etc); and in five (5) cases charges were rejected (e.g. when the prosecutor withdraws the charge or the injured party withdraws the motion, etc.).

At 2nd instance, 26 accused persons were found guilty and four (4) persons were acquitted. In all three (3) cases filed before the Supreme Court, accused persons did not succeed with extraordinary legal remedies and the decision on their guilt remained final.

In 118 cases, accused persons were convicted by a final judgement, 12 persons were acquitted and 20 cases were either terminated or the charges were rejected.

In 34 cases, accused persons were sentenced to imprisonment, out of which two (2) sentences of imprisonment were implemented in the form of community service. The average sentence of imprisonment was 12.1 months (the lowest sentence of imprisonment was one (1) month and the highest 36 months).

The most common type of sentence was a suspended sentence of imprisonment, which was applied in 71 cases. A fine was imposed in 12 cases (average fine was 1,138 EUR, the lowest was 500 EUR and the highest was 4,300 EUR).

In three (3) cases, the court imposed safety measures, since the accused person was not responsible due to inability to understand the meaning of the committed act.

II. Findings from the Field Study

a. Preliminary (Police) Proceedings

- Only 5% of the suspects heard by the police in pre-trial proceedings had their lawyer present during interrogation. All of them retained their lawyer.

- 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. At the time of the confession, the lawyer was present only in one case.

In the majority of the 150 analysed cases, the first interrogation of suspects took place during the preliminary police proceedings (115). Apart from one, suspects were interrogated by the police only once. In 19 cases, suspects were in police custody while they were interrogated by the police**. Only six (6) suspects had legal representation during the police interrogation, however none of the suspects that were in police custody.** The six suspects all retained their lawyer.

As mentioned in results from desk research, the process of acquiring the suspect's statement without a lawyer present is not considered a police interrogation under the CPA and the official note of the suspect's statement in this case cannot be used as evidence in court. **However, as confirmed in case file analysis, the official note of the statement remains in the case file and thus available to the presiding judge during trial.** Although the judgement cannot be based on this type of statement, stakeholders confirmed that certain investigating acts such as house search could be a result of the statement made without a lawyer. This type of statement therefore has a very important influence on the further course of the investigation and proceedings.

The suspects that retained a lawyer to represent them during the police interrogation, were not arrested, but were probably invited to come to the police station at a certain time and date.[165] Consequently, case law analysis did not offer information, whether the police records the time of notification of a lawyer diligently (e.g. if the suspect was detained and asked for a lawyer).

In 89 cases, the suspects gave their statement during the questioning; 25 confessed to committing criminal offence, 41 denied; and 22 partly confessed. Only one suspect had their lawyer present at the time of the confession.

In all six cases, the lawyers present during the police questioning did not ask questions, make comments or put forward any oral motions.

Desk research showed that the law does not prescribe grounds for mandatory defence in the preliminary police procedure, and that the Legal Aid Act provides legal aid only in judicial proceedings. Under the CPA there are options for the police to appoint a lawyer free of charge to a suspect if he/she does not have the means to retain a lawyer if this is in the interest of justice.[166] However, in none of the analysed cases, the police applied this provision. 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. But the case law analysis showed that the suspects rarely do so. Further consultation with stakeholders revealed possible reasons:

[165] This could not be corroborated in the case file analysis, as the case files did not contain such information. However, in many cases the police invite suspects to attend the interrogation even 15 – 20 days in advance, so that their lawyer can attend (Interview with police officer, 10 July 2017).
[166] Criminal Procedure Act 1994 and subsequent modifications, Article 4/1

- In many cases, the main problem is the suspect's capability to pay the defence counsel.[167] 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. Case file analysis: The police called two different lawyers, and although the police postponed the interrogation, none of the lawyers came to the police station. The suspect was then questioned by the police without a lawyer present, and he chose to exercise his right to remain silent.[168]

- 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.[169]

- 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.[170] 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.[171] **"If the police interrogate the suspect (in the presence of his/her lawyer) the interrogation has equal probative value as the interrogation by the investigating judge. But we (lawyers) do not have access to police documents… they give you the criminal complaint, but never the appendices."** Lawyer, Focus Group (9 May 2017) The issue of access to police case files was mentioned during both Focus Groups with lawyers as a crucial obstacle for lawyers to providing effective legal defence to suspects during police proceedings.

- Some suspects underestimate the seriousness of their situation and believe that the matter will be resolved on its own. **"I did not take a lawyer because it was just an argument that turned into a fight. I did not think it was serious, I certainly did not think I would end up in jail. Now I would make a different decision and take a lawyer."** Convicted person, Interview No.2 (28 June 2017)

Right to information on access to a lawyer

- In 98% of the cases analyzed, suspects were informed of their right to of access to a lawyer before the police interrogation.
- The police use a standardized form when drawing up written records of the interrogation and official note of the suspect's statement, which includes the content of the legal instruction.

[167] Interview with police officer, 10 July 2017.
[168] Case file analysis, Case No. 142, District Court II.
[169] Interview with police officer, 6 July 2017.
[170] Outcomes from Focus Group with Criminal Defence Counsels, 25 April 2017.
[171] Some of the lawyers disagreed with such tactics, arguing that police interrogation is very stressful for suspects and as it is hard to repair the damage of a bad statement later on, recomending legal representation during police questioning (Outcomes from Focus Group with Criminal Defence Counsels, 25 April 2017).

In 115 analysed cases, the suspect's first interrogation was performed by the police in preliminary proceedings. Out of these, 113 were informed at the first police about the right of access to a lawyer (that they have the right to the legal assistance of a lawyer of their own choice, who may be present at their interrogation); and in two (2) cases, the suspects were not informed of this right at the first interrogation. In five (5) cases, the first interrogation was performed by the investigating judge, in one (1) case it was performed by the single judge of the local court as part of individual acts of investigation; and in 29 cases, suspects were not interrogated in the pre-trial phase of the proceedings.[172]

In cases where the suspects are not taken into police custody, the police often invite suspects to attend the interrogation in advance. The summons includes the instruction that they have the right to the legal assistance of a lawyer who may be present at their interrogation so that their lawyer can attend.[173] In such cases, suspects already bring the lawyer with them and they rarely ask for a lawyer after they arrive at the police station. In any case, the police inform suspects of their right to a lawyer at the beginning of the interrogation.

The case file analysis showed that the police use standardised forms when drawing up written records of the interrogation (in the presence of a lawyer) or official note of the suspect's statement (if the suspect is not represented by a lawyer). The written record (a copy of which the suspect is entitled to) includes the content of the legal instruction, the suspect's statement on exercising the right to a lawyer and whether the lawyer was present or not. The suspect's statement whether he understood the legal instructions is also included. To detained suspects, the police also hands out a brochure about the rights of detained persons.[174]

However, some of the lawyers raised their concern 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 and that sometimes their clients do not really know what they signed.[175] Similarly, one of the convicted persons we interviewed stated that he does not remember the police informing him of his right to a lawyer nor receiving a copy of a document of any kind.[176] It is possible, that the information was never provided to him, but it is also possible that in the state of great distress he stated he had felt during the arrest, he was not aware of it.

If the suspect asks for a lawyer at the police station and names the lawyer he wishes to retain, the police makes the first contact by calling the lawyer and then enables the suspect to speak with the lawyer. 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. After the suspect chooses the lawyer, the police make the first contact. Desk research showed that the law demands from the police to postpone the interrogation until the arrival of the lawyer or until the time determined by the police, which may not be shorter than two hours.[177] The field study

[172] Most of these cases were processed before local courts in summary criminal proceedings, where there also is no judicial investigation.
[173] Interview with police officer, 10 July 2017
[174] Interview with police officer, 6 July 2017
[175] Outcomes from Focus Group with Criminal Defence Counsels, 25 April 2017.
[176] Interview with convicted person (No.2), 28 June 2017
[177] Criminal Procedure Act 1994 and subsequent modifications, Article 148/5

did not provide any information indicating that this is not respected in practice. The interviewed police officers also stated that 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 and that the police do not limit the duration of the consultation.

As described in the results from desk research, persons who, in the course of questioning by the police become suspects, must be informed of their rights as suspects before the police continues to gather information from them. **The case file analysis included only one case where the suspect who was interrogated as a witness confessed to the crime during the police questioning. The case file did not include any indications, that the police stopped the conversation and informed the (now) suspect of his right to a lawyer. Furthermore, the official record of the suspect's statement was not excluded and remained in the case file during the trial phase of the proceedings.**[178] As the analysis revealed only one such case, it cannot be concluded that this is a widespread problem. In 113 out of 115 cases the police considered the persons as suspects from the beginning of the questioning,[179] which might indicate that situations where the persons become suspects in the course of questioning by the police are not very common and the described case possibly shows that in such cases the obligation to provide legal instruction on the suspect's rights is not always respected.

b. Judicial Investigation

- In 39% of the cases analysed, suspects had a lawyer present during the interrogation
- Of these 82% retained their lawyer, 12% were represented by ex officio lawyers due to mandatory defence and 6% had legal aid lawyers.

In 44 cases, the next interrogation took place during judicial investigation, and was performed by the investigating judge.[180] At the time of the interrogation, 17 suspects had a defence counsel present: in 14 cases, the suspects retained their lawyer, in one (1) case, the suspect was represented by a legal aid lawyer; and in two (2) cases suspects interrogated by the investigative judge were represented by an *ex officio* lawyer due to grounds for mandatory defence. In one case, where the person did not have a lawyer during the questioning, the analysis showed the investigative judge should have established grounds for mandatory defence and appointing of *ex officio* lawyer:

The suspect was illiterate, about which she told both the police and the investigating judge. The grounds for mandatory defence were only recognised at the beginning of trial, when the judge established that the defendant is incapable of defending herself successfully, postponed the first hearing and ordered the appointment of an ex officio lawyer.[181]

In all cases, the lawyers were present during interrogation before the investigating judge. In 12 cases, it seems that the suspects retained a lawyer after they received a summons to appear

[178] Case file analysis, Case No. 110, District Court I.
[179] In the other case, the police treated the person as a witness during the entire police proceedings; the decision to charge the person with a crime was made later by the public prosecutor. The case is described under section D, describing the outcomes of the field study concerning the trial phase of the proceedings.
[180] This number excludes detention hearings, also performed by the investigating judge. The subject of pre-trial detention is described in a separate section of this study.
[181] Case No. 128, District Court II.

before the investigating judge. In five (5) cases, where the court was aware of the suspect's defence counsel, the court informed the lawyer about the interrogation.[182] In general, in the analysed cases the defence counsels did not submit any complaints due to the lack of notification about any of the procedural acts.

In most cases (11), the present defence counsels asked questions, made comments or put forward oral motions. In six (6) cases, no such activity could be identified in the written record of the interrogation.[183]

In investigative phase of the proceedings, in 25 cases witness interrogation took place at the time the suspect was represented by a lawyer. In 12 of these cases, the lawyer attended all witness interrogations personally; in three (3) cases a substitute defence counsel attended some of the witness interrogations; in five (5) cases the lawyer attended only some of the witness interrogations and did not arrange a substitute to replace him; and in six (6) cases the lawyer did not attend any of the witness interrogations. In the cases, where the lawyer did not attend any of the hearings, only in one (1) case, the lawyer was not notified of the hearing (notification was not documented, and the lawyer was not present).

In the cases we analysed, identity parades, confrontations and reconstructions of the scene of a crime rarely took place. At the time the suspect was represented by a defence counsel, only one identity parade and one reconstruction of the scene of the crime were conducted. In both cases, the lawyer attended the investigative acts.

In 54 cases the defence counsel inspected the case files during or after the conclusion of the judicial investigation; in 44 cases, the documents did not include any evidence that the defence counsel inspected the files, although the suspect was either represented during the investigation or during trial at the first instance.

c. Detention Hearing

- In 13% of the analyzed cases, the accused persons were remanded in custody.
- As this detention hearing requires mandatory defense, all suspects were represented by a lawyer during the hearing: in 90% this was an ex officio lawyer, in 10% the suspects retained their lawyer.

Twenty (20) suspects were remanded in custody during the pre-trial phase of the proceedings; 19 of them were also placed in police custody prior to being brought before the investigating judge for pre-trial detention hearing. When the suspect is brought before an investigating judge by the police, during the interrogation hearing and for as long as the suspect is subject to a detention order, defence by a lawyer is mandatory.[184] In all analysed detention cases, the suspects were represented by a lawyer and had the lawyer present during the detention hearing. In 18 of these cases, the lawyer was appointed *ex officio*; and in two (2) cases the suspects retained their lawyer themselves.

[182] Acknowledgement of receipt was recorded in the case file.
[183] Out of these six (6) cases, five (5) lawyers were retained and one (1) was appointed *ex officio.*
[184] Criminal Procedure Act 1994 and subsequent modifications, Article 70

In the majority of these cases (18), the present defence counsels asked questions, made comments or put forward oral motions. In two (2) cases, no such activity could be identified in the written record of the interrogation.[185]

The main issue that arose from the field study are the systemic obstacles for providing efficient legal representation by the *ex officio* appointed lawyers.[186] The case law analysis indicates that these are the lawyers that most often represent suspects during detention hearings. How much in advance the lawyers are informed about the detention hearings varies from court to court. Some courts inform the lawyer one day in advance, some 6-12 hours and some only one or even half an hour in advance. But in all cases the lawyers stressed that the suspect is brought to the court only 10 or 15 minutes before the interrogation, together with the documentation, which in practice usually means the criminal complaint without any appendices. This means that the time for consultation with their client and the review of the available information about the case 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 situation is worsened by the fact that the courts do not have separate rooms for such lawyer-client consultations, meaning that the conversation takes place in the hallway in front of the court room. The police are always present, particularly if the suspect is in handcuffs. Although they discretely step aside, lawyers can never be completely sure that their conversation is not overheard.

d. Trial

- In 67% of the cases analysed, defendants were represented by a lawyer during the trial is at first instance.
- Of these there were 52% of retained lawyers, 26% ex officio lawyers for the purpose of mandatory defence and 22% lawyers based on free legal aid.

During trial on the first instance, 101 accused persons were represented by a lawyer. The majority of accused persons were represented by a retained lawyer (53); 26 accused persons were represented by ex officio appointed lawyers due to mandatory defence; 22 were represented by legal aid lawyers.

None of the analysed cases showed any difficulties in notifying or summoning the defence counsels. There were no cases where the defence counsel's presence was mandatory, and the defence counsel did not appear in court. In none of the cases appointment of a substitute defence counsel was necessary.

In the majority of cases, the present defence counsels asked questions, made comments or put forward oral motions. In eight (8) cases, no such activity could be identified in the written record of the interrogation, however in seven of these cases the accused person confessed to

[185] In both cases, the lawyer was appointed *ex officio.*
[186] Outcomes from Focus Groups with Criminal Defence Counsels, 25 April 2017 and 9 May 2017.

committing the criminal offence and in one case the private prosecutor did not appear in court and the proceedings were consequently closed.[187]

In none of the cases did the defence file any complaints about the lack of respecting confidentiality between the defendant and the defence counsel or complaints about the authorities hindering the effective right to access to a lawyer.

The case law analysis did not reveal any major issues with lawyers not being informed of the court hearings or being informed very late. In three cases legal aid lawyers were notified of their appointment only a few days before the hearing or on the day of the hearing and in each of these cases the judge postponed the hearing to allow the lawyer to consult with the accused person and prepare for the hearing. That postponing hearings in cases where the defence needs more time to prepare is not an issue, was also confirmed during the consultations with lawyers and judges.[188]

The courts were also very understanding towards the accursed persons that expressed their intent to apply for a legal aid lawyer at the first court hearing. In three such cases, where legal defence was not mandatory the court postponed the hearing and thus allowed the defendant to apply for legal aid.

In general, the outcomes of the field study did not reveal any major issues concerning the accused persons' right to access to a lawyer, as the court include the information on the right to a lawyer in the summons; and the accused is then also informed orally before the interrogation.

However, one specific type of criminal proceedings raised serious concerns. In summary criminal proceedings that take place before local courts in case of criminal offences punishable by deprivation of liberty for under 3 years, public prosecutor may in filing the summary charge sheet propose to the court to issue a punitive order without holding the main hearing.[189] The public prosecutor may propose the pronouncing a fine, prohibition from driving a motor vehicle, suspended sentence with a fine or up to six months imprisonment, or the seizure of objects and property benefits acquired through commission of criminal offence. If the judge agrees with the proposal, he issues a punitive order by means of a ruling.

In such proceedings, the accused is never summoned before the court or heard by a judge. Punitive order was issued in 24 analysed cases and 22 case files did not contain any evidence of the accused person receiving information on their right to a lawyer during the trial phase of the proceedings. In 17 analysed cases, the accused persons were not represented by a lawyer and only one (1) accused person appealed against the ruling of the court to issue a punitive order. In seven (7) of these cases, the accused persons were also never summonsed or questioned by the police or the investigating judge - not only that these seven persons were found guilty and sentenced without ever giving any kind of statement, but also that they have never received any information on their right to a lawyer.

Further consultation with stakeholders confirmed that these cases are not just anomalies but an occurrence enabled by the existing criminal justice legislation.[190] Some of the participants of

[187] Out of these, five (5) lawyers were retained, two (2) were legal aid lawyers and one (1) was appointed *ex officio*.
[188] Outcomes from Focus Groups with Criminal Defence Counsels, 25 April 2017 and 9 May 2017, Interview with a judge, 24 May 2017, Interview with a judge, 8.6.2017.
[189] Criminal Procedure Act 1994 and subsequent modifications, Article 445.a
[190] Interview with a judge, 8 June 2017

the Defence Counsel Focus Groups stated that it seems that the purpose of the punitive order is to find a socially vulnerable person and quickly conduct the proceedings.[191] This is particularly problematic if the accused has his permanent residence registered at the local social work centre (homeless people and people who for different reasons are not able to register their permanent address at the place of their residence), which do not notify them regularly about the mail that arrived in their name. After a while, the judgement is considered to be served and becomes final, without the knowledge of the defendant.

Two such cases were identified in the case file analysis, both involving members of the Roma community.

Case No. 36, Local Court II: **Based on a criminal complaint, the police gathered information on alleged shooting. In the process, they also talked to the (later) accused person, who denied any involvement in the incident. His statement was corroborated by other witnesses and other evidence. The police concluded that the criminal complaint was false and thus never treated the accused as a suspect and never informed him of his rights. As part of standard procedures, the police informed the public prosecutor of its conclusions. Later the public prosecutor filed a criminal charge with the proposal for the issue of a punitive order. The court agreed, and the accused was sentenced to a suspended sentence of imprisonment, never being informed of his right as a suspect or accused person.**

Case No. 37, Local Court II**: The police received a criminal complaint against a Roma woman who allegedly stole 1 litre of olive oil from a local restaurant. The police never questioned her so during the police proceedings the accused was never informed of her rights. The public prosecutor filed a criminal charge with the proposal for the issue of a punitive order and the court agreed, never hearing the accused nor informing her of her rights. The accused was sentenced to a suspended sentence of imprisonment, under the condition that she pays 10 EUR to the owner of the restaurant. The accused did not pay the amount and was later sentenced to 3 months of imprisonment.**

e. Legal Aid

- In 15% of the cases analysed, the accused persons acquired free legal aid.
- In all cases, the competent professional service has considered the financial means of the applicant and the content of his case.

In 22 analysed cases the accused persons successfully applied for legal aid. In all cases the Legal Aid service performed both the financial and the merits test.

In terms of financial test, the authorities always considered both the applicant's income and assets. In one case the authorities also considered the family situation of the applicant and in another case the costs of legal representation were mentioned in the reasoning of the decision.

In terms of merits test, the authorities assess whether the applicant's matter has reasonable prospects of success. In its decision-making, the authorities also considered the complexity of the case (in 5 cases); social status of the applicant and the importance of the outcome of the proceedings for the applicant's social status (18 cases); personal circumstances of the applicant

[191] Outcomes from Focus Group with Criminal Defence Counsels, 9 May 2017.

– that the applicant is a layman and that equality of arms is essential for an effective defence (21 cases); and gravity of the criminal offence (in 2 cases); potential sentence (10 cases).

In two (2) cases the applicant named the lawyer he wished to be appointed to him and in both cases the authorities accepted the applicant's proposal.

The law does not include any obligation to provide a legal instruction to suspects and accused persons concerning the possibility to apply for legal aid. In the analysed case files, such instructions could not be identified. The judges we interviewed stated, that they often provide information on legal aid, particularly if the accused mentions that he cannot afford a lawyer.[192] According to the judges, many people are aware of the possibility of legal aid, although they might not know exactly where and how to apply.

One of the shortcomings of the legal aid scheme is the relatively low income census, determining the applicants eligibility for legal aid. To be eligible, the monthly income of the applicant (personal income) or average monthly income per family member (personal family income) must not exceed the amount of two basic amounts of minimum wage, which means that **"as soon as somebody has some sort of income, he will immediately exceed the census"**,[193] but still will not be able to afford a lawyer.

National legal aid scheme only applies to court proceedings but not to preliminary police proceedings. The police are bound to inform a suspect who has been deprived of freedom, that if he does not have the means to retain a lawyer by himself, the police will, upon request of the suspect, appoint a lawyer for him at the expense of the state if this is in the interest of justice.[194] However, the majority of consulted stakeholders stated that they are not familiar with cases where the police would use this legal provision in practice.

"(Suspects) don't even ask for it. When we tell them that we will later bring them to the investigating judge, where legal defence is mandatory, they decide to wait for the ex officio lawyer."
(Interview with police officer, 6 July 2017)

Another important shortcoming for effective legal representation is the remuneration the lawyers receive for the counselling and representation performed within the national legal aid scheme. **In accordance with Article 17 of the Attorneys Act, a lawyer providing legal aid services is entitled to half of the amount he would be paid under the Attorney Tariff.** The Attorney Tariff determines the number of points each provided service is worth and the value of the point, which is 0,459 EUR. For example, defending a suspect during investigating acts is worth between 100 and 400 points (depending on the gravity of the crime), which means the regular fee will be between 45,9 EUR and 183,6 EUR, and the reduced legal aid fee will be between 22,95 EUR and 91,80 EUR.

Not only that the legal aid lawyers are granted only half of the Attorney Tariff, the authorities are also limiting the types of eligible costs, such as travel cost, amount of time to visit the client in detention, accessing and copying case file documents, forcing the lawyers to be less active;

[192] Interview with judge, 8 June 2017
[193] *Ibid.*
[194] Act Amending Criminal Procedure Act - K, 2011

providing only the appearance rather than effective defence.[195] While some law firms refuse to provide legal aid within the existing scheme, the legal aid list is filled with younger lawyers who lack the knowledge and experience to tackle all the different types of cases assigned to them.

The above described issue concerning remuneration also applies to the system of mandatory defence, as the *ex officio* appointed lawyers also receive only half of the Attorney Tariff.

Budget of the national legal aid scheme

Year	Budget
2011	774.921,10
2012	754.683,76
2013	659.172,34
2014	628.401,38
2015	577.235,83
2016	475.627,03

Source: Data submitted by the Supreme Court of the Republic of Slovenia upon request

f. Waivers

The law does not provide for any restrictions concerning the withdrawal of the waiver (it can be given at any stage of the proceedings). Although the law does not prevent the withdrawal of the waiver (and the defendants may change their mind and retain the lawyer at any moment), it also does not require from the court to provide any information about the consequences of a waiver or that withdrawal of the waiver is possible at any stage of the proceedings. The case file analysis showed that the authorities do not provide this information to suspects and accused persons in practice.

Although the legal instruction does not explicitly state that the suspected or accused person has the right to revoke the waiver at any point of the criminal proceedings, the law does demand from the competent authorities (the police, the investigating judge, the presiding judge during trial) to inform the suspects and accused persons of their right to a lawyer prior to any questioning. For example, if the defendant waived his right to a lawyer when interrogated by the investigating judge, he is again reminded of this right when summoned to appear in court during trial and before his interrogation at the main hearing. The majority of waivers occured during police proceedings (107); the numbers are significantly lower during judicial investigation (26) and trial (29), from which it can be concluded that suspects and accused persons generally understand that they can change their mind and request for a lawyer.

g. The right to have a third person and or consular authorities informed of the deprivation of liberty

[195] Outcomes from Focus Group with Criminal Defence Counsels, 25 April 2017.

In all 20 cases where the suspects were deprived of liberty, the suspects were informed of their right to have a third person informed of the deprivation of liberty. However, from the case files it was not always visible whether the suspect named the third person or waived his right. In the police proceedings, the suspected person's statement concerning this right is usually not noted in the official note of the interrogation or the decision on the deprivation of liberty, but in the official note of all task performed concerning the detained person. This document is not included in the court case file. Nonetheless, the case file analysis showed that nine (9) detainees named a third person; in seven (7) cases this person was a close relative; in one (1) case the detainee named a person other than a relative; and in one (1) case the file did not include the information who the third person was. In six (6) cases it was noted that the third person was successfully informed; in five (5) cases the time and date was noted in the case file.

In practice, the police often exercise the legal possibility to postpone the notification for 24 hours, particularly if a house search is planned.[196]

In the case of detained foreign nationals, three (3) detainees demanded the consular authorities of his country to be informed of their deprivation of liberty; one (1) detainee did not wish to exercise this right. In one case the detainee demanded that a representative of the consular authorities is present during interrogation, but the consular authorities did not attend.

In the case of a detained Syrian refugee, the decision on police custody included the information that Syrian consular authorities will be informed. At the detention hearing before the investigating judge, the detainee stated that he did not wish to have the consular authorities informed. As the detainee was a refugee, the matter was even more sensitive, but from the case file it could not be concluded what the result was.

The defence counsels we consulted during the field study stated that there are no particular difficulties in the practical implementation of the right to have a third person and or consular authorities informed of the deprivation of liberty.[197]

[196] Interview with police officer, 10 July 2017
[197] Outcomes from Focus Groups with Criminal Defence Counsels, 25 April 2017 and 9 May 2017.

G. Conclusion and recommendations

The outcomes of desk research show that the majority of the provisions of the Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings are adequately transposed into Slovenian national legislation.

The exception are some of the provisions concerning the waiver of the right to a lawyer. Although the law does not prevent suspects and accused persons from revoking their waiver, the legal instruction as prescribed by the national law does not explicitly state that possibility.

- **The legal instruction on the rights of suspected and accused persons should include the information about the possibility to revoke a waiver subsequently at any point during the criminal proceedings**

However, field study revealed some important practical obstacles to the right of access to a lawyer.

Suspects or accused persons summonsed to appear before a court must have sufficient time to consult their lawyer before such appearance. This is usually not the case when suspects are brought before the investigating judge from police custody. Legal defence during the interrogation is mandatory, which is most often performed by *ex officio* appointed lawyers. Field study showed that most often ex officio lawyers and their clients have as little as 15 minutes to consult before they appear in court. Confidentiality of their conversation is also at risk, as the consultation usually takes place in the hallway in front of the court room.

- **Suspects should be allowed sufficient time for consultation with their *ex officio* appointed lawyers before they are interrogated by the investigating judge.**
- **For such consultations, appropriate space that ensures confidentiality should be provided.**

Written record of the police interrogation in the presence of a lawyer can be used as evidence in court. However, lawyers do not have the right to inspect the police case file beyond the criminal complaint.

- **For effective defence during police interrogation, the suspect's lawyer should be able to inspect police case file.**

The case file analysis showed that accused persons that are subject to procedures for issuing a punitive order often do not receive any information on their right to a lawyer. Namely, in such proceedings, the accused is never summoned before the court or heard by a judge.

- **The authorities should make sure that in the proceedings for issuing a punitive order, accused persons always have effective access to a lawyer and information on their rights.**

Important shortcomings were identified in the field of legal aid.

Law enforcement authorities are not obliged to provide legal instruction suspects and accused persons concerning the possibility to apply for legal aid.

- **The authorities should consider including information on the possibilities to acquire legal aid in the legal instruction provided to suspects and accused persons, at least when they are being summonsed to appear in court for the first time.**

The national legal aid scheme only applies to judicial proceedings. Although the police may appoint a lawyer free of charge to a suspect if he does not have the means to retain a lawyer if this is in the interest of justice, this provision is almost never used in practice.

- **The authorities should provide to suspects and accused persons effective access to legal aid, with clear pathways and conditions from the time they are suspected of having committed a criminal offence, including preliminary police proceedings.**

Remuneration legal aid lawyers receive for the counselling and representation performed within the national legal aid scheme is only half of the amount they would be paid under the Attorney Tariff. Furthermore, the authorities are limiting the types of eligible costs and, forcing the lawyers to be less active; providing only the appearance rather than effective defence.

- **To ensure quality legal aid services and effective defence, the fees of legal aid lawyers should be increased and the expenses that are necessary to provide legal counselling and representation reimbursed.**