

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

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

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

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



Co-funded by the  
European Union

Co-funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. Neither the European Union nor the granting authority can be held responsible for them.

## Acknowledgments

Forum for Human Rights is grateful to all professionals and persons with disabilities who shared their stories and experience with us. It is their contributions which make this report so valuable.

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## Publication date

March, 2023

## Grant Information

101056701 - JUST-2021-JACC



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# EXECUTIVE SUMMARY

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# EXECUTIVE SUMMARY

## The aim of this national briefing paper is to allow an assessment in Slovakia of:



How and what barriers defendants with intellectual and psychosocial disabilities face in the criminal justice system in accessing information, support and procedural accommodations that prevent them from participating, what are the views of criminal justice professionals on people with intellectual and psychosocial disabilities that they work with and the challenges they face, as well as the difficulties they perceive regarding protection of access to justice for such defendants, and whether they are equipped sufficiently to ensure observance thereof.



To what extent and what ways is there law, policy and/or practice (including promising practices) that enable defendants with intellectual and/or psychosocial disabilities to overcome these barriers, particularly through provision of procedural accommodations, and if such law does not exist, whether there is any way to ensure access to justice for defendants with intellectual and psychosocial disabilities in practice?

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

# EXECUTIVE SUMMARY

## Main findings regarding barriers, challenges and best practices

- In general, Slovakia recognises human rights instruments relating to defendants with disabilities in criminal proceedings and their access to justice.
- The UN Committee on the Rights of Persons with Disabilities recommended that Slovakia amend procedural rules to ensure procedural accommodation, provide legal aid, and provide mandatory training to personnel in the judiciary and law enforcement.
- In general, Slovakia has little legislation or guidance on the provision of procedural accommodations for defendants with disabilities, and no legislation establishing easy-read, sign language, braille, or other accessible forms of communication. Disability in criminal proceedings is more broadly enshrined in legislation when people with disabilities are victims of a crime rather than defendants.
- When it comes to information about their rights and specific measures tailored to their needs, people with disabilities are not protected by legislation. Despite the fact that specific information must be provided, there is no practice in informing defendants with disabilities in a way that they understand.
- Decisions on procedural accommodations are mostly made at the discretion of the judge, prosecutors, and police officers, with no norms or standards in place for requesting specific procedural accommodations. Similarly, the individual assessment of disability appears to be discretionary and only for the purposes of determining capacity to stand trial or establishing insanity defence.
- Insanity defence is generally recognised in Slovakia and includes mandatory expert assessment, and persons with "limited" or "withdrawn" legal capacity are guaranteed mandatory legal representation, but otherwise, the authorities determine whether a person is capable of conducting their own defence.

# EXECUTIVE SUMMARY

- Official authorities and national human rights institutions generally pay little attention to the rights and procedural accommodations guaranteed to defendants in criminal proceedings who have intellectual or psychosocial disabilities. Similarly, education and awareness-raising in these areas appear to lag behind other areas in which criminal justice professionals are educated. In terms of the situation of defendants with disabilities and the protection of their access to justice, the interviews with judges, lawyers, human rights experts, and non-governmental organisations appear to be very contradictory.

# EXECUTIVE SUMMARY

## Main recommendations

- There is an urgent need to enact legislation that emphasizes access to justice for defendants with disabilities in criminal proceedings in a variety of ways, including procedures for identifying psychosocial or intellectual disability in defendants, accommodating their communication and understanding difficulties, and providing a clear framework for requesting and ensuring the granting of procedural accommodations. The legislative changes must be discussed with people with disabilities and their representative organisations, and their full participation in the public debate and legislative procedure is required. International organisations' and monitoring bodies' recommendations should also be implemented as soon as possible.
- Information provided to defendants with intellectual or psychosocial disabilities must be made more accessible and available in a variety of formats tailored to their needs, whether through legislation or the practical implementation of easy-read and similar forms of communication. These communication methods should be used not only when informing defendants, but also when conducting criminal proceedings.
- More adequate legal representation must be provided for people with disabilities, including free and accessible representation not only in criminal proceedings but also before courts and state authorities in general, as well as adequate training for legal representatives and attorneys to ensure they are capable of communicating and understanding the needs of defendants with intellectual and psychosocial disabilities.
- Training and awareness-raising about the situation, rights, and challenges of defendants with disabilities must be prioritised in education of personnel in the judiciary, prosecution, law enforcement, or in attorney trainings and other education of personnel working in Slovakia's criminal justice system.

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

UNITED NATIONS, 2008

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# 01

INTRODUCTION

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# INTRODUCTION

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

According the *United Nations International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020)* procedural accommodations include:

“all necessary and appropriate modifications and adjustments in the context of access to justice, where needed in a particular case, to ensure the participation of persons with disabilities on an equal basis with others. Unlike reasonable accommodations[1], procedural accommodations are not limited by the concept of “disproportionate or undue burden”. (p. 9)

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

According to the CRPD, disability is an evolving concept and “*results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others*”. In other words, the CRPD adopts a social and human rights model which proposes a new conceptualization of disability: “it is society that “disables” persons with disabilities from

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

# INTRODUCTION

exercising their human rights as citizens” (United Nations, 2008) if the necessary adaptations to the social participations of these persons are not provided.

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

The research guidelines are based on the international normative framework as set out in the relevant and intersecting articles of the **CRPD: article 12** (Equal recognition before the law) and article 13 (Access to justice); the ***International Principles on Access to Justice for Persons with Disabilities*** (UN, 2020): **Principle 1** (All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability); **Principle 3** (Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations); **Principle 4** (Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others); **Principle 5** (Persons with disabilities are entitled to all substantive and procedural safeguards recognised in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process); **Principle 6** (Persons with disabilities have the right to free or affordable legal assistance); **Principle 10** (All those working in the justice system must be provided with awareness-raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice); **European Convention on Human Rights**: Article 5 (Right to liberty and security), 6 (Right to a fair trial), 13 (Right to an effective remedy) and 14 (Prohibition of discrimination);

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# INTRODUCTION

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

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

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

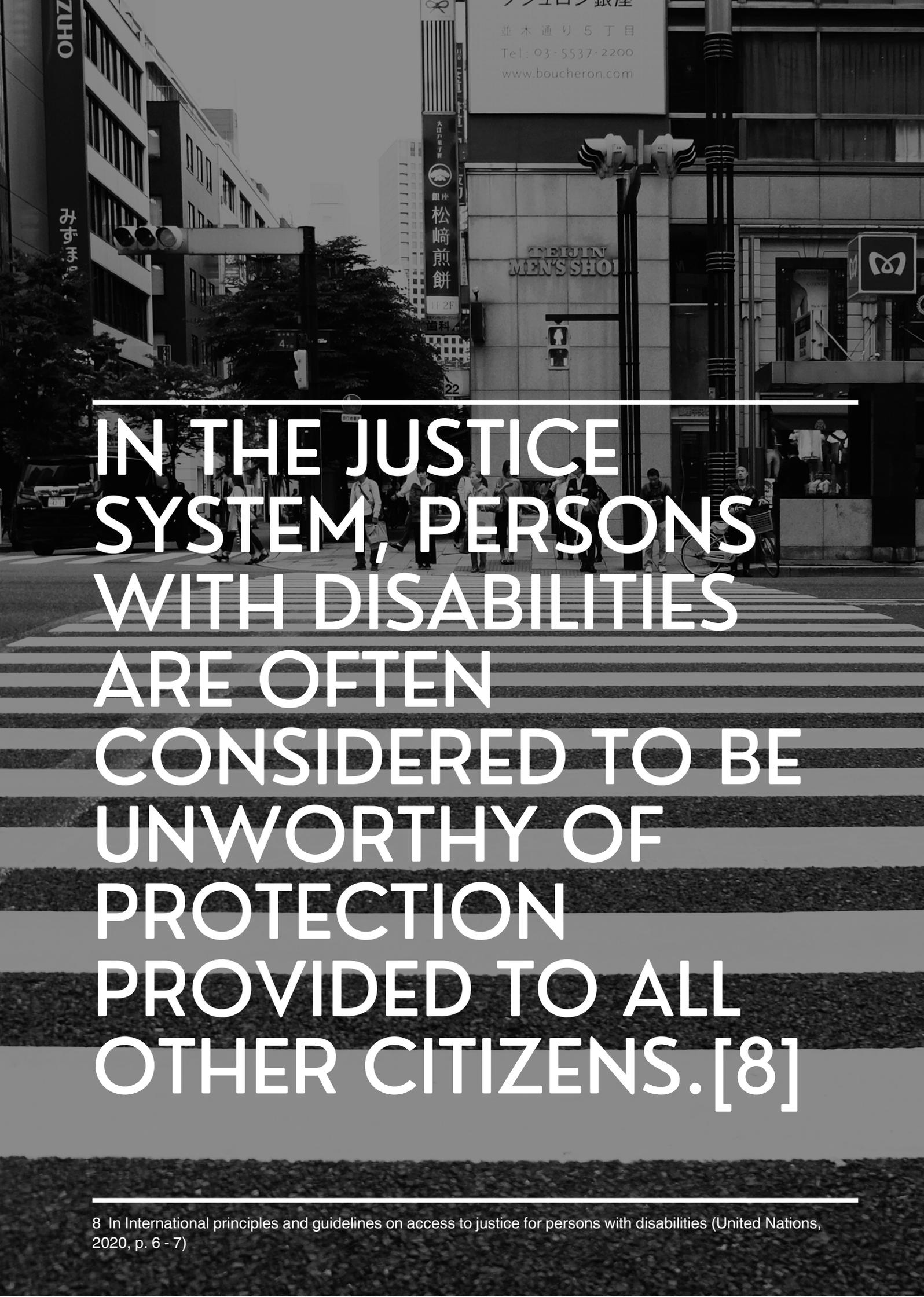
3 Directive 2012/13/EU of the European Parliament and of the Council– On the right to information in criminal proceedings – Articles 3, 4, 6 and 7;

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

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

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

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



IN THE JUSTICE  
SYSTEM, PERSONS  
WITH DISABILITIES  
ARE OFTEN  
CONSIDERED TO BE  
UNWORTHY OF  
PROTECTION  
PROVIDED TO ALL  
OTHER CITIZENS.[8]

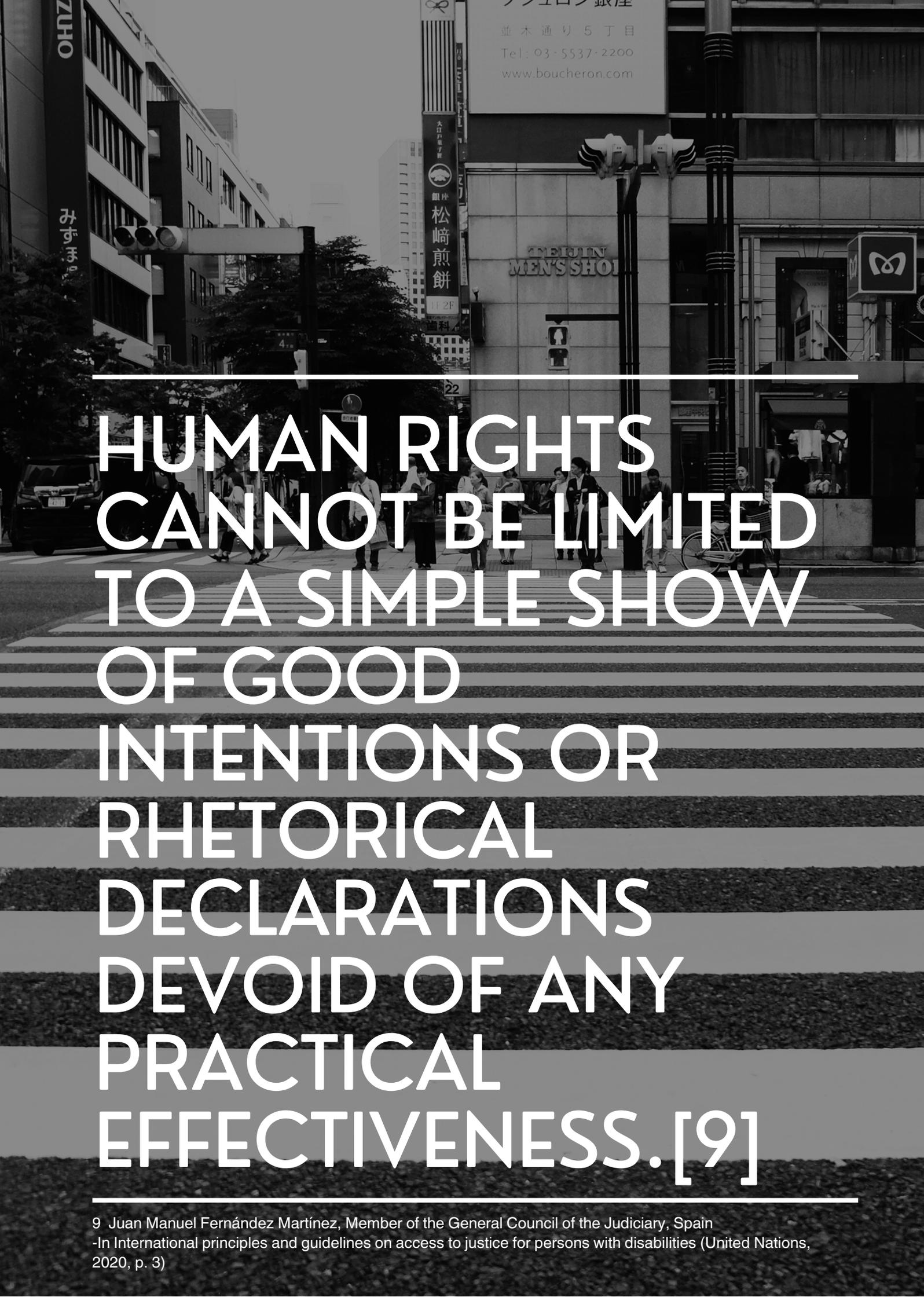
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8 In International principles and guidelines on access to justice for persons with disabilities (United Nations, 2020, p. 6 - 7)

# 02

GOALS AND  
METHODOLOGY

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

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

# GOALS AND METHODOLOGY

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

## The specific goals of this project phase were:



### **Map the national legal and political framework**

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



### **Examine the experience of different stakeholders**

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



### **To collect recommendations**

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

# GOALS AND METHODOLOGY

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

Additionally, for the **field work, semi-structured interviews** (N= 6) were carried out with key stakeholders: Defendants with intellectual and /or psychosocial disabilities (N=0)<sup>[10]</sup>; Criminal justice professionals (N=3); Support services professionals (N=1); Non-Governmental Organisations (N=1), and Human Rights Institutions (N=1). The interviews were conducted from November 2022 to May 2023. It was given priority to interviewees who have had experience/contact with the criminal justice system in the last three years. A non-probability purposeful sampling technique was used to identify and recruit the participants of this project. The identification of the interviewees was possible with the help of the national partners of the project. The data was analysed using content analysis. In the next section we summarise the main key finds of the desk research and interviews.

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10 In Slovakia, interviews with defendants with disabilities have yet to take place. Given the fact that persons with disabilities are generally not given enough attention in Slovakia, it was difficult to reach defendants with disabilities. In cooperation with the Ombudsman, interviews were finally arranged in a prison where 4 men with disabilities were found who met the research criteria. This section will therefore be completed after the interviews have been done and the findings analyzed. The findings of the interviews will be integrated into the next project deliverables: the national disability bench book and the international synthesis report. Due to these circumstances, the findings of the report are limited.

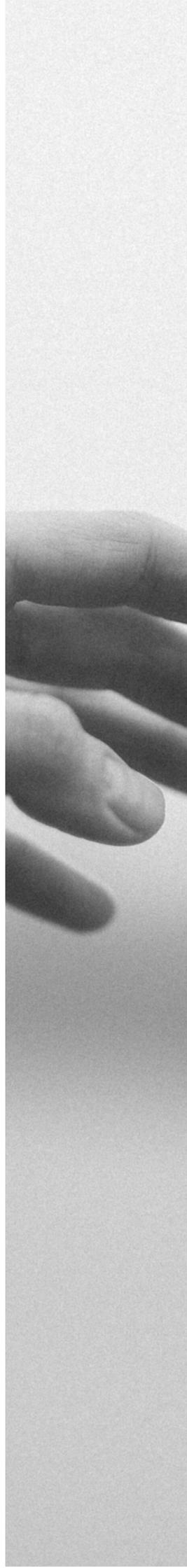
03

DEFENDANTS WITH  
DISABILITIES ACCESS  
TO JUSTICE

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# POLITICAL AND LEGAL FRAMEWORK

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



# DEFENDANTS WITH DISABILITIES ACCESS TO JUSTICE

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JUSTICE SYSTEMS  
REFLECT THE VALUES  
OF THE SOCIETIES IN  
WHICH THEY ARE  
EMBEDDED. [11]

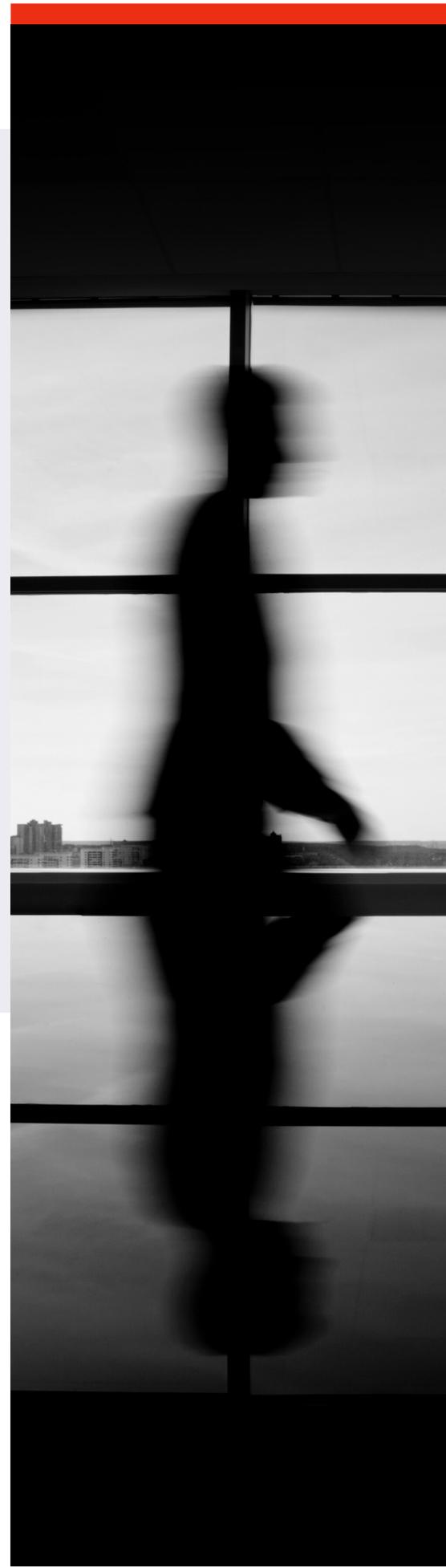
## ACCESS TO JUSTICE

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

# POLITICAL AND LEGAL FRAMEWORK

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

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



## 01 Transposition of the international legal framework

### A. Applicable UN regulation

Slovakia ratified the United Nations Convention on the Rights of Persons with Disabilities in 2010, albeit with a reservation on article 27(1)(a), which prohibits discrimination on the basis of disability in the conditions of recruitment, hiring, and employment in armed forces, security agencies, and so on. Concerning articles 12 (Equal recognition before the law) and 13 (Access to justice), the UN Committee on the Rights of Persons with Disabilities noted a "lack of procedural accommodation and reasonable accommodation in the justice and law enforcement sector, particularly with regard to persons with intellectual disabilities." It advised Slovakia to "amend procedural rules to ensure that persons with intellectual disabilities are provided with procedural accommodation from the outset [...] that the State party make legal aid available to persons with disabilities." It also recommended mandatory training for "all personnel in the justice, administration, and law enforcement sectors" on a variety of issues, including procedural accommodation in the legal process. Concerns were expressed by the UN CRPD in terms of the right to liberty and Art. 14 of the CRPD regarding "situations experienced by persons with intellectual and psychosocial disabilities who appear to be involved in the commission of crimes." It urged Slovakia to ensure due process for all people with disabilities.[12]



# POLITICAL AND LEGAL FRAMEWORK

## 01 Transposition of the international legal framework

National human rights bodies and civil society organisations that provided information to the UN CRPD provide additional information. For example, the Commissioner for the Rights of Persons with Disabilities stated that, aside from criminal proceedings, people with mental disabilities may be denied free and accessible legal representation.[13] The Slovak National Centre for Human Rights, a national human rights institution, determined that law enforcement and the judiciary receive very little training on issues affecting people with disabilities, instead focusing on general discrimination issues.[14]

The **United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** was ratified by Czechoslovakia in 1988 and Slovakia succeeded into the treaty, following its dissolution. The UN Committee against Torture (UN CAT) has so far issued three concluding observations regarding Slovakia, but has not dealt with the issue of procedural accommodations or access to justice for persons with disabilities in any of them. In its second concluding observations.[15] It merely noted that psychiatric patients are often subject to ill-treatment in places that deprive them of liberty, which lack independent monitoring.[16] The UN CAT has, however, dealt with the individual communication No. 891/2018 against Slovakia, concerning woman with disability placed in an institutional setting and subjected to physical and chemical restraints. The UN CAT has not only adopted the view that the complainant has been ill-treated, but also that the situation has not been properly addressed, the intent of the authorities has been formalistically examined with a view to dismiss the complainant's allegations, the investigations were improper and ineffective, and they did not remedy the violation of her rights.[17]

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13 INT/CRPD/IFR/SVK/35829.

14 INT/CRPD/IFR/SVK/35712.

15 CAT/C/SVK/CO/2.

16 CAT/C/SVK/CO/2, § 20.

17 Decision concerning communication 890/2010, CAT/C/72/D/890/2018, 21 January 2022.

# POLITICAL AND LEGAL FRAMEWORK

## 01 Transposition of the international legal framework

**The European Committee for the Prevention of Torture (CPT)** and Inhuman or Degrading Treatment or Punishment has visited Slovakia six times so far,[18] and issued six reports, most recent in 2019. While the CPT reported more generally on conditions of people in certain facilities where they were deprived of liberty, there are certain information contained specifically as regards access to justice and safeguards for persons with disabilities, although not specifically in criminal proceedings. It has been reported that patients' rights are not always communicated properly, and prosecution, as a supervisory body for patients under protective treatment, has not been in touch with those patients, and has not actively verified respect for their rights.[19] In 2018, the CPT observed that patients involuntarily placed in hospitals were not heard by the court, or were not served with court decisions, or were not aware of the possibility to use a remedy against the decisions. They were represented by guardians ad litem that they were never in contact with, and even patients consenting to hospitalisation were subsequently prevented from leaving the hospitals. The report noted that persons deprived of legal capacity were hospitalised with the consent of their guardian and were never given any standing to express their wishes to leave, and were not afforded to pursue any remedy. Patients were not always informed of their rights, daily routine of hospitals, information about legal aid, procedures for review of the involuntary placements, or other remedies available, as there was no uniform practice in psychiatric establishments.[20]

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18 In 1995, 2000, 2005, 2009, 2013, and 2018. The seventh periodic visit is planned in 2023.

19 Report to the Government of the Slovak Republic on the visit to Slovakia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 February to 3 March 2005, CPT/Inf (2006) 5, §§ 111-113.

20 Report to the Slovak Government on the visit to the Slovak Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 28 March 2018, CPT/Inf (2019) 20, §§ 130-136.

# POLITICAL AND LEGAL FRAMEWORK

## 01 Transposition of the international legal framework

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

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

EU directives on the right to defence include broadly worded provisions that, in practice, could be interpreted to provide appropriate rights protection to defendants with disabilities, but they do not include disability in their scope. For example, according to Art. 3(1) of the Directive 2013/48/EU, defendants' access to counsel must be provided in such a way that "the persons concerned can exercise their rights of defence practically and effectively." [20] Similarly, Art. 13 therein includes obligation to take into account "particular needs of vulnerable suspects and vulnerable accused persons", but these do not refer to any specific obligations regarding defendants with disabilities. Similarly, disability is referred to as general category of protected group in terms of non-discrimination in preambles to the directives, such as recital 29 of the Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons. Generally, very little content of the EU directives is directly targeted on rights of defendants with disabilities.

# POLITICAL AND LEGAL FRAMEWORK

## 01 Transposition of the international legal framework

The directives were transposed into national laws in Slovakia, primarily into Act no. 301/2005 Coll. Code of Criminal Procedure, and the laws list transposed directives in their respective annexes. Slovakia notified the transpositions, which are now available in the European Union's Official Journal. However, a review of Slovak legislation transposing the directives revealed that the disability-friendly approach was only adopted for victims with disabilities, and the Act on Victims of Crimes (no. 274/2017 Coll.) enshrines the obligation to pay close attention to difficulties in understanding and communicating with victims with disabilities when they are informed of their rights. Aside from that, very little thought has been given to disability-friendly provisions. Even in the transposition of directives on the right to interpretation and translation, on the right to information in criminal proceedings, on the strengthening of certain aspects of the presumption of innocence, and on the right to be present at the trial in criminal proceedings, Slovakia has not introduced any provisions aimed at rights for defendants with disabilities, despite the fact that it has transposed all directives on time and no issues concerning inadequate transposition have arisen.

In addition to the EU directives, the Commission issued a Recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings on November 27, 2013, dealing in greater detail with the rights of vulnerable groups, including specifically persons with disabilities. This includes, for example, a recommendation to inform them about their rights in an accessible format (recommendation point 8), or a recommendation to record audio and video of any questioning (point 13). However, domestic application of this Recommendation in Slovakia is limited and has not been discussed in public.

## 02 Overview of the national legal framework regarding access to justice

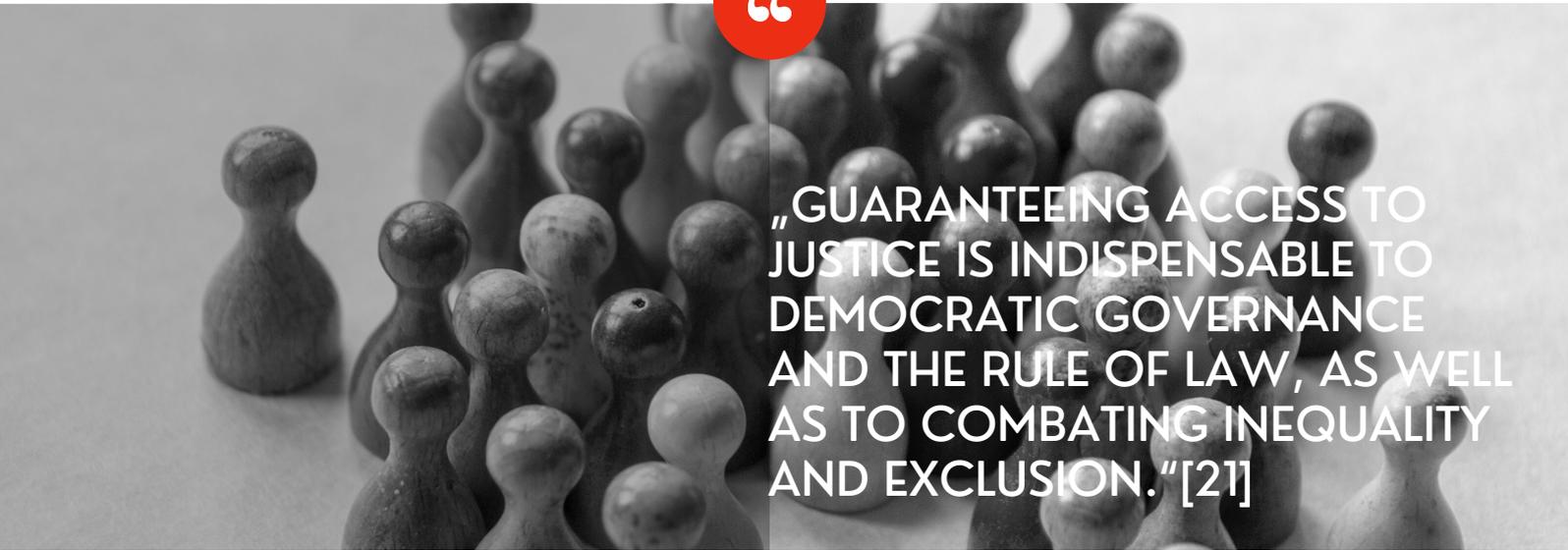
### General Disability and Mental Health legislation

#### Right to participation / Recognition of legal capacity

The Civil Code (Act no. 40/1964 Coll.) recognises the possibility of limiting the legal capacity of disabled people. According to Art. 10 of the Civil Code, if a person is capable of making only certain decisions as a "result of mental disorder" that is not temporary, the court will limit such persons' legal capacity. The procedure for limiting legal capacity is outlined in the Code of Non-contentious Civil Procedure (Act no. 161/2015 Coll.) and is subject to court jurisdiction. A family member, a healthcare or social service provider, or anyone with a legal interest in the matter can initiate the proceedings.



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„GUARANTEEING ACCESS TO JUSTICE IS INDISPENSABLE TO DEMOCRATIC GOVERNANCE AND THE RULE OF LAW, AS WELL AS TO COMBATING INEQUALITY AND EXCLUSION.“[21]

21 Michelle Bachelet, United Nations High Commissioner for Human Rights, International principles and guidelines on access to justice for persons with disabilities (United Nations, 2020, p. 2)

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

The person whose capacity is being assessed is a participant in the proceedings, has full capacity to act in the proceedings, and has the right to select a lawyer or other representative. If the person does not have a legal guardian, the court will appoint a guardian ad litem, and if their actions conflict with those of the person whose capacity is being considered, the court will decide which action is in the person's best interests. The court must hear the person whose capacity is being determined, as well as appoint an expert and hear their testimony.

### **Insanity defence/ Incapacity to stand a trial (a complete exclusion from the criminal proceedings)**

The insanity defence is defined in Art. 23 of Act 300/2005 Coll. (the Criminal Code). A person is not criminally responsible under that provision if they "could not recognise [the conduct's] wrongfulness or control their actions" due to a mental disorder. Apart from the existence of a mental disorder, the lack of cognitive capacity or control over one's actions is therefore required to successfully raise the insanity defence, though both lack of cognition and control are not required. Legal doctrine has established that both short-term and long-term lack of cognitive or controlling capacity are sufficient grounds for pleading insanity. As a result, in Slovakia, the insanity defence can apply to intellectual and psychosocial disabilities, as well as short-term episodes of "illness" such as epilepsy. The courts make the legal determination as to whether the insanity defence absolves the defendant of criminal responsibility. Expert witnesses and their reports or statements, on the other hand, are frequently used in raising the defence and establishing the existence of lack of cognition or control.

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

### **Compulsory treatment, institutionalisation, alternatives of incarceration**

In Slovakia, compulsory treatment in criminal proceedings is traditionally done through "protective treatment" under Art. 73 et seq. of the Criminal Code. It is imposed on defendants if they have raised the insanity defence and their continued presence in society is dangerous to society, but it is also imposed if their punishment was reduced or excluded due to "diminished" capacity, where cognition or control of the defendant's conduct was not entirely absent. In these cases, the Criminal Code makes the imposition of protective treatment mandatory. Other cases, such as violent crimes against family members or crimes committed while under the influence of prohibited substances, allow for discretionary protective treatment. Protective treatment can be imposed independently, but it can also be imposed as part of a prison sentence, in which case it begins concurrently with the prison sentence and is carried out directly in the penitentiary. The protective treatment can take place in an ambulatory form, but may be ordered even in institutionalised form,[22] and the courts can choose between the two forms if necessary. The protective treatment is imposed for as long as "the purpose requires" and there is no time limit on the duration of the treatment, although it is imposed only after criminal proceedings take place.

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

Expert witnesses evaluate the defendant's mental state during the pre-trial and trial stages. Art. 148 and 149 of the Code of Criminal Procedure contain separate provisions on the examination of an accused person's mental state. It is performed by a psychiatric expert only when ordered by the judge during trial or pre-trial proceedings. If the examination cannot be done ambulatory and requires hospitalisation, the trial or pre-trial judge can order involuntary hospitalisation and examination for 2 months at most,[23] although the defendants can challenge this decision with an interlocutory appeal.

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22 Most commonly, institutionalised form of protective treatment is performed in a psychiatric hospital, or Hospital for Convicts and Detainees of the Trenčín Penitentiary.

23 Although can be extended by one additional month upon request by the prosecutor.

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

Apart from criminal proceedings, individuals (even if not charged with a crime) can be forcibly hospitalised without informed consent under the Healthcare Act (no 576/2004 Coll.) if, as a result of mental illness or symptoms of mental disorder, they endanger themselves or those around them, or if there is a risk of serious deterioration in state of health. In such cases, the healthcare facility must notify the court within 24 hours and the court must rule on the legality of the hospitalisation within five days of the deprivation of liberty. This is true even if hospitalised patients revoke their informed consent and are subsequently detained (prevented to leave the hospital). If the admission is ruled lawful, the court will hold proceedings on the legality of further hospitalisation, with the mandatory appointment of an expert witness, and must make a decision on the legality of further hospitalisation within three months of the first decision on the legality of admission. If further hospitalisation is also deemed lawful, the person in question, family members, or legal representatives can seek judicial review of the admission on a regular basis; if their applications are denied, the courts may rule that a new application is only permitted after three months. In any case, the courts must ex officio review involuntary hospitalisation after one year. The hospitals themselves are obligated to release people from unlawful admission or further hospitalisation, but they are not obligated to retain people, even if authorised by courts, and can release people on their own initiative.

### **National Disability strategy**

Slovakia has not yet adopted a National Strategy for Persons with Disabilities, and the UN CRPD's concluding observations on Slovakia also do not mention the adoption of a National Strategy. Slovak Ministry of Labour, Social Affairs and Family prepares National Programme of Development of Living Conditions for People with Disabilities,<sup>[24]</sup> a programme describing a plethora of measures to be adopted by various public authorities. The current program 2021-2030 was approved in February 2021 as a "open" document that will be updated and evaluated annually. Apart from public officials, people with disabilities have been involved in the program's adoption through their representative civil-society organisations.

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24 <https://www.employment.gov.sk/sk/rodina-socialna-pomoc/tazke-zdravotne-postihnutie/kontaktne-miesto-prava-osob-so-zdravotnym-postihnutim/>.

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

Certain obligations in the program are broadly related to access to justice. To begin, the Ministry of Justice is expected to adopt the definition of disability discrimination in all aspects of life, the definition of reasonable accommodation, the definition of multiple discrimination, and failure to provide reasonable accommodation as disability discrimination by 2023. Second, in 2022, the Ministry of Justice was to establish the framework for supported decision-making. However, no legislative changes in this regard have yet been made.



# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

### Procedural accommodations

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

Next, we will describe briefly situation regarding the provision of **procedural accommodations** in Slovakia:

#### Right to information

The situation of informing persons suspected or charged with a crime about their rights is primarily governed by Art. 34 of the Code of Criminal Procedure.<sup>[25]</sup> The police and the court are required to "inform the accused of his rights, including the meaning of confession, and to provide him with a full opportunity to exercise them." Where necessary, the accused must be adequately explained the instruction." Furthermore, an accused who has been detained or arrested must be informed of his right to urgent medical assistance, the right to inspect files, and the maximum period of deprivation of liberty before being brought before a court for a pre-trial detention hearing (Art. 34). (5). The detained or arrested person will also be given written notice of his rights, which must be recorded in the transcript (Art. 34). (5).

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<sup>25</sup> Note that separate provisions provide for other information to be provided in specific situations (e. g. during interrogations, in relation to rights for translation and interpretation etc.). These however do not concern rights of persons charged with commission of the crime as such, and do not include any perspective with regard to disability-friendly provision of information.

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

Aside from the general remark of "adequate explanation where necessary," there is little guidance on what may trigger the obligation for authorities to provide these explanations, and how they apply it in practice. While the situation clearly applies to defendants with disabilities who should be given a more detailed explanation, this is not explicitly stated in the legislation. Information provided to the accused person before the interrogation is supplemented by Art. 121 et seq. of the Code of Criminal Procedure.[26]

As stated in Art. 34 above, the provision of information for persons charged with a crime is to be explained "if necessary," with no information as to what triggers the necessity, whether the accused can ask questions or challenge the incomprehensibility of the information, or whether the necessity is solely at the discretion of the officers conducting the interrogation and their perception of the person's situation.

### **Independent intermediaries and/or facilitators (Right to participation)**

The law does not presuppose the possibility of recognising intermediaries or facilitators, and it does not govern their position or legal obligations. The role of intermediaries or facilitators is not explicitly defined in Slovak law.

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26 Under Art. 121(2) information to be stated is set out expressly: 'As an accused, you have the right to give or refuse to give evidence. No one may force you to confess. You have the right to choose your defence counsel. If you do not have the means to pay for a defence counsel, you have the right to request that a defence counsel be appointed for you. You have the right to request that a defence counsel be present during your interrogation and not to testify without a defence counsel being present. Additionally, Art. 121(3) includes obligation to provide, in view of the particular circumstances of the case, shall also be instructed on the possibility and conditions of conditional discontinuance of criminal prosecution, conclusion of a conciliation and discontinuance of criminal prosecution, on the procedure of plea bargaining, as well as on the conditions of imposition of the penalty of forfeiture of property. Under Art. 122, the information referred to in Art. 121(2) shall be read out to the accused and, if necessary, explained to him and the accused shall confirm by signature that he has understood them. He shall also be informed of the other rights of the accused referred to in Article 34(1) to (3) and of the conditions of service of documents and the consequences thereof. The accused shall then be informed of the offence with which he is charged and of its legal qualification.

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

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

The hearings in the presence of a “confidant” is allowed to all procedures in criminal proceedings for aggrieved parties.[27] The Code of Criminal Procedure generally calls for public hearings, but allows for their exclusion in certain circumstances, such as public order, security, or confidential matters. In such cases of non-public hearings, defendants have the right to be accompanied by two confidants, except when an appointed agent is being questioned, again without any reference to confidants for persons with disabilities.

### **Requests for and offers of accommodations**

According to the research, there is a notable lack of official laws, rules, or procedures for requesting specific procedural accommodations for people with disabilities. As a result, decisions on procedural accommodations and the conduct of criminal proceedings are most likely made at the discretion of the judge, or the prosecutors and police officers in charge of the specific part of the proceedings, and they are not bound by any legal framework or soft-law as guidance.

### **Right to interpretation and communication support**

There is no legislation establishing easy-read, sign language, braille, or other accessible forms of communication, and there is no evidence of widespread practice. The general legislation governing interpreters applies to situations other than interpretation and translation into a foreign language, such as people with hearing impairments. However, there is no established practice of providing defendants in criminal proceedings with any type of accessible information, whether through language, easy-read format, audiovisual technologies, or other means.

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27 Art. 48a of the Code of Criminal Procedure. Under Art. 46(1) therein, aggrieved party is anyone who suffered harm due to a crime (e. g. to their health, property, morale, other harm, or to their other rights and freedoms).

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

### **Communication support**

The issue of interpretation and translation in criminal proceedings and the Code of Criminal Procedure is limited to the issue of interpretation and translation in Art. 28, which includes interpretation and translation of languages that the person does not speak (it is not explicitly stated that this includes, for example, sign language interpreters, but these interpreters are designed as such by separate law on experts, interpreters, and translators no. 382/2004 Coll.). The Code of Criminal Procedure expressly states which decisions must be translated, namely the decision on charges, the order of remand in pre-trial custody, the indictment, the plea bargain and the motion for its approval, the judgment, the sentencing order, the decision on appeal, and the decision on conditional suspension of prosecution, as well as any other document required to ensure a fair trial, particularly the proper exercise of the rights of the defence. Interpreters are present in court when the person requests it or when the authorities determine that it is necessary for the person to exercise their rights properly. The law assumes that an interpreter in the appropriate language is unavailable but is available, in which case interpretation may be provided via video conference.

Aside from the position of interpreters and translators, the legislation largely ignores communication issues and the position of people with disabilities in criminal proceedings.

### **Adopting procedures for hearings**

The law makes scarcely mentions procedural accommodations for hearings. References to the rights of people with disabilities and the protection of their participation have traditionally been made at the beginning of relevant procedural codes, such as recitals.[28] In Art. 2(21), the Code of Criminal Procedure expressly recognises disability rights only for victims and aggrieved parties, stating that the victim's personal situation and immediate needs, age, sex, possible disability, and maturity must all be considered, while fully respecting his or her physical, mental, and moral integrity.

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28 Such recitals include vague provisions like: "The court shall take into account the specific needs of the parties to the dispute arising from their state of health and social status" (Code of Civil Contentious Procedure) or "Where a disabled person is a party to the proceedings, the court shall ensure effective access to justice on an equal basis with the other parties to the proceedings." (Code of Civil Non-contentious Procedure).

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

In terms of specific procedural guarantees, the Code of Criminal Procedure, for example, provides for the recording of an interrogation of a minor charged with a crime if appropriate given the circumstances, particularly where there is doubt as to whether the person is capable of understanding the content of the interrogation, taking into account his or her best interests, and unless compelling technical reasons prevent this. Persons with disabilities have specific rights as victims when they have the status of a particularly vulnerable victim, but not as defendants. These, for example, can rely on pre-trial recorded interrogation testimony if the trial is held in absentia, if the defendant refuses to testify during trial, or if significant differences between trial and interrogation testimony are discovered.

The testimony of a defendant via video conference is also permitted if the defendant has protected status due to concerns about the defendant's and family members' health and safety, but the provision, like most legislation, does not address the position of a defendant with a disability.[29] Similarly, if the witnesses are particularly vulnerable victims, such as people with disabilities could be considered, they can be questioned remotely.

### **Right to be present at trial**

The most recent legislation pertaining to environmental accessibility for people with disabilities is Act no. 201/2022 Coll. on construction, which will go into effect in 2024. The act includes general obligations to design and construct new buildings in accordance with accessibility requirements, in accordance with universal design principles, and in accordance with technical specifications to be adopted by the authorities. There are no available data on accessibility of law enforcement or court buildings that are already constructed, but deficiencies have been noted in many building already constructed, e. g. in the report by the Ombudsperson from 2016.[30] They found several deficiencies in various Police Corps buildings (district directorates and “client centres”). Three of the thirty assessed buildings were completely unsuitable for building entry, and some other buildings, while accessible (e.g., wheelchair lifts), had operational issues. While the interiors of the assessed buildings were mostly accessible, the age and condition of some buildings posed issues, such as accessible bathroom use. Another "major deficiency" identified by the Ombudsperson was accessibility for people with sensory impairments, such as orientation of people with such impairments.

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29 Art. 273 Code of Criminal Procedure.

30 See [https://vop.gov.sk/wp-content/uploads/2021/09/Bezbarierovost\\_policia.pdf](https://vop.gov.sk/wp-content/uploads/2021/09/Bezbarierovost_policia.pdf).

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

In terms of judiciary, Annex II to the November 2017 CEPEJ report concerning Slovakia<sup>[31]</sup> includes questionnaire “Ensuring quality of Justice in Courts in Slovakia”, where 111 out of 200 respondents were representatives of judiciary (court presidents, judges, management personnel etc.). Part of the questionnaire concerned future plans to ensure physical access to court buildings and plans to ensure court buildings accessibility for people with physical disabilities (questions 18 and 19). In both questions, respondents mostly confirmed the existence of such plans (78 and 79 %). However, the questions did not include the assessment of current physical accessibility of courts.

### **Remote hearings**

In most criminal cases, the hearings take place in person. The Code of Criminal Procedure allows for in absentia trials only if the accused was served with an indictment, had the opportunity to comment on the case, was informed about the possibility, and the defendant's attorney does not demand personal testimony of the defendant, and only if the matter can be reliably solved and the purpose of the criminal proceedings secured even in absentia. It is not permitted, however, if the defendant is detained pending trial or the sentence carries a maximum penalty of ten years in prison. In such a case, the defendant must either explicitly refuse to participate in the trial or seek an in absentia trial. If the defendant has fled abroad or is in hiding, an in absentia trial is permitted.

However, remote hearings are not required by the Code of Criminal Procedure, and it is unclear whether in absentia rules may be applied in cases where defendants are only willing to participate remotely. Even during the pandemic, when criminal cases were prioritised, they were mostly handled in person. During the research, one interviewee, a judge, mentioned that while witness testimony can be given remotely, defendants must be present in the courtroom.

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31 See <https://www.coe.int/en/web/cepej/cooperation-programmes/strengthening-the-efficiency-and-quality-of-the-slovak-judicial-system>

# POLITICAL AND LEGAL FRAMEWORK

## 02 Overview of the national legal framework regarding access to justice

### Rights Monitoring

#### Independent mechanism

The Commissioner for Persons with Disabilities is a person who is elected by the legislature (the National Council) to serve as the primary independent mechanism for people with disabilities and the protection of their rights. It is an independent agency with its own office where anyone can file a complaint alleging violations of the rights of people with disabilities.[32] Although the commissioner's official competence excludes the conduct of police officers in criminal proceedings, prosecutors, or courts, the commissioner had received submissions concerning persons with disabilities in criminal proceedings, their treatment in criminal proceedings, and police officers' inadequate understanding of their situation.[33] However, the available reports and information on the commissioner's inquiries into her activities do not show any specific report or attention devoted to the issues of people with disabilities facing criminal charges.

#### Equality Body

The national equality body is Slovak National Centre for Human Rights, established by Act no. 308/1993 Coll. with accreditation status B (partially compliant with the Paris Principles). The Centre, apart from monitoring discrimination, can conduct e. g. human rights research and education, monitor racism, xenophobia and antisemitism, or provide legal aid to victims of discrimination in anti-discrimination lawsuits. Among the published reports of the Centre are issues including rights of persons with disabilities,[34] e. g. on availability of community social services, but not issues regarding rights in criminal proceedings, or access to justice for persons with disabilities.

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32 The position was created by Act no. 176/2015 Coll. and operates from 2016.

33 As described in an interview with an employee of the commissioner's office.

34 See <https://www.snslp.sk/nasa-cinnost/vyskumna-cinnost/publikovane-vystupy-vyskumnej-cinnosti/>.

## 03 Training and awareness for criminal justice professionals

The publicly available sources provide no information on police and law enforcement training on issues affecting people with disabilities, their access to justice, or their rights in criminal proceedings. The education of prosecutors and judges is done predominantly by the Justice Academy of Slovakia, but the list of planned or finished courses<sup>[35]</sup> similarly does not include any educational activities concerning persons with disabilities. One of the participants in ENABLE national working group meeting however mentioned recent widespread training of police officers on specific forms of communication, mostly for police officers forming “first contact” with victims or suspects. As regards trainings for attorneys and trainee attorneys, organised by Slovak Bar Association, these touch upon many areas of law, including criminal proceedings and rights of defendants, but without focus on disability.

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<sup>35</sup> See <https://ja-sr.sk/archiv-studijnych-planov-kalendar-vzdelavacich-podujati>.

## 04 Statistics and data on access to justice

The official statistics available from the Statistical Office of Slovakia[36] contain only data on defendants in terms of the types of crimes committed, and only data on perpetrators in terms of first-time offenders and reoffenders, children under the age of 18, and children under the age of 14 (the criminal liability threshold). contain data on defendants only in terms of the types of crimes committed, and data on perpetrators only in terms of first-time offenders and reoffenders, children under the age of 18, and children under the age of 14 (the criminal liability threshold).

### Forensic hospitalisation

The psychiatric ward of the Hospital for Accused and Convicted in Trenčín Penitentiary (Nemocnica pre obvinených a odsúdených a ústav na výkon trestu odňatia slobody Trenčín) provides hospitalisation for persons unfit to stand trial and psychiatric evaluation. [37] According to public data, the hospital has a capacity of 361 people and 191 beds, and it is barrier-free and accessible. In the last ten years, the average occupation has been between 55 and 75 percent, with an average of 1641 to 2589 hospitalisations per year, with an average length of stay of 14 days in emergency cases and 73 days in protective treatment.[38] The available data, however, are not broken down by type of treatment or the number of people hospitalised due to inability to stand trial.

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36 See

[https://slovak.statistics.sk/wps/portal/ext/themes/demography/justice/indicators!/ut/p/z1/jdDBDolwDAbgZ-EJ9gMDxrFggCvEhTGBXcxOZomiB-PzawxXJ701-f62KTNsYmaxL3exT3df7PXTzyY9d5kURRESRJIBcq80cFIYOGfjF5Q1NTxrAdHWCSQ1us-7OAbFzGzJ40cRtuU9wPjHj8x4V4D7gQJWUKljRDmvy11\\_qCCHMhKqTSMgXIHvSf\\_OfNy0nuCkoyB4A8FMaGk!/dz/d5/L2dJQSEvUUt3QS80TmxFL1o2X1E3SThCQjFBMDg1NzAwSU5TVTAwVIMwS1My/](https://slovak.statistics.sk/wps/portal/ext/themes/demography/justice/indicators!/ut/p/z1/jdDBDolwDAbgZ-EJ9gMDxrFggCvEhTGBXcxOZomiB-PzawxXJ701-f62KTNsYmaxL3exT3df7PXTzyY9d5kURRESRJIBcq80cFIYOGfjF5Q1NTxrAdHWCSQ1us-7OAbFzGzJ40cRtuU9wPjHj8x4V4D7gQJWUKljRDmvy11_qCCHMhKqTSMgXIHvSf_OfNy0nuCkoyB4A8FMaGk!/dz/d5/L2dJQSEvUUt3QS80TmxFL1o2X1E3SThCQjFBMDg1NzAwSU5TVTAwVIMwS1My/) or [https://datacube.statistics.sk/#!/view/sk/VBD\\_SK\\_WIN/sk1005rs/v\\_sk1005rs\\_00\\_00\\_00\\_sk](https://datacube.statistics.sk/#!/view/sk/VBD_SK_WIN/sk1005rs/v_sk1005rs_00_00_00_sk).

37 See <https://www.zvjs.sk/file/a1a4f664-36e9-44ff-abf5-21deebd46013.pdf> for organisation of the Hospital for Accused and Convicted

38 See <https://www.zvjs.sk/sk/zariadenia/trencin>.

## 05 Main findings

In general, Slovakia has had few problems with nominal ratification of key human rights instruments or timely transposition of EU directives on the right to defence in criminal proceedings. However, international monitoring has revealed that places where persons with disabilities are detained frequently expose them to ill-treatment, lack independent monitoring, are not adequately safeguarded with adequate oversight, and frequently do not adequately ensure access to justice and the right to an effective remedy. For example, by not serving court decisions on the persons concerned.

In general, Slovak law pays little attention to the unique circumstances of defendants with intellectual and psychosocial disabilities. Only victims of crimes with disabilities are given special consideration in criminal proceedings in terms of their specific rights and access to justice in their unique situation. In cases involving psychosocial or mental disability, Slovak law generally provides for alternatives to incarceration such as protective treatments, insanity defence, or the role of expert witnesses. These appear to be imposed when defendants with intellectual or psychosocial disabilities are not convicted due to their disability, but it is clear from the legislation that protective treatment follows essentially automatically in cases of insanity defence, if the court determines the person is dangerous if left free. Similarly, even when these measures are imposed outside the realm of criminal law, a regime for involuntary treatment and judicial oversight over its permissibility is enshrined.

To a limited extent, the law enshrines the adaptive approach in certain issues, such as the use of recorded testimony or testimony via video conference, for example, for children charged with a crime, or victims and defendants with protected identity, but not for defendants with disabilities. However, there is very little legal support for the hearings themselves taking place remotely.

# POLITICAL AND LEGAL FRAMEWORK

## 05 Main findings

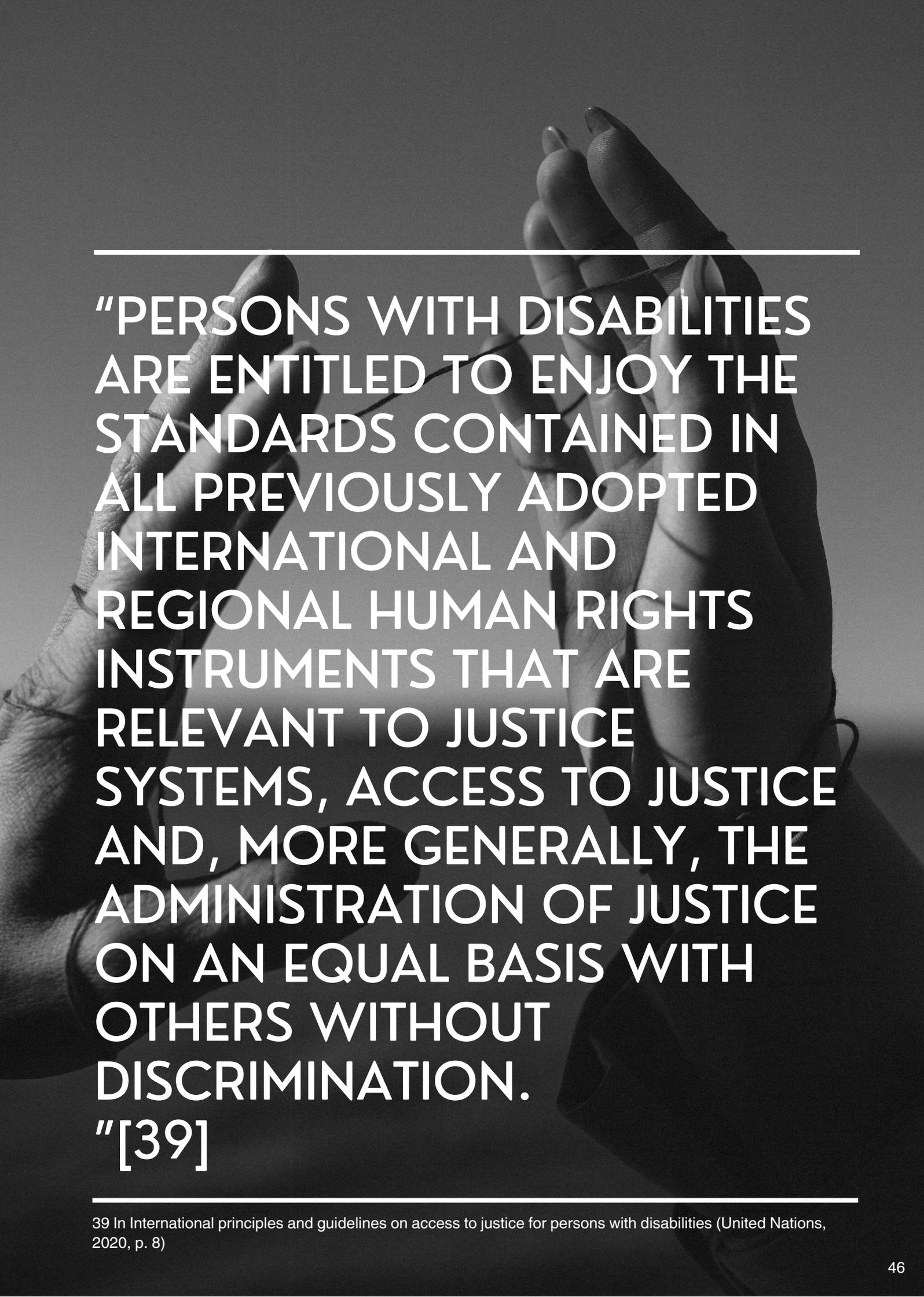
At the same time, Slovakia faces serious problems with access to justice, owing primarily to the widespread and systematic omission of disability-friendly provisions and the incorporation of disability rights into generally applicable instruments of criminal law and procedure in a wide range of areas evaluated. Slovakia fails to implement strategies to protect the rights of people with disabilities.

Slovak law enshrines very little flexibility in informing criminal defendants about their rights, and it does so through general provisions, where flexibility is essentially at the discretion of authorities, with no clear guidelines. There is a clear lack of any specific legislation on procedural accommodations for defendants with disabilities (or recognition of procedural accommodations in existing criminal law instruments), as well as the ability to even request such accommodations, as there is no procedure for such requests. There is also no comprehensive legislation on disability rights in criminal law in terms of intermediaries or facilitators, no recognition of companions for people with disabilities to provide support in proceedings, and no recognition of the need for communication support other than foreign-language and sign-language interpretation and translation.

Furthermore, physical accessibility of courthouses and other buildings have been reported as a problem in a variety of settings. Apart from physical barriers to entry, the interior of buildings is occasionally similarly deficient, for example, in terms of restroom accessibility. Although a new law aims to address this, it is not yet in effect, and its effective implementation is unknown.

In Slovakia, the imposition of protective treatment as an alternative to incarceration involving deprivation of liberty for persons with intellectual or psychosocial disabilities appears to be permissible for an indefinite period of time, as a result of the person's disability being deemed dangerous to society.

Similarly, little attention is paid to training criminal justice professionals on issues involving people with disabilities who have been charged with a crime. In situations where people with psychosocial or mental (or any other) disabilities become victims of crimes, training and legislation include a disability-oriented focus, but not nearly as much attention is paid to the specific needs of defendants with disabilities in the criminal justice system.



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**"PERSONS WITH DISABILITIES ARE ENTITLED TO ENJOY THE STANDARDS CONTAINED IN ALL PREVIOUSLY ADOPTED INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS THAT ARE RELEVANT TO JUSTICE SYSTEMS, ACCESS TO JUSTICE AND, MORE GENERALLY, THE ADMINISTRATION OF JUSTICE ON AN EQUAL BASIS WITH OTHERS WITHOUT DISCRIMINATION."  
"[39]"**

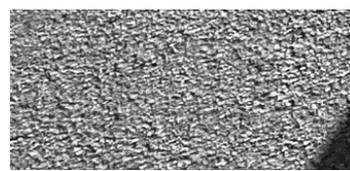
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39 In International principles and guidelines on access to justice for persons with disabilities (United Nations, 2020, p. 8)

DEFENDANTS WITH DISABILITIES  
ACCESS TO JUSTICE

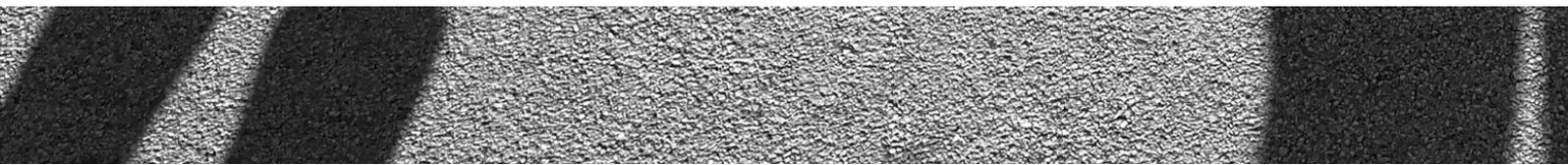


EXPERIENCES  
ABOUT THE ACCESS  
TO JUSTICE OF  
DEFENDANTS WITH  
DISABILITIES



A black and white photograph showing the long, dark shadows of several people walking on a light-colored, textured pavement. The shadows are cast from the left, indicating a low sun position. The overall mood is somber and contemplative.

# DEFENDANTS WITH DISABILITIES ACCESS TO JUSTICE

- 01** Defendants' with disabilities experiences
  - 02** Criminal justice professionals' experiences
  - 03** NGOs, human rights institutions, and support service professionals' experiences
  - 04** Brief analysis of patterns
- 
- A partial view of the same black and white photograph showing shadows of people on pavement, located at the bottom of the page.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

In order to examine, in Slovakia, the experience of different stakeholders about the access to justice of defendants with intellectual and/ or psychosocial disabilities - identifying barriers, challenges and areas of improvement they envision in it -, 6 semi-structures interviews were conducted (for detailed information see Annex 1) with

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

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



# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 01 Defendants' with disabilities experiences



**NOTE:** In Slovakia, interviews with defendants with disabilities have yet to take place. Given the fact that persons with disabilities are generally not given enough attention in Slovakia, it was difficult to reach defendants with disabilities. In cooperation with the Ombudsman, interviews were finally arranged in a prison where 4 men with disabilities were found who met the research criteria. This section will therefore be completed after the interviews have been done and the findings analyzed. The findings of the interviews will be integrated into the next project deliverables: the national disability bench book and the international synthesis report. Due to these circumstances, the findings of the report are limited.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences



### Experiences, challenges and areas of improvement identified

#### Main challenges identified

The criminal justice professionals found no significant problems or flaws in the legislation governing criminal proceedings for people who need mandatory legal representation. They did note, however, that such people frequently have difficulty understanding the proceedings and require more time and patience in communication. They stated that having an attorney represent them during the proceedings ensures a fair trial.

*"I would say one problem is legal and one is personal; there is insufficient or no specific protection of those persons in criminal proceedings, and on a personal level, I believe there is insufficient understanding of either members of the Police Force, that is, law enforcement agencies, or witnesses and other persons involved."*[40]

40 Quote from Slovak lawyer, male.



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

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### Process of identification of disability

Medical reports provided by a guardian or caregiver are frequently used to identify individuals with disabilities in criminal proceedings. The police also appoint an expert witness to assess the individual's intellectual capacity and ability to control and recognise illegal behavior. If the expert witness determines that the individual is unable to understand the proceedings, the criminal proceedings may be terminated. In some cases, doubts about the defendant's capacity may arise later in the trial, and an expert report may be requested. There is, however, no requirement to conduct any type of mandatory examination or screening. The interviewees also stated that they have not had any problems with unidentified disabilities in criminal proceedings, and that psychological evaluations and expert reports are frequently used to assess an individual's capacity to understand the proceedings.

*"When acting in the role of the accused, a person must understand the fundamentals, that is to say, why he is in court, what he is accused of [...] I've had adjourned hearings and written an expert report [where doubts about the defendant's capacity arose only during the trial]."*[41]

### Contestation of the assessment

Individuals who have been assessed by an expert witness in a criminal proceeding have the right to challenge the report and seek a controlling expert witness report. If the controlling report comes to a different conclusion, an expert concilium at an expert institution will evaluate and comment on both reports to ensure a fair system. Defendants and attorneys can object to the reports, but they usually request a court-ordered review to avoid having to pay the fees. The expert witness may also be called to the main hearing and questioned by the parties to the proceedings, and the report's conclusions may be examined.

*"They approached my client as if he did not have such an illness, also by assessing his behavior as it related to the criminal proceedings, which in my opinion was not entirely correct, because the occurrence of mental illness should have been more reflected, in my opinion."*[42]

41 Quote from Slovak judge, male.

42 Quote from Slovak lawyer, male.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### **Information about accommodations**

Only situations of domestic violence are marked on the case file with information about a defendant's disability. In general, judges and other criminal justice professionals infer the existence of a disability based on specific information in the case file (e. g. information about mandatory legal representation being provided, or indirect indicators such as education of the defendants etc.). The sharing of disability information is essentially at the discretion of the authorities.

*"The accused does not sign anything at the main hearing; the main hearing is conducted orally, as opposed to a form where the accused signs an information sheet that can be 3 or 4 pages long." I haven't seen that information sheet rewritten into a more acceptable question [...] the main effort to accommodate needs comes primarily from oral contact."*  
[43]

### **Use of force or coercion**

The interviewees did not share any experiences in which force or coercion was used on defendants with disabilities. They did not recall any cases in which similar issues were raised.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### Provision of procedural accommodations

During the proceedings, the defendants were usually accompanied by a guardian or a worker from the facility where the person was hospitalised. Otherwise, none of the interviewees mention defendants using any kind of assistance.

*"I am personally attempting to tailor the instruction to those individuals during the hearing."*[44]

#### » Right to information

Even if they are just a suspect and not yet charged, every person brought to the police station is informed of their rights using a form. When a person is charged, they are guaranteed the right to counsel, and if they cannot afford one, they are given a free defence attorney from a list. The information about their rights is standardised and usually includes an enumeration of the Criminal Procedure Code's provisions. Lawyers must ensure that their clients understand their legal rights. In some cases, such as when a defendant has a mental disability, the proceedings may be disclosed to the defendant's parents.

#### » Right to interpretation and communication support

*"The entire discussion is not led in legalese, but we accommodate simplified speech and try to solve it in a way that the person understands the purpose unequivocally."*[45]

*"The form and method of communication with these people is designed so that the person does not perceive any handicap. [...] We don't have the technology to amplify our voices for people with poor hearing, so we once did it in such a way that the defendant didn't sit at his desk, but stood right next to mine, and I had to yell for him to hear. [...] We didn't have any speakers."*[46]

44 Quote from Slovak judge, male.

45 Quote from Slovak judge, male.

46 Quote from Slovak judge, male.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

Despite the lack of specific guidelines, criminal justice professionals stated that they strive to tailor their communication style to the needs of the defendants in all cases. They recalled instances in which defendants sought assistance from third parties, such as family members, for reasons other than legal. An attorney, on the other hand, recalled a case in which no psychologist was present during the questioning of a defendant with a disability, and the authorities, in his opinion, made no effort to secure such presence.

### » **Right to interpretation and communication support – questioning**

In terms of questioning, interviewees' experiences varied. Judges recalled that they have various technical means to conduct hearings remotely, such as video conference, when a sign-language interpreter is not present in person in small towns. Similarly, specific rooms were provided for judges to question minors in order to reduce their stress. According to one interviewee, remote hearings were not permitted in the absence of the defendant, who had to be present in the courtroom. On the other hand, one attorney recalled a police questioning in which the defendant was communicated with in standard form and without any special measures.

*"The police have some technical measures, but they are almost exclusively used in relation to communicating with victims, vulnerable people, minors, and so on [...], for example, to avoid repeated interrogation [and secondary victimization]."*[47]

### » **Requests for and offers of accommodations**

The interviewees have not recalled that accommodations would be requested, or granted on a regular basis, and recalled only case-by-case approach without any guidelines being applied.

47 Quote from Slovak judge, male.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

*“These persons are treated in a standard way based on standard procedures, as if that person did not have a mental or intellectual disability. I just haven't noticed any particular approach [...] [The information provided to defendants] do not contain any specific instruction regarding mental illness or any rights related to rights arising specifically from mental illness. In my view, the law enforcement agency is not examining those circumstances.”[48]*

### **Insanity defence**

Insanity defence, according to interviewees, is usually the first thing assessed if considered relevant, as it is grounds for excluding criminal liability. Aside from expert witnesses and examinations, no extensive evidence was gathered because the issue of insanity defence would determine the next steps to be taken. If the proceeding is terminated but the person is not hospitalised and their continued freedom is dangerous, the prosecutor will file a motion to impose protective treatment. According to one interviewee, even when deciding on protective treatment, evidence must be taken to prove whether the person raising an insanity defence still did the alleged acts and whether they would constitute criminal offenses.

Experts are only commenting on whether the defendants were capable of controlling their actions, that is, whether they had the element of control or were capable of recognising the illegality of their conduct, with the courts still making the legal determination of insanity defence.

The interviewees also mentioned "procedural" insanity defence, which occurs when a person is unable to understand the case or its purpose.

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48 Quote from Slovak judge, male.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### Compulsory treatment

The type of protective treatment (institutionalised or ambulatory) is decided by a court on the prosecutor's motion. It is decided by criminal law judges, and the person who is placed in protective treatment is still represented by an attorney. Not only are the person and their guardian or attorney served with the decision to end criminal proceedings, but also with motions and decisions concerning protective treatment. In protective treatment cases, courts usually hear experts, take evidence, and decide what specific protective treatment to impose. Interviewees, on the other hand, have not specified any detailed information that must be provided to defendants about protective treatment and its consequences.

One lawyer mentioned that expert witnesses produce reports as to the insanity, and whether the charged persons had the ability to control their conduct and be aware of its unlawfulness. However, he then recalled a case where subsequently, during proceedings for imposition of protective treatment as an alternative to incarceration, the expert witnesses were no longer summoned to comment on whether protective treatment can be imposed (under the Criminal Code, whether the person can be considered "dangerous to society" if no treatment is imposed). On the other hand, a prosecutor interviewed mentioned that expert statements were always considered in compulsory treatment cases.

One attorney also mentioned that in his view, the authorities considered compulsory treatment in hospitals too often, without resorting to ambulatory form first. Finally, he mentioned that under the jurisprudence of Slovak courts, imposition of a compulsory treatment should be allowed only if there is a high probability that a person will reoffend under the influence of disability.

*"I myself have encountered a case where the prosecution was discontinued for insanity and the defence counsel proved that his client did not even commit that act. If we conclude that the defendant did not commit that act or an act is not a crime, I still cannot impose protective treatment, otherwise protective treatment may be imposed even on acts where prosecution is discontinued."*[49]

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### **Attitudes and training / awareness**

The criminal justice experts interviewed shared a range of perspectives on defendants with intellectual and psychosocial disabilities. They considered the Ministry of Justice to be primarily responsible for securing technical measures, interpreters, and translators, but they also believed that individuals such as judges should ensure accessibility in cases they encounter. The judges interviewed thought the training they received, including online options, was adequate. They have not stated whether these trainings specifically addressed the needs of defendants with disabilities, their access to justice, or procedural accommodations. According to one interviewee, defendants with disabilities should not be given preferential treatment, but should be treated with accommodation and empathy in terms of communication.

Judges stated that working with people with disabilities requires patience, and there is no ignorance of defendants with disabilities, but there may be pressure on the courts due to understaffing.

However, in terms of criminal defence attorneys, it has been emphasised that the legislature should enact laws to ensure that disability is taken into account in criminal proceedings, and that the Slovak Bar Association and the trainings it provides should place more emphasis on this area. It was claimed that there is a widespread belief that people with disabilities should be treated as if they were healthy, which could undermine the purpose of criminal proceedings.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 02 Criminal justice professionals' experiences

### Best practices

The interviewees expressed a variety of areas where they believed best practices should be implemented, but the majority of these concerned the necessity of legislative changes at the baseline level, raising awareness about the issue, cooperating with organisations that assist people with disabilities, and training law enforcement on the nature of intellectual and psychosocial disabilities and their impact on individual behavior.

They have not recalled any best practices that are already widely used. One judge recalled the practice of recording questioning in pre-trial proceedings, stating that this allowed him to witness police conduct, which led him to rule the evidence inadmissible.

### Main Recommendations

Some interviewees were unsure how to improve the situation, recalling the role of the Ministry of Justice and considering the establishment of a separate office or department within it. They questioned whether systematic legislative changes were even necessary because criminal proceedings against people with intellectual and psychosocial disabilities were relatively rare. On the contrary, one interviewee proposed legislative changes, such as amendments to the Code of Criminal Procedure in the area of information accessibility, a more precise definition of the rights of people with mental illnesses, or the mandatory participation of psychologists and other medical experts. One proposal called for any investigative actions (interrogations etc.) to be always supervised by multiple persons, e. g. interrogations should not be left for police officers only.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

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



### Experiences, challenges and areas of improvement identified

#### Equality Perception's

The interviewees shared their mostly negative experiences with the treatment of defendants with intellectual or psychosocial disabilities in criminal proceedings, and they recalled instances in which they perceived bias and discrimination against such defendants in the conduct of authorities who did not accept the real situation and specific circumstances of defendants with disabilities.

*"Accused people with disabilities are not always treated in accordance with the rights guaranteed by the Convention on the Rights of Persons with Disabilities and national legislation." For example, a person with limited legal capacity is required to have a defence counsel, but this is not always followed. It is even worse when a person with a disability does not even have limited legal capacity, because legal representation and its provision for free is at the discretion of the court."*[50]

50 Quote from Slovak national human rights institution representative, female.



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

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

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

## Complaints

Several complaints involving defendants with intellectual or psychosocial disabilities were heard by the interviewees. For example, in one case, a young man with a disability had previously filed multiple criminal complaints against his neighbors for moving illegally on his father's land and engaging in various disagreements and mutual provocation with those neighbors. Even though there was no danger in his behavior, law enforcement arrested him and escorted him to a hospital for the accused and convicted, and he was prosecuted without pre-trial detention only after his complaints.

Another person was subjected to protective treatment at the request of the prosecutor after allegedly being violent towards his mother, despite the fact that both their testimonies were contradictory, as she in fact provoked him and his diagnosis made the provocation easy.

Another person was hospitalised at least seven times and was on psychopharmaceutical medication while stealing goods from a store, and she was convicted despite the fact that an expert witness testified that at the time of the offense, she had reduced or even lacked ability to control or recognise the illegality of her actions, raising the question of whether raising insanity defence was possible. Due to a stroke, one person was deemed fit to stand trial without being examined as to whether he understood the purpose of the proceedings.

One interviewee recalled a situation where man with a disability was arrested by police officers wearing plain clothes, and she alleged that when he was, he tried to defend himself, thinking he was about to be mugged, as he as unable to ascertain the situation due to his disability. Due to lack of proper communication, the man was subjected to use of force during arrest, and later charged with assaulting a public official.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

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

## Procedural accommodations

### » Accessible information

The professionals interviewed recalled overly complicated language (difficult even for people who do not have legal education) and information provided only in written format, on a form several pages long, with no necessary accommodation. According to one interviewee with international experience, other countries face problems similar to Slovakia in this regard.

### » Support services

The interviewees knew very little about potential support services or procedural accommodations that authorities might use in criminal proceedings against defendants with intellectual or psychosocial disabilities. There were allegedly instances where law enforcement officials did not even follow the rules of procedure.

The available assistance was primarily comprised of NGO and NHRI activities that provided defendants with contact information or helplines but were not involved in criminal proceedings.

## Identification of disability

One interviewee stated that it is not uncommon for police or criminal justice professionals to mistake disability and associated behavior for uncooperative or suspicious behavior, though the frequency of such misunderstandings is unknown.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

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

## **Awareness and attitudes**

The interviewees described situations in which defendants with intellectual or psychosocial disabilities' behavior was not assessed in the context of their disabilities, where defendants' disability was not prioritised, and where the Ministry of Justice should introduce legislation, pay attention to violations of existing laws, and organize trainings for judges and law enforcement.

Several allegations were made in the interviews about stereotypes, prejudices, harmful generalizations, and a general lack of knowledge about defendants with disabilities.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

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

## Best practices

The interviewees were unaware of any specific projects or practices, but they repeatedly mentioned education as an area that needed more attention. Despite the fact that there has been more discussion about mental health and that the situation is improving, the interviewees were unaware of any specific plans for education on access to justice for people with disabilities.

## Main recommendations

The interviewees suggested that more emphasis be placed on the pre-trial stage, even before charges are filed, because this is when the majority of evidence is gathered. At that time, defendants' lack of access to justice can be especially harmful. Similarly, issues of mandatory legal aid, as well as improved information and training for law enforcement, should be prioritised during the pre-trial stage of criminal proceedings.

Despite tendencies to educate, the interviewees repeatedly perceived education as inadequate and something that needed to be improved, not only among state officials, but also among other professionals.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

## 04 Brief analysis of patterns

The interviews with stakeholders revealed several major patterns.

- To begin, in the absence of specific laws and guidelines tailored to the needs of defendants with disabilities, the actual implementation of many disability-friendly policies aimed at ensuring equal access to justice is frequently in the hands and absolute discretion of individual officers. They can easily decide whether to allow or exclude procedural accommodations from the procedure, on what grounds, and on a case-by-case basis.
- Second, both in law and in practice, the provision of information about defendants' rights in criminal proceedings is highly formalised. The specific information to be provided is detailed in legislation, including information to be provided based on the individual circumstances of specific cases, and it is traditionally provided in writing.
- The specific information to be provided, on the other hand, does not concern the rights of defendants with disabilities and does not reflect the specific position they have in terms of decision-making or communication in criminal proceedings. Furthermore, the information is provided in technical language, which mostly copies provisions of relevant laws and does not include any accessible information, such as easy-to-read forms with information about the defendant's rights. If it is unclear whether defendants in criminal proceedings or during interrogations understand their rights, the law again places initiative and discretion in the hands of law enforcement officials and judges, relying on them to facilitate understanding and make the necessary adjustments to protect the defendants' rights. Furthermore, the interviews show that there is a general assumption that lawyers are present to protect the defendants' rights, and their presence may be viewed as a sufficient guarantee at times.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE OF DEFENDANTS WITH DISABILITIES

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

- However, respondents have indicated that in general, when a person with disability has a legal guardian, family member or caregiver, healthcare provider, etc., these are generally allowed to accompany defendants in criminal proceedings, regardless of whether the defendants' legal capacity is full or limited.
- Apart from informing defendants with disabilities about their rights, it appears that other methods to facilitate or simplify communication with defendants with disabilities, whether technical measures, manner of communication, asking questions in a different manner, etc., are used on an ad hoc basis. Again, these are left to the discretion of law enforcement or judges, despite the fact that respondents frequently indicate that they use simplified forms of communication. However, it appears that the precise mode of communication is left to their discretion, and they lack support staff and guidelines.
- Similarly, it appears that, while identification of disability and the possibility of its review upon legal challenge is possible, information about defendants' disabilities in criminal proceedings is not routinely shared, and it is up to authorities to determine on their own, based on examination of case-files, whether information available indicates that defendant has any disability, and what steps to take.
- Respondents frequently identified the Ministry of Justice, as a central government body, as being primarily responsible for the criminal justice system in Slovakia, not only in terms of developing legislation, but also of laying the technical groundwork and providing personnel, as well as training on disability rights issues. Respondents have also stated that, while various professions receive regular training, the rights of people with disabilities and the issues they face, particularly in criminal proceedings, are not enshrined in the education provided.

# 04

## CONCLUSIONS AND RECOMMENDATIONS

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# CONCLUSIONS AND RECOMMENDATIONS

## 01 Conclusions

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

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

Slovak law still allows for legal capacity limitations in cases of mental health conditions if courts determine that a person can only make certain decisions as a result of their mental health. The proceedings can be initiated by anyone other than the person in question, who then simply participates in the proceedings and can choose or have one appointed. The proceedings must include an expert witness and a person whose capacity is being limited.

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RESPECT FOR THE RIGHTS OF ALL PERSONS, INCLUDING PERSONS WITH DISABILITIES, THE FULFILMENT OF THEIR FULL EQUALITY AND THE PROTECTION OF THEIR DIGNITY REVEAL WHAT KIND OF SOCIETY WE ARE AND WILL BE. [51]

51 Juan Manuel Fernández Martínez, Member of the General Council of the Judiciary, Spain, In *International principles and guidelines on access to justice for persons with disabilities* (United Nations, 2020, p. 4)

# CONCLUSIONS AND RECOMMENDATIONS

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

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When defendants with disabilities are charged, they are denied a significant number of various procedural accommodations that are required for them to understand and participate in the criminal proceedings. Intermediaries or facilitators, or any other similar methods for simplifying communication, easy-to-read documents, or similar methods for ensuring access to justice with procedural accommodations, play little to no role in Slovakian criminal law. Other communication support, such as family members or communication technology, is similarly under-recognised in the legislation, and while trials are open to the public, there is no clear guidance as to what other persons may facilitate communication, such as during an investigation or interrogation. There is also no official procedure for requesting and granting any particular procedural accommodation, except in rare cases such as sign language interpretation. In general, the legislation prioritizes communication and the rights of victims of crime over those of perpetrators (e.g., children or persons with disabilities harmed by a crime).

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

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The legislation establishes a comprehensive regime for informing people about charges and their rights at various stages of criminal proceedings and in various situations. However, the legislation does not include the option or obligation to provide this information in an accessible manner, or to take into account defendants' individual characteristics and disabilities. As a result, information and notices are frequently on standardised documents, and specific accommodation and ensuring that the person actually understands the information is largely left to the authorities in their discretion.

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# CONCLUSIONS AND RECOMMENDATIONS

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

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The presumption of innocence is enshrined in law, and persons with disabilities have an equal right to legal representation in criminal proceedings, can receive free legal aid, and must be provided with an attorney in cases where they are deprived of or limited in legal capacity, or whenever there are doubts that they can conduct defence on their own. Authorities frequently regard the attorneys as a guarantee of a fair trial. Interpretation and translation are also legally protected, though generally only for foreign languages and sign language interpretation. Defendants face similar issues not only in criminal proceedings, but also when grounds for insanity defence are available, such as when people are placed in protective treatment or other measures involving deprivation of liberty. The information about the defendant's disability is left at the initial assessment of criminal justice professionals, and it is not shared between authorities in an official form throughout the proceedings.

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

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Persons with disabilities are entitled to free legal aid in criminal proceedings if they are indigent, and they are also entitled to an attorney ex officio if they are facing criminal proceedings while their legal capacity has been removed or limited.

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

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According to the research and respondents, very little attention has been paid to training of criminal justice professionals in order to raise their awareness and expertise in the difficulties that defendants with disabilities face, as well as ways to ensure their understanding of the criminal proceedings and equal access to justice.

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# CONCLUSIONS AND RECOMMENDATIONS

## 02 Recommendations

Several key recommendations based on research and interviews would improve access to justice for people with disabilities charged in criminal proceedings.

- To begin with, in the absence of specific laws and guidelines, the actual implementation of many disability-friendly policies is frequently in the hands and sole discretion of individual officers. They can easily decide whether to allow or exclude procedural accommodations from the procedure, on what grounds, and on a case-by-case basis.
- The core content of the above recommendations should thus be introduced not only through education and practice, but also through legislative changes or the adoption of specific legislation dedicated to these issues, which is currently lacking. Such legislation should be drafted as soon as possible, in consultation with the appropriate stakeholders and experts. Information provided to defendants with psychosocial or intellectual disabilities in criminal proceedings must be tailored to their specific situation, not only through training the responsible authorities, but also by clearly stating in law and practice what forms of communication may be used with these defendants and how to use them.

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

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# CONCLUSIONS AND RECOMMENDATIONS

- Existing legislation with accommodations, such as video-conference testimony, exists, but it is not applicable to the unique position of defendants with disabilities, and this viewpoint must be introduced in legislative amendments to enable a similar approach to defendants with intellectual or psychosocial disabilities.
  - Second, there is a need to improve criminal justice professionals' education regarding their interactions with defendants who have psychosocial or mental disabilities. The trainings cover a wide range of topics, including: identifying disability and its most common symptoms or behaviors in people with intellectual or psychosocial disabilities; difficulties defendants with intellectual or psychosocial disabilities may have understanding the criminal proceedings, certain questions, or difficulties communicating or expressing their needs; and appropriate ways of communicating with people with such disabilities.
  - Third, respect for defendants with disabilities' access to justice must be emphasised already in pre-trial proceedings, where crucial pieces of evidence are gathered, and it is necessary to recognise the challenges these defendants face and what measures are appropriate to ensure their access to justice at this stage. Similar trainings are required in this regard not only for prosecutors but also for law enforcement.
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# 05

## REFERENCES

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# REFERENCES

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# ANNEXES

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# ANNEXES

## Annex 1 - Profile of the interviewees

ID	Interviewee*	Sex	Age	Duration of the interview	Years when had contact with the justice system	Type of interview (remote, on-site, other)	Other relevant information
SK/L/M/05	Lawyer	Male	28	50 minutes	3 years of experience in criminal trials as attorney in training	Online	Informed consent provided verbally
SK/L/M/07	Lawyer	Male	38	40 minutes	Attorney for 5 years, lawyer for over 13 years	Online	Informed consent provided verbally
SK/J/M/01	Judge	Male	53	40 minutes	27 years in judiciary, only in criminal court	Online	Informed consent provided verbally
SK/J/M/02	Judge	Male	43	55 minutes	20 years in judiciary, over 5 years in criminal court	Online	Informed consent provided verbally
SK/J/M/09	Prosecutor	Male	45	55 minutes	Over 15 years of practice in prosecution, currently specializing in domestic violence and vulnerable victims	Online	Informed consent provided verbally

# ANNEXES

## Annex 1 - Profile of the interviewees

ID	Interviewee*	Sex	Age	Duration of the interview	Years when had contact with the justice system	Type of interview (remote, on-site, other)	Other relevant information
SK/J/F/08	Prosecutor	Female	54	45 minutes	Over 30 years of practice in prosecution, criminal cases only, specializing in violent crimes and domestic violence	On-site	N/A
SK/S/F/04	Psychologist	Female	49	25 minutes	Over 20 years of experience in psychiatry	Online	Informed consent provided verbally
SK/HR/F/03	National Human Rights Institution	Female	38	25 minutes	Over one year in an NHRI office	Online	Informed consent provided verbally, presented also experience
SK/HR/F/06	NGO	Female	70	20 minutes	Lawyer working with persons with disabilities almost 50 years, for the last 8 years as a representative of an NGO helping people with disabilities, recipients of social services.	Via telephone	Informed consent provided verbally

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