

Dignity at Trial

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

Key Findings of the Czech National Report

Czech Republic
League of Human Rights
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Table of Content

1. NATIONAL POLICIES AND LEGAL FRAMEWORK.....	3
1.1. LEGAL FRAMEWORK	3
1.1.1. General overview of criminal proceedings in the Czech Republic	3
1.1.2. Relevant national legislation concerning procedural safeguards for persons with intellectual and/or psychiatric impairments.....	3
1.2. POLICIES AND PROGRAMMES TARGETING PROCEDURAL RIGHTS OF PERSONS WITH INTELLECTUAL AND/OR PSYCHOSOCIAL DISABILITIES IN CRIMINAL PROCEEDINGS.....	4
2. IMPLEMENTATION OF THE RECOMMENDATION IN THE NATIONAL CONTEXT.....	4
2.1. APPROPRIATE ASSESSMENT MECHANISMS FOR IDENTIFYING VULNERABILITIES..	4
2.1.1. Assessment by the police	4
2.1.2. Assessment by the court.....	5
2.1.3. Assessment by medical experts.....	5
2.1.4. Identified gaps and shortcomings	6
2.1.4.1. Police and judiciary	6
2.1.4.2. Medical experts.....	6
2.1.5. Good practices and case studies	6
2.1.5.1. Police and judiciary	6
2.1.5.2. Medical experts.....	7
2.1.6. Recommendations.....	7
2.1.6.1. Police and judiciary	7
2.1.6.2. Medical experts.....	7
2.2. APPROPRIATE SAFEGUADRS DURING THE PRE-TRIAL PHASE (ARREST, POLICE CUSTODY, PRE-TRIAL DETENTION, COURT HEARINGS).....	7
2.2.1. Identified gaps and shortcomings	8
2.2.1.1. Police.....	8
2.2.1.2. Prosecutor	9
2.2.1.3. Investigative Judge	9
2.2.1.4. European Arrest Warrant	10
2.2.2. Good practices and case studies	10
2.2.2.1. Police.....	10
2.2.2.2. Investigative Judge	11
2.2.3. Recommendations.....	11
2.2.3.1. Police.....	11
2.2.3.2. Investigative Judge	11
2.3. SAFEGUARDS DURING THE TRIAL PHASE (HEARINGS, JUDGEMENT)	12
2.3.1. Identified gaps and shortcomings	12
2.3.1.1. Court.....	12

2.3.2.	Good practices and case studies	12
2.3.2.1.	Court.....	13
2.3.3.	Recommendations.....	13
2.3.3.1.	Court.....	13
2.4.	REMEDIES.....	13
2.4.1.	Identified gaps and shortcomings	13
2.5.	RECOMMENDATIONS FOR THE CZECH REPUBLIC	13
2.5.1.	Identification of vulnerability and reasonable accommodation.....	13
2.5.2.	General and preventive recommendations	14
2.5.3.	Specific safeguards	14
2.5.4.	Obligation of third persons and cooperation.....	15

1. NATIONAL POLICIES AND LEGAL FRAMEWORK

1.1. Legal framework

1.1.1. General overview of criminal proceedings in the Czech Republic

Criminal proceeding is regulated by criminal laws, particularly the Criminal Code (Act. no 40/2009), and the Code of Criminal Procedure (Act no. 40/2009). The criminal justice authorities act according to the Code of Criminal Procedure and other specific acts, such as the Act on State Prosecutor (Act no. 283/1993), Police Act (Act no. 273/2008), Act on Pre-trial Detention (Act no. 293/1992), Rules of Procedure for District and Regional Courts (Regulation no. 109/1994) and Rules for Execution of Detention (Regulation no. 109/1994). For the purposes of this publication, we also include the Act on Forensic Experts and Interpreters (Act no. 63/1967) and other documents of the criminal justice authorities, such as a form for instructions of the accused.

The criminal proceedings are led by criminal authorities, i.e. the police, the state prosecutor and the court (judge). Each of these authorities plays a different role and is responsible for a different part of the process. The role of the **police** is to investigate and perform other tasks within the examination phase of the proceedings. The members of police are the first authorities to get into touch with the suspect, therefore their role in identifying the vulnerability is crucial.

The **public prosecutor** supervises the actions of the police and its key role is to protect the public interests, which is to prosecute all crimes and warrant the punishment, but also to ensure that no innocent person is prosecuted or sentenced.

Finally, once the investigation is over, the case is brought by the prosecutor to the **criminal court**. Only the impartial court may decide on the guilt and impose a punishment or a protective measure, such as a protective (forensic) treatment. Before the main hearing, the court also issues decisions on some preliminary measures, such as pre-trial detention or observation in a psychiatric hospital to determine the sanity of the accused or their ability to stand trial.

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

The Czech legislation does not recognise the term “vulnerable perpetrator”. Vulnerability of persons in criminal law is only used as regards to vulnerable victims, which are victims with physical, intellectual or mental disability or sensory impairments that in interaction with various barriers hinder their full and effective participation in society on an equal basis with others.¹ Some procedural safeguards are present for people under guardianship or accused that are “unable to defend themselves due to their psychical or mental impairments,” such as mandatory defence by a lawyer. However, although a large recodification of criminal procedure is being prepared by a recodification committee, the recommendation is not considered during the first proposals, and neither the proposal includes the concept of a vulnerable perpetrator.

¹ This definition is almost identical to definition of disability in the preamble of CRPD

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

There is no strategy targeting the procedural rights of vulnerable perpetrators or referring to the recommendation. The biggest policy document concerning people with disabilities is the National Plan for the Promotion of Equal Opportunities for persons with disabilities 2015–2020 adopted by the government. However, this plan only proposes measures targeting people with disabilities as victims.

The only strategic document regarding the practice of treatment of vulnerable perpetrators is an opinion of Supreme Public Prosecutor from September 5th 2014 that focuses on the assessment of mental health of the perpetrator during the criminal proceedings.

2. IMPLEMENTATION OF THE RECOMMENDATION IN THE NATIONAL CONTEXT

2.1. APPROPRIATE ASSESSMENT MECHANISMS FOR IDENTIFYING VULNERABILITIES

2.1.1. Assessment by the police

Although the police in practice do assess the existence of vulnerability in suspected or accused persons, there is no standard mechanism or set of criteria. Some guideline for the police was provided by the Supreme Public prosecutor in their opinion published in 2014. According to this, to determine whether it is necessary to assess the sanity of the suspected person, the police must look for these signs: whether the person has been in the care of ambulant psychiatrist or has been hospitalised in psychiatric hospital, or their mental health was assessed in a different proceeding, whether the person is known to have psychiatric problems, is taking medication or has received a protective treatment in previous proceedings. The police can also hear the family of the person or refer to their other criminal files.² In most cases, the initial assessment is provided by the police, who refer the suspect or accused to an expert psychiatrist. No specialised training for the policemen on how to identify potentially vulnerable persons is in place. In certain situations, a medical assessment is mandatory, such as if the suspect is deprived of liberty,³ if the person asks to be examined,⁴ if a person who is to be put in a cell discloses that they suffer from a serious illness or this is apparent from their looks or behaviour.⁵

If the police suspects that the person may be not criminally liable due to their mental illness, they may request an expert psychiatric opinion even before the prosecution (accusation notice). The suspected person may object against the lack of impartiality or qualification of the expert⁶ or against the formulation of questions by the police or public prosecutor.⁷ However, as the suspected person is still not accused in this phase, there is no mandatory defence by a lawyer in place.⁸ Moreover, the law does not oblige the guardian to be present during this stage of proceedings. Thus, if the suspected person has difficulties understanding the proceedings, they may remain without any support. If the expert determines that the

² Opinion of the Supreme Public Prosecutor from September 5th 2014, available online: <http://www.bulletin-advokacie.cz/nejvyssi-statni?browser=mobi>

³ Art. 75 of Act no. 141/1961 Col., Code of Criminal Procedure

⁴ Art. 24 of the Act no. 273/2008 Col., Police Act

⁵ Art. 31(2) of the Act no. 40/2009 Col. Criminal Code

⁶ Art. 11 of the Act no. 36/1967 Col., on Forensic Experts and Interpreters

⁷ Art. 105(3) of the Act no. 141/1961 Col., Code of Criminal Procedure

⁸ Art. 36 of the Act no. 141/1961 Col., Code of Criminal Procedure

suspected person is not criminally liable, the case is postponed, as the act cannot be considered a crime. However, the court may in this stage impose a protective treatment, even in institutional (in-patient) form.

After the suspect is notified of the charge (accusation) and the criminal prosecution starts, the expert opinion might be ordered by the police or the public prosecutor. In this phase, the person must be represented by an attorney, if they are under guardianship, they are placed in psychiatric hospital for observation or are unable to defend themselves to the physical or mental disabilities.⁹ Determination whether the person fulfils these criteria is in part up to the criminal authority.

2.1.2. Assessment by the court

Once the accused is brought before of the court, it also must assess their vulnerability. Again, no guidelines for courts exist, so the decision on whether the person needs special support or safeguards is solely based on the subjective opinion of the judge. After the judge sees the person face to face, they can determine, that the person fulfils the criteria for mandatory defence.¹⁰ The judge may also adjust their language during the trial to make sure, the person understands its meaning and procedure.

2.1.3. Assessment by medical experts

Expert opinion to determine whether the person suspected or accused is criminally liable, is able to stand trial and whether they are dangerous at large, is provided by an expert psychiatrist¹¹ that meets the legal criteria to be registered as forensic expert. The expert follows the questions raised by the authority that ordered the opinion. The suspected or accused person may object against the qualification or lack of impartiality of the expert¹² or against the questions raised¹³. The objections must be submitted with the public prosecutor (if the opinion is ordered in the preparatory stage) or the president of the senate (in the trial stage) and the authority may decide to replace the expert, to change the questions or to reject the objections.¹⁴

If the accused person refuses to undergo the psychiatric evaluation, the court or a judge¹⁵ may order observation during hospitalisation in psychiatric hospital.¹⁶ The observation order must be only used as ultima ratio and it always need to be properly justified.¹⁷ The accused may appeal against the observation order (decree) and the appeal has a postponing effect. The maximum time the order is valid is 2 months in adults¹⁸ and 1 month in children and youth¹⁹. In both cases, the expert may request to extend the period up to 1 month.

⁹ Art. 36 of the Act no. 141/1961 Col., Code of Criminal Procedure

¹⁰ Art. 36 of the Act no. 141/1961 Col., Code of Criminal Procedure

¹¹ The list of forensic experts and interpreters is available online:

[http://data.lot.justice.cz/justice/repznatl.nsf/\\$\\$\\$SearchForm?OpenForm&Seq=1](http://data.lot.justice.cz/justice/repznatl.nsf/$$$SearchForm?OpenForm&Seq=1)

¹² Art. 1 of the Act no. 36/1967 Col., on Forensic experts and Interpreters

¹³ Art. 105(3) of the Act no. 141/1961 Col., Code of Criminal Procedure

¹⁴ Art. 105(3) of the Act no. 141/1961 Col., Code of Criminal Procedure

¹⁵ Art. 105(3) of the Act no. 141/1961 Col., Code of Criminal Procedure

¹⁶ Art. 116(2) of the Act no. 141/1961 Col., Code of Criminal Procedure and art. 38(1)(a)(3) of the Act no. 372/2011 Col., on Health Care Services

¹⁷ Decision of the Constitutional court no. III.ÚS 2569/14 from April 16th 2016

¹⁸ Art. 117 of the Act no. 141/1961 Col., Code of Criminal Procedure

¹⁹ Art. 58(2) of the Act no. 2018/2013 Col., on Juvenile Justice

2.1.4. Identified gaps and shortcomings

The biggest gap appears to be the non-existence of the concept of vulnerable suspected or accused person in the Czech law. Vulnerability as a concept is only used in case of victims and is defined by the Act no. 45/2013 Col. on the Victims of Criminal Acts as a child, a person that is of an older age or has a physical, intellectual or mental disability or sensory impairments, that in interaction with various barriers hinder their full and effective participation in society on an equal basis with others or a victim of human trafficking, terrorist attack or crimes against human dignity in sexual sphere, crimes involving compulsion or threat of bodily harm or hate crimes.²⁰

However, as described above, the criminal justice authorities do in fact assess vulnerability in practice, this is based on their own experience and subjective attitudes.

2.1.4.1. Police and judiciary

Both police and judiciary lack guidelines or specialised training for determination of vulnerability and/or supports that the suspected or accused person needs. These guidelines might be crucial, as police are usually first to encounter the person and both police and judges may put in place procedural safeguards, such as assessment of one's criminal liability or ability to stand a trial or mandatory defence by an attorney.

In some cases, the judges have admitted that the information they get from the criminal files regarding the personality of the accused might differ from the reality. Because the audio-visual recordings are not mandatory, the statements are collected and written down by the police, which distort the overall picture. One judge has said that "often I get the feeling reading the criminal files that the person is speaking like a book and then I see them and they are not able to speak in complicated sentences."

2.1.4.2. Medical experts

Forensic experts and their work has been lately under public criticism, which resulted in amendment of the law that is now being discussed in the parliament. The new law should introduce effective tools to control the quality of expert opinions and to sanction experts who do not satisfy the required standards.²¹ However, this may lead to a decrease of number of experts who would be willing to register as forensic experts.

2.1.5. Good practices and case studies

The law as such does not contain a list of accommodations that may be available for the vulnerable suspected or accused person, neither does prevent the authorities to modify the proceeding to ensure these persons properly understand the proceedings. We have identified several good practice examples, most of which depend on the subjective attitudes of the authorities and their experience.

2.1.5.1. Police and judiciary

²⁰ Act no. 45/2013 Col, on Victims of Crimes

²¹ Draft law on Forensic Experts, Forensic Offices and Forensic Institutes, available online: <http://www.psp.cz/sqw/text/tiskt.sqw?O=7&CT=1025&CT1=0>

“I have recently investigated a case, where the perpetrator was placed in an institution. He had a severe intellectual disability and was accused of rape of children. I ordered an expert assessment even before the accusation was made, as I have thought he would not be criminally liable. However, the expert concluded that he is liable and can understand the proceedings and take part in it, if properly explained the meaning of it.”²²- Police woman
“If I hear a ten-year-old child as a witness, understandably the instructions I give them must correspond with their mental age... I must explain everything to them so they understand... It is a very similar situation with people with intellectual disabilities, there is a clear parallel. They are both groups of people who are unable to defend their rights, so all the conduct of the criminal justice authorities should be modified for them to understand.” ²³- Judge

2.1.5.2. Medical experts

“There is an overall lack of experts and there might be a problem to find one for the case. The courts send the documents to one expert, give them a deadline and expect them to carry it out. We are trying to do it a more pleasant experience for both sides, after we choose the expert, we call them and ask them if they are able to do it. Their first question is always about the deadline. In the past, the standard was one month, but that is currently unimaginable. Most of the time we are glad they can do it on two or three months. After one month or month and a half, we are practically finished with investigation and then we just sit around waiting for the opinion.” ²⁴- Police man

2.1.6. Recommendations

2.1.6.1. Police and judiciary

- The concept of vulnerable perpetrators should be introduced in the Czech law and practice.
- Guidelines and regular trainings for criminal justice authorities regarding identification of vulnerability and treatment of vulnerable perpetrators should be made available.

2.1.6.2. Medical experts

- Effective control of quality of expert opinions, including sanctions for poor assessments should be adopted.
- The state should motivate experts to get certified as forensic experts.

2.2. APPROPRIATE SAFEGUARDS DURING THE PRE-TRIAL PHASE (ARREST, POLICE CUSTODY, PRE-TRIAL DETENTION, COURT HEARINGS)

Pre-trial phase of criminal proceedings is lead by the police and supervised by the public prosecutor. As was said before, the police are usually the first authority to get into contact with the suspected or accused person, thus is the first to identify their vulnerability and to put procedural safeguards in place. These may include ordering an expert (psychiatric) opinion,

²² CZ, police officer 1b_Interview_7 (9 Jan. 2017).

²³ CZ, judge n.1_Interview_2 (12 Dec. 2016).

²⁴ CZ, police officer 2_Interview_11 (18 Jan. 2017).

ensuring that the person is represented by an attorney, giving the instructions in accessible language or cooperation with civil society organisations. Moreover, the police may decide that the case will be suspended, so the person will never be brought before the judge, if the expert determines that the suspected person is not criminally liable due to their mental disability.²⁵ If the person's criminal liability is assessed after the accusation was made, the proceedings will be terminated.²⁶ However, in both cases a forensic protective treatment may be imposed,²⁷ even if there is not decision on the guilt.

2.2.1. Identified gaps and shortcomings

2.2.1.1. Police

- **Right to information**

Although the law allows for the use of interpreter when the police provides information regarding the nature of the act and their rights to the suspected or accused person, it only talks about deaf or blind-deaf persons.²⁸ It is not clear whether this provision can be interpreted as a right of people with other types of disabilities (such as a severe intellectual disabilities) to utilize an interpreter to easy-to-read or augmentative language.

The police have also suggested that the defence attorney might act as an interpreter, however, without proper training and experience we doubt that this would be sufficient. It seems that a better option would be to cooperate with specialised civil society organisations, whose position in criminal proceeding is not in any way regulated by law.

- **Right to access to a lawyer**

People with intellectual or psycho-social disabilities will most likely fall under mandatory defence by an attorney,²⁹ which not only means that the person must have access to lawyer, but also cannot refuse their assistance.³⁰ Shortcoming that was mentioned the most during the research was an insufficient preparation of the attorneys to communicate with a person with a disability. Although it seems that the police in most cases ensure that an attorney is available to the vulnerable suspect or accused, the quality of the attorney might influence the outcome of the proceedings.

The mandatory defence is guaranteed only to accused person, however, even before this moment the police may order an expert assessment. Although the suspected person has a right to legal assistance in this stage, it is not mandatory. Thus, they may not be able to make use of proper safeguards, such as the right to object against the lack impartiality or expertise³¹ of the expert or against the formulation of questions by the police.³²

- **Right to medical assistance**

We have not identified any specific shortcoming related to the right to medical assistance.

- **Recording of questioning**

²⁵ Art. 159(3) of the Act no. 141/1961 Col., Code of Criminal Procedure

²⁶ Art. 172(1)(e) of the Act no. 141/1961 Col., Code of Criminal Procedure

²⁷ Opinion of the Supreme Public Prosecutor from September 5th 2014, available online: <http://www.bulletin-advokacie.cz/neivyssi-statni?browser=mobi>

²⁸ Art. 28(2) of the Act no. 141/1961 Col., Code of Criminal Procedure

²⁹ Art. 36 of the Act no. 141/1961 Col., Code of Criminal Procedure

³⁰ Art. 36 of the Act no. 141/1961 Col., Code of Criminal Procedure

³¹ Art. 11 of the Act no. 36/1967 Col., on Forensic Experts and Interpreters

³² Art. 105(3) of the Act no. 141/1961 Col., Code of Criminal Procedure

Although the law allows for video and/or audio recordings of the questioning and other acts during the criminal proceedings,³³ this is not mandatory, even if the questioned person belongs to a vulnerable group. It is up to the police to determine whether the recording is necessary, in practice most of the questioning is done without audio and video recording, to illustrate, only 2293 acts were recorded in specialised interrogation rooms in 2015. The police and public prosecutors agreed that these specialised rooms should be used more.

- **Deprivation of liberty**

The law does not contain specific provisions guaranteeing reasonable accommodations for people with disabilities in police cells. In practice, when the person is seriously ill, the police release them from the cell³⁴ or transfers them to an appropriate medical facility.

- **Privacy**

We have not identified any shortcomings regarding the right to private life.

2.2.1.2. Prosecutor

- **Privacy**

We have not identified any shortcomings regarding the right to private life.

2.2.1.3. Investigative Judge

- **Right to information**

Most of the communication between the accused and the court (judge) is done in writing. The legal notices and decisions are in a written form and language that is difficult to understand by a non-lawyer. The instructions regarding the rights and obligations during the court hearing are provided by the judge directly, so in practice the judges usually modify the language when addressing a vulnerable person.

- **Right of access to a lawyer**

We have not identified any shortcoming regarding the access to lawyer other than described above.

- **Right to medical assistance**

We have not identified any shortcoming regarding the access to lawyer other than described above.

- **Recording of questioning**

Unlike the police, the courts are obliged to make audio-recordings during the hearing, unless the hearing is done outside of the court or it is not possible due to technical problems or lack of capacities.³⁵ Video- recordings are not carried out.

- **Deprivation of liberty**

³³ Art. 62(1) of the Act no. 273/2008 Col., Police Act

³⁴ Art. 32(1) of the Act no. 273/2008 Col., Police Act

³⁵ Art. 55b(8) of the Act no. 141/1961 Col., Code of Criminal Procedure

We have not identified any shortcoming regarding deprivation of liberty.

- **Privacy**

Generally, the court hearings are public,³⁶ the judge may exclude the public only in exceptional circumstances.³⁷ The existence of vulnerability or the fact that private information regarding the health of the accused person are subject of the hearing is not viewed as a sufficient reason to exclude the public. However, the decision should take into account the social stigma around mental disabilities and a potential violation of private life of a person who is not criminally liable

2.2.1.4. European Arrest Warrant

We have not identified any shortcomings regarding the European Arrest Warrant.

2.2.2. Good practices and case studies

2.2.2.1. Police

- **Right to information**

“The suspected person must understand the instruction, especially regarding the question whether they want to testify or remain silent. Only after that we can discuss the case. Sometimes you inform them about their rights and they start to testify, but you have to stop them and first make sure they understood that they have a right to remain silent.”³⁸ - Policeman

“When talking to a person with intellectual disability, you have to proceed the same as with children. This means, you have to give them the same information, but in a form, that is understandable with respect to their age and maturity.”³⁹– Policeman

“The person doesn’t know their rights, they don’t know where they can find support. If we don’t get into contact with them and do not accompany them through the process, the person hardly knows what to expect. It can lead to passivity and a very unfavourable outcome of the proceedings.”⁴⁰– representative of NGO

- **Right to access to a lawyer**

“As soon as we acknowledge (there is no standard procedure) that the person is, due to their age, physical or psychological impairment, unable to defend themselves, the law requires so called mandatory defence by a lawyer... Usually, there is no expert opinion yet. But the decision is based on our visual and verbal assessment of the person or from testimony of other people who can tell you how they act.”⁴¹ - Policeman

“The attorney has a lot of responsibility. In one case, there was an attorney, who was totally unconcerned. There was a hearing regarding pre-trial detention on Saturday, the attorney came, she said a few things and left. The person then was left there alone and we had to

³⁶ Art. 2(10) of the Act no. 141/1961 Col., Code of Criminal Procedure

³⁷ Art. 200 of the Act no. 141/1961 Col., Code of Criminal Procedure

³⁸ CZ, police officer 2_Interview_11 (18 Jan. 2017).

³⁹ CZ, police officer 1b_Interview_7 (9 Jan. 2017).

⁴⁰ CZ, NGO n.1_Interview_13 (22 Dec. 2016).

⁴¹ CZ, police officer 1a_Interview_6 (9 Jan. 2017).

take care of him. So, having an attorney doesn't always mean the person has proper support."⁴² – Public prosecutor

- **Recording of questioning**

"We try to make use of the special interrogation rooms as much as possible. I think it is useful for all the parties... Before they were mainly used for child witnesses, now also for vulnerable victims. It has one major advantage – anyone can play it again during the criminal proceedings to make sure the person has been properly instructed."⁴³ – Policeman

2.2.2.2. Investigative Judge

- Right to information

"Generally, everyone must be instructed in all stages of proceedings about their procedural rights... The instruction should be provided in a way to achieve the purpose. So, the person understands the content."⁴⁴ – Judge

2.2.3. Recommendations

2.2.3.1. Police

- Right to information
 - All the documents, especially instructions for the accused regarding their rights and the proceedings, as well as the accusation notice should be reviewed and drafted in easily understandable forms.
- Right to access to a lawyer
 - A thorough and regular training should be provided for the attorneys who are appointed as defence attorneys for vulnerable perpetrators.
 - The law should guarantee mandatory defence from the moment the expert opinion is ordered (before the accusation notice).
- Deprivation of liberty
 - The law should specify the right to reasonable accommodations in the police cell and pre-trial detention.

2.2.3.2. Investigative Judge

- Right to information

⁴² CZ, public prosecutor n. 2_Interview_9 (9 Jan. 2017).

⁴³ CZ, police officer 2_Interview_11 (18 Jan. 2017).

⁴⁴ CZ, judge n.1_Interview_2 (12 Dec. 2016).

- The law should set forth an obligation for the courts to develop documents and materials in accessible language and trainings for judges on how to communicate with vulnerable persons should be available.
- The court should always see the person when deciding on pre-trial detention or imposing an institutional (in-patient treatment). If the person is not able to stand a trial, the court should see them in the institution where they are placed.
 - Privacy
- The law should allow for exclusion of public during hearings that involve vulnerable perpetrators and people not criminally liable.

2.3. SAFEGUARDS DURING THE TRIAL PHASE (HEARINGS, JUDGEMENT)

In this part, we mostly refer to the previous chapter. The courts have the same obligations in any stages of the criminal proceedings.

2.3.1. Identified gaps and shortcomings

2.3.1.1. Court

- Right to information

As in the previous chapter, there is a problem with accessible formats of courts documents. The courts rely on the attorneys to support the vulnerable person during the proceedings, which also mean that they explain to them the meaning of the documentation. However, if the attorneys are not trained to work with vulnerable persons, this may fall short. Some civil society organisations may provide interpretation and support for the person, however their position in criminal proceedings is not in any way regulated.

- Right to access to a lawyer

As in the chapter above, the research showed a general dissatisfaction with the quality of work of the attorneys.

- Right to medical assistance

We didn't identify any shortcoming in this area.

- Recording of questioning

We didn't identify any shortcoming in this area.

- Privacy

We didn't identify any shortcoming in this area.

2.3.2. Good practices and case studies

2.3.2.1. Court

- Right to information

“It is different at the court, the instruction is more narrow, however the judge at minimum instructs the person about their right to remain silent, the right to state all information that they deem important and a right to consult a lawyer. The judge asks the person whether they understand or they need further explanation. Sometimes it happens that a person asks “how do you mean it?” or “what does it mean for me?”. This doesn’t happen at the police.”⁴⁵– Public prosecutor

2.3.3. Recommendations

2.3.3.1. Court

- Right to information
 - The court documentation should be made available in accessible formats. The law should allow for the use of interpreters during the proceedings even for people with mental disabilities, who communicate in alternative or augmentative languages.
- Right to access to a lawyer
 - The courts should carefully evaluate whether the attorney appointed by the court is effectively representing the vulnerable person. If not so, the court should replace the attorney
- Privacy
 - The law should allow for exclusion of public during hearings that involve vulnerable perpetrators and people not criminally liable.
 - Judgement

2.4. REMEDIES

2.4.1. Identified gaps and shortcomings

The law is not clear regarding the situation where a person without legal capacity or person who is unable to understand the proceedings may refuse an appeal submitted in their favour by their family or other close persons.

2.5. RECOMMENDATIONS FOR THE CZECH REPUBLIC

2.5.1. Identification of vulnerability and reasonable accommodation

- Introduction of concept of vulnerable perpetrator in criminal proceedings

⁴⁵ CZ, public prosecutor n. 2_Interview_9 (9 Jan. 2017).

The legislation lacks a clear definition of “vulnerability” in case of suspected or accused persons. Some safeguards are ensured for persons under guardianship or persons who are unable to defend themselves. However, these do not cover all the situations when vulnerable persons need special supports to take part in the proceedings on equal basis with others. Law, or guidelines for criminal justice authorities should acknowledge and define this concept, criteria and methods for recognising the existence of vulnerability. This should also be accompanied by thorough and regular training for the authorities.

➤ Development of documents in accessible formats

The communication between the suspected or accused person and authorities is in large part done in writing. This is true also for the most important information, such as instructions regarding the rights and accusation notice. In practice, this information may be difficult to understand, we recommend to review these documents and develop the forms in accessible languages.

➤ Reasonable accommodation for people deprived of liberty

Although the law sets forth an obligation for authorities to respect the dignity of all persons deprived of liberty, in practice it is not interpreted as a right to reasonable accommodation within the meaning of CRPD. We recommend to develop guidelines as well as mechanisms for persons to request reasonable accommodations or supports if needed.

2.5.2. General and preventive recommendations

➤ Developing trainings for criminal justice authorities and attorneys

Most of the respondents of our research agreed that there is a lack of training for persons who get into contact with vulnerable perpetrators. This may lead to a lower standard of protection. A thorough and regular training should be available for all criminal justice authorities and attorneys.

➤ Improving the quality of expert opinions

The amendment of law that is currently being discussed by the parliament aims at improving the control of quality of the expert opinions. On the other hand, the state also must ensure that there is sufficient number of experts, by motivation or making the conditions to register as a forensic expert more flexible.

➤ Increasing the frequency of use of special interrogation rooms

The use of audio-video recordings in the special interrogation room is an appropriate means to ensure the vulnerability of the interrogated person is acknowledge. We recommend that these are used more frequently.

2.5.3. Specific safeguards

➤ Procedural safeguards in case of termination of the proceedings

If the case is suspended by the police or terminated by the public prosecutor due to the lack of criminal responsibility of the perpetrator, the person will not become “accused person” by law. However, even in this situation, an expert opinion may be ordered by the authorities and

the case may result in institutional (in-patient) protective treatment. During this time, the person does not have the same level of protection as an accused person, such as a mandatory defence by an attorney. We recommend that the law specifies that the procedural safeguards also cover these situations.

- Possibility to disagree with an appeal

An appeal against the decision of the first instance court may be submitted in favour of the accused also by their family or other close persons, however this is not allowed against their will. The law does not specify on how to assess the ability to give consent or refuse this appeal in person who are under guardianship or might not understand the proceedings.

2.5.4. Obligation of third persons and cooperation

- Ensuring better cooperation of criminal justice authorities with civil society

Although the law does encourage the authorities to cooperate with a wide range of subjects, in practice this mostly means providing support to vulnerable victims. We recommend that the authorities closely cooperate with organisations that protect the rights of persons with mental disabilities to ensure a higher level of protection and support for vulnerable suspects and accused persons.

- Obligation of the guardian to take part in the proceedings

The guardian has a right to take part in the proceedings regarding the person under guardianship, however, this is not their obligation. But as the mandatory defence does not apply before the accusation notice, a guardian might be the only person who can provide support for the vulnerable suspect. The law should set forth an obligation of the guardian to take part in all the acts of the proceedings, unless there is a conflict of interest (the guardian is a victim or a witness).

- Exclusion of public from the court hearing

To protect privacy of the vulnerable accused, the law should specify situations where the court may decide to exclude the public from the public hearing.