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"While access to justice is fundamental for the enjoyment and fulfilment of all human rights, many barriers prevent persons with disabilities from accessing justice on an equal basis with others. Such barriers include restrictions on the exercise of legal capacity; lack of physical access to justice facilities, such as courts and police stations; lack of accessible transportation to and from these facilities; obstacles in accessing legal assistance and representation; lack of information in accessible formats; paternalistic or negative attitudes questioning the abilities of persons with disabilities to participate during all phases of the administration of justice; and lack of training for professionals working in the field of justice. In the justice system, persons with disabilities are often considered to be unworthy of, unable to benefit from or even likely to be harmed by due process protection provided to all other citizens. Even fundamental rights, such as the right to remain silent and the presumption of innocence, may be denied either directly in law or policy or indirectly in custom and practice. The risks are extreme – e.g. false confessions, erroneous verdicts and unlawful deprivation of liberty." [1]

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



How and what barriers defendants with mental health conditions, psychosocial and/or intellectual disabilities face in the criminal justice system in accessing information, support and procedural accommodations, and



To what extent and in what ways is there law, policy and/or practice (including promising practices) that enable defendants with mental health conditions, psychosocial and/or intellectual disabilities to overcome these barriers, particularly through provision of procedural accommodations?

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

<sup>1 2020,</sup> International Principles and Guidelines on Access to Justice for Persons with Disabilities, p. 6, available at: <a href="https://bit.ly/3MiA9lr">https://bit.ly/3MiA9lr</a>

# Main findings regarding barriers, challenges and best practices

- Lithuania has not yet transposed the EU directive regarding the protection of vulnerable persons
  in the criminal proceedings. Therefore, such persons are not systematically identified and do
  not receive required attention, assistance, and support. There is no legal definition of nor any
  requirement for procedural accommodations within the criminal justice system in Lithuania,
  and the concept of 'vulnerability' itself is not defined in legislation.
- There is a general problem of not collecting statistical disaggregated data concerning disabilities in the country. Generally, a small number of such cases is reflected in official national statistics.
- In terms of collection and sharing of statistical data and related processes, a complicated
  relation and lack of collaboration exists between the justice system and health care system.
  This is especially relevant when compulsory medical measures or compulsory treatment is
  applied instead of potential imprisonment, and also, when people with unrecognised disabilities
  or difficulties end up in the prisons' system.
- Problems have been identified concerning the use of terminology, with differences occurring
  between English and Lithuanian. There are inaccurate, outdated, derogatory and unethical
  terms still used in Lithuanian translations of international treaties and in national legal acts. This
  creates a significant confusion and inaccuracies for professionals working in the legal system
  and with official legal acts, which regularly leads to miscommunication between experts.
- Issues have been discovered in processes of **identifying** in a timely manner that defendants potentially have a disability. Difficulties with the assessment of individual needs for support or procedural accommodations are common.
- The 'Letter of Rights' creates a major problem as it uses a complicated, technical language
  that is difficult to understand for people without a legal background. Therefore, persons with
  intellectual and/or psychosocial disabilities face significant challenges during criminal
  proceedings and accessing the justice system. It is left to the discretion of legal officials to
  explain the rights to suspects and defendants, however, little training is provided on how to.

- Most **written communication** (official letters and notices) are unavailable in an Easy-to-Read, plain language, Braille, or any other accessible format. Criminal justice professionals are often unaware of potential accessibility measures.
- There is a general lack of competencies and skills among legal professionals, namely, a lack
  of education and specialised training about disability (especially, intellectual, psychosocial,
  autism, and similar), mental health, the UN Convention on the Rights of Persons with
  Disabilities, specialised communication skills, specialist interviewing skills, the meaning and
  importance of and differences between reasonable and procedural accommodations.
- Issues exist with distribution of available funds. Significantly more funding tends to be
  regularly allocated towards physical buildings, reorganisations but not enough for human
  resources and to ensure quality and competences of staff, officers, prison guards, and other
  significant employees of the system.
- There is a lack of specialised court psychologists and psychiatrists who can help pre-trial
  investigators. There is no legal regulation or guidelines on their role within investigations. This
  results in the reluctancy of the investigators to ask for help when communicating with
  defendants with disabilities.
- A general lack of **specialised psychologists** and other experts creates difficulties when forming a defence. It becomes difficult for lawyers to find specialised professionals who can present a second opinion.
- There are implementation problems concerning **regulatory tools**, often due to the human factor. Even though more recently the criminal process has become more focused on the rights of both victims and defendants with disabilities, some new safeguards are provided in theory but their practical implementation is slow.
- Issues arise with regards to effective legal representation by a lawyer. Differences in quality of
  work are clear between private and governmental attorneys. There is often a lack of direct
  communication between the government attorneys and their clients. Most of the time the first
  meeting will be in court, and there often is very few (if any) opportunities provided for the client
  to understand the reasoning behind their defence strategy.

- Often the in-person participation of defendants with disabilities in proceedings is lacking, especially since the COVID-19 pandemic. The defendants are not always given opportunity to attend the court hearings as the decision whether to invite the defendant to the court is made by the judge based on the report provided by the healthcare experts. If the defendant is in a remote medical treatment facility, they often do not get updates about their case nor opportunities to express interest in participating in the proceedings.
- It is technically possible to have **a relative** supporting the defendant throughout the process, however, this is left to the discretion of prosecutors and judges. Due to the lack of regulations, there is often a reluctance to allow a third party in the proceedings as it may have an unclear impact on the trial.
- The 'intermediary' mechanism is not regulated or implemented in the criminal justice system in Lithuania.
- The use of **outdated** medical examination documents in courts is possible, for example, regardless of the defendant's potential recovery. This may unnecessarily prolong the applying of compulsory medical measures or implicate the right to a fair trial and/or direct participation in the proceedings.
- Issues exist concerning the broader **social care system** and institutional services: people starting their lives at children's homes, then potentially moving on to segregated large social care institutions (or homelessness), having a lack of needed **individualised support** in the community that then potentially results in offending. A similar vicious circle has been observed following serving a sentence and trying to **re-integrate** in society: often people may end up re-offending due to the lack of needed support within the system(s).
- There is a clear lack of inter-institutional, inter-disciplinary, cross-sectoral collaboration (for example, between courts, prosecutors, the bar association, probation, independent experts, and NGOs).
- Negative societal attitudes and stigma related to mental health conditions and disabilities
  are prevalent in Lithuania. This may result in automatically judging accused persons with mental
  health conditions. Often this affects or determines attitudes and sometimes actions and
  practices of police officers, pre-trial investigators and other legal professionals in the criminal
  justice system. For example, during questioning and trial, if no medical condition is

documented, lawyers and prosecutors may position unclear statements from the defendant with a disability as a lie to get guilty verdict.

- There is a general lack of specialist, psychological and general mental health **supports in the prisons' system.**
- Alternatives to either imprisonment or compulsory medical measures and compulsory treatment
  are rare. There is a need to shift focus from only punishment and sentencing to also providing the
  needed support and rehabilitation in order to aid recovery and prevent re-offending following
  release.
- Practices differ depending on a **specific municipality**, and geographical location in the country.

### **Main recommendations**

- To replace an outdated and derogatory term of 'mental deficiencies' (Lt. psichiniai trūkumai) in the Code of Criminal Procedure (Articles 51, 52, 79, 200, 312, 316, 367, 368)
- To amend the Code of Criminal Procedure to include provisions on procedural accommodations
  for vulnerable individuals and to provide persons who have undergone compulsory medical
  measures with the right to seek a review of the decision or revocation of the measures
- To expand the definition and role of support persons in relevant regulations to provide better support mechanisms for vulnerable individuals and ensure clarity and common understanding for criminal justice professionals
- To improve services provided by the State Guaranteed Legal Aid Service so that the most vulnerable persons receive quality legal aid
- To update the Letter of Rights (Lt. teisių išaiškinimo protokolas) so that the information is presented in a simplified, comprehensible, easy-to-understand manner, also in an Easy-to-Read format

- To improve the current process for exchanging medical records in order to establish a clear system for passing on information as individuals move through the criminal justice system, which is essential to minimise errors and guarantee appropriate care and medication access
- To provide sufficient and regular quality training to criminal justice professionals, especially
  police officers, working in courts and detention centres on how to identify and appropriately
  communicate with individuals with mental health conditions, intellectual and/or psychosocial
  disabilities
- To establish a comprehensive procedure for recognising, assessing, and providing individual supports for vulnerable individuals who are accused, detained, or sentenced for a crime
- To systematically collect disaggregated data on individuals with disabilities involved in the criminal justice system
- To enhance cooperation among various institutions within the criminal justice system to establish a more uniform and efficient framework for providing appropriate procedural accommodations for vulnerable defendants





# INTRODUCTION

### INTRODUCTION

Access to justice for persons with disabilities is recognized 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 [2], **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 study 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 based model which proposes a new conceptualisation of disability: "it is society that "disables" persons with disabilities from exercising their human rights as citizens" (United Nations (UN), 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 the research study on the barriers defendants with intellectual and/or psychosocial disabilities face in 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.

<sup>2 &</sup>quot;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

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); and EU acquis on procedural rights: right to interpretation and translation in criminal proceedings [3]; right to information in criminal proceedings [4]; right of access to a lawyer in criminal proceedings [5]; strengthening of certain aspects of the presumption of innocence and on the right to be present at the trial in criminal proceedings [6]; legal aid for suspects and accused persons in criminal proceedings [7]; and procedural safeguards for vulnerable persons suspected or accused in criminal proceedings [8].

In what follows, we present the goals and methodology of the study, then we summarize the main findings of the field-work (desk-based research, Freedom of Information requests, and semi-structured interviews) and we end with the main conclusions and recommendations regarding the access to justice for defendants with mental health conditions, psychosocial and/or intellectual disabilities in Lithuania.

<sup>3.</sup> Directive 2010/64/EU of the European Parliament and of the Council – Articles 1, 2, 4 and 5.

<sup>4.</sup> 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.

<sup>5.</sup> 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.

<sup>6.</sup> 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.

<sup>7.</sup> 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.

<sup>8.</sup> Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings – Section 2 and 3.

# GOALS AND METHODOLOGY

### **GOALS AND METHODOLOGY**

The main objective is to improve knowledge on experiences and participation barriers faced by defendants with mental health conditions, psychosocial and/or intellectual disabilities in the criminal justice system (from investigation/arrest to sentence, as well as during the deprivation of liberty that follows).

### The specific aims of the study are as follows:



### Map the national legal and political framework

- (laws, policies, strategies, etc.) about access to justice for defendants with disabilities, mainly focusing on the provision of procedural accommodations.



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

- (defendants with intellectual and/or 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**.

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

Additionally, for the **field work, semi-structured interviews** (N=13) were carried out with key stakeholders: Defendants with intellectual and /or psychosocial disabilities (N=6); Criminal justice professionals (N=4); Support services professionals (N=2); Researchers (N=1). The interviews were conducted from October 2022 to March 2023. Priority was given to interviewees who have had experience or contact with the criminal justice system in the last three years. A non-probability purposive sampling was used to identify and recruit the participants of this study. The data was analysed using thematic analysis with the aid of MAXQDA software.

DEFENDANTS WITH DISABILITIES ACCESS TO JUSTICE IN LITHUANIA

# DEFENDANTS WITH DISABILITIES ACCESS TO JUSTICE

# POLICY AND LEGAL FRAMEWORK

- **01** Transposition of the international legal framework
- **02** Overview of the national legal framework regarding access to justice
- **03** Statistics and data on access to justice

### **ACCESS TO JUSTICE**

The main goal of the desk-based research was to shed light on the policy and legal framework about the rights and access to justice for defendants with disabilities.

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

- 1) Identification of the main international legal policies and orientations regarding the rights of persons with disabilities and access to justice adopted in Lithuania;
- 2) Brief overview of the most relevant domestic laws, policies or strategies which regulate the rights and access to justice of persons with disabilities;
- 3) How training and awareness raising for those working in the field of administration of justice is being promoted, and finally,
- 4) Presenting of available official data related to the rights and access to justice for persons with disabilities.





# 01 Transposition of the international legal framework

Lithuania ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol in 2010. On 8th December 2010, the Government of the Republic of Lithuania adopted the resolution No. 1739 "On the implementation of the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol", which outlined the institutional mechanism for the implementation of the Convention, taking into account the provisions of Article 33 of the Convention. The functions of the coordinating institution in Lithuania were assigned to the Ministry of Social Security and Labour. Other state institutions mentioned in the planned mechanism were the Ministries of Education and Science, Communications, Health, Environment, Economy, Justice, Foreign Affairs, Internal Affairs, Culture, Department of Physical Culture and Sports under the Government of the Republic of Lithuania, Department of Statistics, and the public development committee under the Ministry of Transport.

On 31st August 2016, the Government of the Republic of Lithuania by resolution No. 894 changed the procedure for the implementation of the Convention and the Ministry of Social Security and Labour was appointed as the coordinating institution for the implementation of the Convention. This meant that the Ministry's responsibities included setting policy, strategic goals, and objectives. It established that the Government of the Republic of Lithuania determines strategic goals and/or progress objectives of the social integration policy of persons with disabilities by approving National Progress Plans and national development programs. The Ministry of Social Security and Labour, in addition to the previously planned formulation of the social integration policy of persons with disabilities, was also assigned to participate in the

### 01 Transposition of the international legal framework

development of National Progress Plans for the determination of strategic goals and/or progress objectives of the national integration policy for persons with disabilities, and national development programs.

Regarding Article 12 (Equal recognition before the law) and Article 13 (Access to justice), the concluding observations for Lithuania made by the UN Committee on the Rights of Persons with Disabilities in 2016 expressed deep concern at the legal provisions in the country that permit the denial or restriction of legal capacity of persons with disabilities, which is contrary to Article 12 of the CRPD. With reference to its general comment No. 1 (2014), the Committee recommended to Lithuania to repeal laws, policies and practices that permit guardianship and trusteeship for persons with disabilities. The Committee also recommended to replace substituted decision-making with practices of supported decision-making.

With regards to Article 13, the Committee expressed a concern about the number, scope, content and quality of training courses available to judicial and law enforcement professionals. The Committee observed that the existing training courses do not cover all barriers faced by persons with disabilities in the justice system. It recommended to develop and implement a national plan of action, in close collaboration with organisations of people with disabilities. This would aim to build the capacity of professionals, including judges, prosecutors, police officers and prison staff, to enhance their knowledge of the rights of persons with disabilities and to ensure the provision of procedural accommodations in all legal procedures and of reasonable accommodations in prisons.

Other relevant concluding observations by the Committee noted that Article 6 (2) of Code of Criminal Procedure provides that the justice in criminal proceedings is carried out under the principle that all persons are equal before the law and the courts, regardless of origin, social or property status, national origin, race, sex, education, language, religious or political beliefs, type and nature of activities, residence and other circumstances. Granting privileges to anyone or making any restrictions based on some circumstances, personal character, social and property status is forbidden. Thus, regardless of whether the person has a disability or not, the courts of justice are primarily guided by the principle of equality before the law and ensure all those involved the same procedural rights.

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified by Lithuania in 1996. After reviewing the country's fourth periodic report in 2021, the respective Committee stated that Lithuania is close to being in full compliance with the Convention.

A delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment carried out a periodic visit to Lithuania from 10 to 20

### 01 Transposition of the international legal framework

December 2021. The report, similar as the one of a previous visit in 2019, highlights issues related to the accessibility of specialised mental health services in prisons and the Prison Hospital. The Committee expressed its grave concern that many of the CPT long-standing recommendations, some of them dating back to the very first periodic visit to Lithuania in 2000, remain unimplemented (or only partially implemented). This concerns mostly recommendations on widespread inter-prisoner violence and the informal prisoner hierarchy, as well as the abundance of illegal drugs combined with a lack of targeted strategies to help the large numbers of drug users within prisons. No reference was made in the report regarding the access to justice of persons with disabilities.

Regarding the **EU Directives on the rights of defendants**, in 2020, Lithuanian Social Research Centre carried out a study regarding the implementation of the EU Directive 2016/343 **on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.** The research report concluded that:

"If the defendant has mental or intellectual disabilities or if a prosecutor or judge notice that the defendant does not understand what is going on, they recommend a defence lawyer; it is also suggested that a relative may accompany such a person and participate during the interrogation of any witnesses. If the defendant is unable to attend the trial due to their mental condition, then their lawyer must attend. Psychiatrists can recommend that a patient not attend a trial at all. If the defendant has some psychological problems, medical expertise is sought regarding liability and then a completely different process starts."

In 2017, Human Rights Monitoring Institute published a country report regarding the transposition of the Directive 2012/13/EU on the right to information in criminal proceedings, concluding that most of the Directive have been transposed to Lithuanian law. Recommendation was made to draft a special, more accessible letter or letters of rights for vulnerable groups, such as minors or people with disabilities. No information could be found that such recommendation has been implemented.

Lithuania has not yet transposed the Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings.

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

### General Disability and Mental Health legislation

### The right to participation / Recognition of legal capacity

In Lithuania, there are two institutes of civil law by which the rights of individuals can be restricted: legal incapacity and limited capacity. When a person's capacity is limited, care and guardianship is established for them. Article 2.10 of the Civil Code establishes the grounds and procedure for declaring incapacitated a natural person, who due to a mental health condition, cannot understand the significance of their actions or control them.

Non-governmental organisations observe that guardians of a considerable number of incapacitated people who live in social care facilities are the social care facilities themselves. When the interests of the person do not correspond with the wishes and interests of such an institution, the situation may result in a serious conflict of interests. Since the incapacitated person is represented by their guardian, this procedure violates the rights of the person. This was noted by the European Court of Human Rights in the case D.D. v. Lithuania, stating that a person must have the right to challenge their indefinite forced stay in a guardianship institution in court; the person must also have a separate legal representative who would exclusively represent their interests (and not the interests of the guardian and social care or mental health facility).

Although Article 14 of the CRPD stipulates that the restriction of a person's freedom cannot be based on their disability, in Lithuania, the restriction or deprivation of liberty is legalised for persons with mental health conditions, psychosocial and/or intellectual disabilities in the following cases:

1) When they are assigned in-patient compulsory medical measures under the criminal procedure, if they committed the criminal offense while being innocent or under limited liability, as well as those who have a mental health condition after the commission of the criminal offense or the imposition of punishment and, as a result, they cannot understand the essence of their actions or to manage them (Article 98 of the Criminal Code; Articles 392, 403, 405 of the Criminal Procedure Code);

02 Overview of the national legal framework regarding access to justice

2) Forcibly hospitalised persons with mental health conditions and behavioural problems, when they refuse hospitalisation and there is a real threat that their actions may cause substantial damage to the health or life of themselves or others (no longer than 3 days, Article 2.26, Part 4 of the Civil Code; Mental Health Article 12 of the Supervision Law).

### Incapacity to stand a trial (a complete exclusion from the criminal proceedings)

According to the Criminal Code, courts may apply compulsory medical measures to persons recognised by the court as legally incapacitated or of diminished capacity, as well as to persons who are 'mentally disturbed' after the commission of a criminal act or the imposition of punishment, and as a result of which they cannot understand the essence of their actions or control those. Article 76 of the Code explicitly references the exemption from guilt due to a health condition, including a mental health diagnosis. This section applies to persons who as a result of their health condition, cannot understand the essence of their actions or control them, who shall then be released from further execution of the punishment.

When releasing such a person from punishment, the court decides on the imposition of compulsory medical measures or compulsory treatment. If such a person recovers, they can be sent to continue serving their sentence. In such a case, the time during which compulsory medical measures are applied shall be counted towards the period of imprisonment on a day-by-day basis. In cases where persons are not deemed to have recovered, this may result in long-term deprivation of liberty.

### Compulsory treatment, institutionalisation, alternatives of incarceration

Article 98 of the Criminal Code outlines compulsory medical measures. For compulsory treatment to apply, persons first need to be recognised by the court as being of diminished responsibility [9] or diminished capacity [10] as well as to persons who have suffered a mental health condition after committing a criminal act or being sentenced, and as a result of which they cannot understand the essence of their actions or control them.

Medical measures can be out-patient or in-patient. Out-patient measures include ambulatory monitoring in the conditions of primary mental health care. They are applied by the court to a person who, due to the dangerousness of the committed act and their mental health condition, does not need

<sup>9.</sup> According to Art. 17(1) of the Criminal Code, a person is not criminally responsible if, while committing an act prohibited by this Code, they could not realise its dangerousness or control their actions due to a mental health condition.

10. According to Art. 18(1) of the Criminal Code, the court recognises a person as having limited liability or diminished capacity if, while committing an act prohibited by this Code, that person could not fully understand the dangerous nature of the criminal act or control their actions due to a mental health condition, which is not a sufficient basis for declaring them not criminally responsible.

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

to be monitored and treated in an in-patient facility, or who can continue to receive out-patient treatment when their mental health condition improves after in-patient treatment. In-patient monitoring can be under conditions of general, enhanced, or strict monitoring in specialised mental healthcare institutions subordinated to the Ministry of Health. Specific requirements for each are outlined in the Code.

The process to apply compulsory medical measures is outlined in Article 394 of the Criminal Procedure Code. This Code distinguishes between the circumstances needed to apply compulsory medical measures that are established during pre-trial or trial phase, or after the punishment has been imposed. If the circumstances are established during the pre-trial investigation or during the trial of the case, the pre-trial investigation officer, prosecutor, judge or court can take one of the below actions:

- 1. The pre-trial investigation officer transfers the investigation material to the prosecutor. When there is a basis, the prosecutor writes down a resolution to start the process of applying compulsory medical measures and instructs the pre-trial investigation institution to conduct the pre-trial investigation or conducts it themselves;
- 2. During the hearing of the case in court, the judge or the court makes an order to start the process to apply compulsory medical measures.

If the circumstances are established after the punishment has been imposed, the court shall make the following decisions:

- 1. Before the judgment has become final and execution has not begun, the court takes over the case and decides to start the process of applying compulsory medical measures;
- 2. When the sentence has already been executed, the court of the place of execution of the sentence, having demanded a criminal case, decides to start the process of applying compulsory medical measures at the request of the institution that carries out the sentence.

After examining the case regarding the application of compulsory medical measures, the court makes one of the following rulings:

- 1. Exempt a person from criminal liability and apply a compulsory medical measure to them,
- 2. Suspend the trial or the execution of the sentence and apply a compulsory medical measure,
- 3. To close the case and not to apply compulsory medical measures,
- 4. Transfer the case for re-investigation,
- 5. Terminate the case.

02 Overview of the national legal framework regarding access to justice

In Lithuania, the court does not determine the time of application of compulsory medical measures. They are applied until the person recovers or their mental health condition improves and their dangerousness disappears. At least once every six months, according to the conclusion of the health care institution, the court must decide on the issue of extending the application of compulsory medical measures, changing the type or cancelling their application. During these proceedings, the state guaranteed legal aid is available, however, the participation of the defendant themselves is not obligatory and no specific accommodations are generally applied. Article 405 of the Criminal Procedure Code deals with the extension, change or cancellation of application of compulsory medical measure.

According to Article 98, part 7 of the code, if it is not necessary to apply compulsory medical measures to a person, as well as if the court cancels the application of these measures, the person may be handed over by the court to the custody or care of relatives or other persons and at the same time medical monitoring may be established for them.

The board of doctors can recognise a person who was 'mentally disturbed' after the commission of a criminal act or the imposition of a sentence, and because of which a compulsory treatment measure was applied, as having recovered. In such a case, the court cancels the compulsory treatment measure and decides whether to transfer the case to a pre-trial investigation or to transfer it to the court in a general procedure or send the person to further serve the sentence.

The time spent in a health care institution is counted towards the time of arrest and serving the sentence. The Mental Health Care Act regulates the mental health care of persons subject to court-ordered involuntary treatment measures.

### National disability strategy

On 8th September 2020, the Minister of Social Security and Labour by order No. A1-817 approved the 2021-2023 action plan for the social integration of the persons with disabilities. However, the plan is non-binding on the legal institutions and implementation is subject to funding being available.

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:

- 1) 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);
- 2) Provide full access to the physical environment (including access to judicial building, adjustments to the physical layout of the room);
- 3) Make adjustments to procedural rules (e.g., may include use of audio-video records, video-links, adjustments on questioning);
- 4) Be appropriate to gender and whether person is deprived of liberty.

The provision of such procedural accommodations is very limited in Lithuania and not explicitly outlined in the national laws and regulations.

### The right to Information

It is estimated by the Ministry of Social Security and Labour that the general score of accessibility of information in Lithuania is around 5%. As a result, the majority of the public sector institutions and court websites meet only the minimum criteria of the website accessibility. In a survey conducted by Create Lithuania in 2022, the public sector's workers and representatives of people with disabilities said that more information in an Easy-to-Read format would be beneficial within the courts and police system. At the time of writing this report, only the "What should victims of crime know?" booklet in the Lithuanian courts' website was available in the Easy-to-Read format and sign language.

Concerning the right to understand, be heard and understood, it is established in the Article 43 of the Criminal Procedure Code that an interpreter is a person who knows the languages required for translation or understands the signs of a mute or deaf person, who is invited by a pre-trial investigation officer, a prosecutor, a pre-trial investigation judge or a court to participate in the process in accordance with the procedure established by this Code. An interpreter may participate in the process by ensuring their participation by means of remote audio and video transmission, except in cases where the direct participation of the interpreter is necessary for the participant in the process to properly exercise their rights or to understand the ongoing criminal process.

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

Apart from the provision of interpretation services outlined above, other informational accessibility measures are very limited in Lithuania. For example, the inaccessible and difficult to understand 'Letter of Rights' is a major problem. It is a very complicated, technical document and difficult to understand for people without a legal background (see Annex 3). Therefore, persons with intellectual and/or psychosocial disabilities face significant challenges during criminal proceedings in this regard. It is left in the discretion of legal officials to explain the rights to suspects and defendants.

### Independent intermediaries and/or facilitators (the right to participation)

The 'intermediary' mechanism is not regulated or implemented in the criminal justice system in Lithuania.

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

According to Article 53, part 4 of the Code of Criminal Procedure, by a prosecutor's decision or a court order, a person may be allowed to participate in the process with the rights of a representative. This refers to a family member or close relative who submitted a written or verbal request. This person may act as a representative for a person who is not necessarily recognised as incapacitated by the court, but who due to their old age, disability, illness or other important reasons, cannot properly exercise the rights.

### The right to interpretation and communication support

The study conducted by the Human Rights Monitoring Institute in 2018 showed that police investigators had encountered situations where sign language interpretation was necessary and had not experienced difficulties in ensuring such interpretation. This is due to the fact that Lithuanian sign language interpretation services are provided by five sign language interpreters' centres operating in Vilnius, Kaunas, Klaipėda, Šiauliai and Panevėžys regions. However, one of the investigators brought up the fact that in some instances the arresting officers may forget to note whether the suspect has a disability or individual needs.

### Remote hearings

On 27th August 2021, the Council of Judges presented their recommendations concerning remote hearings, however, no reference was made to this service being tailored for the potential needs of persons with disabilities.

02 Overview of the national legal framework regarding access to justice

### **Rights monitoring**

### Independent mechanism

The status of the National Human Rights Institution in Lithuania is held by the Seimas Ombudspersons' Office. Among its many other functions, it regularly conducts activities of the National Preventive Mechanism, which includes monitoring of human rights conditions in places of deprivation of liberty under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### **Equality body**

The Equal Opportunities Ombudsperson's Office is the national equality organisation that is responsible for handling reports on discrimination based on any grounds, including disability, permitted by national law in non-judicial processes. The Ombudsperson can both investigate complaints and impose administrative sanctions in accordance with the Administrative Violations Code of the Republic of Lithuania.

Within the Office of the Equal Opportunities Ombudsperson there is a Commission for the monitoring of the rights of persons with disabilities. However, up to date no decisions could be found regarding the right to access to justice for defendants with intellectual and/or psychosocial disabilities.

# 03 Statistics and data on access to justice

### Statistics and data collection on access to justice

Very limited official statistical disaggregated data about defendants with disabilities exists in Lithuania. Generally, whilst implementing the 2021-2030 National Progress Plan approved by the Government of the Republic of Lithuania, and the task to "Develop an environment suitable for people with disabilities in all areas of life", the Ministry of Social Security and Labour prepared a development program for this purpose.

The program indicates that currently the preliminary level of accessibility of physical infrastructure in the country, including courts, is about 30%, and the level of informational infrastructure and information adoption is only around 5%. The development program to improve the physical and informational

03 Statistics and data on access to justice

accessibility has not yet been fully developed. On the other hand, according to the Department of Prisons under the Ministry of Justice, six out of eight prisons in Lithuania are accessible to people with disabilities.

Although some data is available on the number of recipients of services provided by municipalities to persons with disabilities, this currently only includes transport and sign language interpretation services; it does not include information on legal aid or access to justice.

The Department for the Affairs of Persons with Disabilities under the Ministry of Social Security and Labour produces monitoring indicators for the monitoring of implementation of the CRPD. In their 2021 report, the below data related to Articles 12 and 13 of the convention was provided:

Evaluation Criteria	Source	Result
The number of reviewed court decisions declaring persons incompetent and incapacitated in a certain area;	National Courts Administration	327
The number of appeals to court by persons who are incapacitated in a certain area regarding the review of court decisions by which persons were recognised as incapacitated in a certain area;	National Courts Administration	1756
Number of persons whose status was reviewed by Incapacitated Status Review Panel;	Municipalities	4131 (data provided by 58 municipalities)
The number of contracts accepted regarding the decision-making aid;	Registrar centre	No data provided
The number of secondary legal aid services provided to persons with disabilities;	Guaranteed Legal Aid Services under the Ministry of Justice	328

03 Statistics and data on access to justice

Evaluation Criteria	Source	Result
The number of persons forcibly treated (paid from public insurance funds);	Public Health Insurance Fund of Lithuania	480
The number of prisons adapted for persons with disabilities.	Department of Prisons under the Ministry of Justice	The number of prisons is 8, of which 6 are adapted

### Forensic hospitalisation

In Lithuania, there is one forensic psychiatric hospital in the town of Rokiškis. When applying compulsory medical measures, the court does not determine the duration of its application and does not specify the specific length, because it is presumed that the judge is not competent to decide how soon a person may recover or when their health condition will improve.

The State Service of Forensic Psychiatry is responsible for performing forensic psychiatry and forensic psychology expertise in criminal, civil and administrative proceedings as instructed by a pre-trial judge or the court. Their recommended questions for the defendants' assessment in criminal proceedings are:

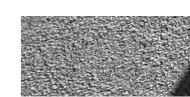
- 1. At the time of the investigation, did the defendant suffer from a mental health condition and was able to understand the significance of their actions and control them?
- 2. Was the defendant unable to fully understand the nature of the dangerous criminal act or to control their actions due to the specifics of their mental health condition or mental state?
- 3. Is the defendant suffering from a mental health condition at the moment (during the trial) and can they understand the significance of their actions and control them?
- 4. Can the defendant participate in the court proceedings?
- 5. Can the defendant, due to their mental state, understand the circumstances relevant to the pre-trial investigation or the trial in court and give evidence?
- 6. Do compulsory medical measures need to be imposed; if so, what type?

It is important to note that these questions are not specifically focused on identifying individual needs for any accommodations of defendants with mental health conditions and/or disabilities.

# DEFENDANTS WITH DISABILITIES ACCESS TO JUSTICE



# EXPERIENCES ABOUT THE ACCESS TO JUSTICE FOR DEFENDANTS WITH DISABILITIES





- **01** Results of the analysis of patterns
- **02** Defendants' with disabilities experiences
- **03** Criminal justice professionals' experiences
- **04** Support services and other professionals' experiences

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE FOR DEFENDANTS WITH DISABILITIES

In order to examine the experiences of different stakeholders about the rights and access to justice of defendants with mental health conditions, psychosocial and/or intellectual disabilities in Lithuania (i.e., identifying barriers, challenges and areas for improvement they envision in it) thirteen semistructures interviews were conducted (see Annex 1) with persons with mental health conditions, psychosocial and/or intellectual disabilities (N=6, including 2 women), attorneys (N=1), judges (N=1), prosecutors (N=1), police (N=1), support service professionals (N=2), lawyer/researcher (N=1).

# 01 Results of the analysis of patterns

Several recurring topics and patterns were identified when analysing data obtained during semi-structured interviews (see Annex 2). The vast majority of research participants identified and described major challenges in ensuring the defendants' right to information. Another common topic raised by the research participants was communication difficulties among all parties and the lack of specialised training for professionals in the justice system. In general, the recognition of disability and assessment of individual needs was often described as either very problematic or even almost non-existent. The strive for 'equal treatment' of all defendants regardless of their potential individual vulnerabilities was often mentioned. A clear absence of the concept of a 'vulnerable person' and of procedural accommodations was observed.



# EXPERIENCES ABOUT THE ACCESS TO JUSTICE FOR DEFENDANTS WITH DISABILITIES

Most of the participants also talked about the issue of the lack of in-person contact with defendants with disabilities during the whole process, and their right to participation often being violated. Two thirds of research participants expressed their concern about the low quality of state guaranteed legal aid services and general issues with the representation of persons with disabilities; the differences in quality of legal aid services between the public and private sectors were emphasised.

Over one third of participants described the issue of the use of outdated terminology and practices in legislation and in the justice system; the lack of alternatives to imprisonment in Lithuania; as well as a major lack of inter-sectoral collaboration. The human factor and judgemental attitudes towards persons with mental health conditions and disabilities based on stereotypes and stigma were also referred to during the semi-structured interviews. Some participants expressed the sense of injustice that is felt when participating in criminal justice processes, and a few even mentioned experiences of physical punishment, psychological pressure and inhumane treatment of defendants with disabilities by officers.

# 02 Defendants' with disabilities experiences



Semi-structured interviews with defendants who have mental health conditions, psychosocial and/or intellectual disabilities revealed quite a bleak picture of what it may be like to be going through this experience. Research participants emphasised the common and regular experience of not being informed about not only their rights but also about the general situation of what is happening to them, what would happen next, and what to expect from the process. The lack of effective communication, judgemental attitudes and often disrespectful treatment by officers was also referred to.

In addition to the above, defendants described challenges they had faced concerning legal representation and the low quality of public legal services and state guaranteed legal aid. They also confirmed that not participating in trial in-person is a common experience.

Please see selected quotes from semi-structured interviews below.

# EXPERIENCES ABOUT THE ACCESS TO JUSTICE FOR DEFENDANTS WITH DISABILITIES

02 Defendants' with disabilities experiences

# Experiences, challenges and areas of improvement identified

### Legal aid and provision of procedural accommodations

### » Right to information

"No one informed me where I was going. (...) No one here does such things, about rights. No one says 'read it'. (...) They give you papers to read; they want you to sign it, I don't read. I can't be bothered to read a few papers, a lot written on those. (...) I didn't call, nobody said such things to me, they didn't say that you can call someone there, I didn't call. (...) And no one will ever inform you who your lawyer is. You have to go and ask the investigator yourself." – I.9

"The sanctions were being extended; it was always in a form of a letter. Everything was in the form of a letter. Yeah, and a friend of mine (...) was there. She was waiting for me in [name of a city] detention centre. How to say it, well, she informed me about those matters." – I.5

"They didn't even tell me that I could get in touch with my family. Because my phone was taken away and everything else, there wasn't much information about my rights, that I had a right to a private lawyer, with my family, I don't know." – I.5

"I didn't make the call, but I knew I had the right to make the call, I heard it on TV, on the radio whatever. No one said anything." – I.8

"They read it to me and informed me of my rights. A lawyer was called in [name of a town], I didn't even understand it, I can't see without glasses, I just signed it. I didn't realise that it was a warning for me not to go anywhere. (...) Well, the lawyer read it. But I probably didn't understand it that well, I was stressed. (...) There were piles of papers, I say I can barely see to sign, I didn't read it, I simply believed in people. Such institutions will not deceive you." – I.10

### » Person of trust and / or intermediary or facilitator

"The only thing, the best one, was that I met that woman, she truly supported me, morally and helped me to calm down. Nothing else I really liked because it was scary what happened, and everything was very stressful. I didn't feel safe. I'm glad it's all in the past now." – I.5

02 Defendants' with disabilities experiences

#### » Legal aid and the right to have access to a lawyer

"A very big difference. The government lawyer didn't speak with me. Just when first testimony was being presented, he sat next to me, he didn't comment on anything, he didn't ask anything. (...) And the private lawyer, he communicated with us, he was more reassuring, provided more information. And maybe helped me to better understand what was happening, what to say, for example, what I shouldn't be saying. Because I have signed without looking what they gave me, just like that. So yes, he gave me more information, provided much more reassurance than the governmental one." – I.5

"It is clear when you choose a private lawyer who is from a law firm, and not, let's name it, the one from where they only have the minimum basic salary (...), where they are registered in the municipalities. It's clear there that those lawyers are of a low level, their competences are just a standard procedure, a set procedure." – I.6

"The government lawyer was there, but he didn't do anything, neither contacting nor calling me. (...) It would have been better not to have that lawyer at all – the same as not having anyone at all. (...) I saw my lawyer in court, but he and the prosecutor were sitting almost at the same table." – I.9

#### Contact with the police

"Because not much time passed since the event, when we spoke about what had happened, it was very difficult. Because it felt like I had to relive the day again, and I wanted to forget it." – I.5

"When the police took me to a psychiatric hospital, they didn't inform my mother. There, for 2 days, people searched for me, they called the police, they didn't know where I was until they found out that I was in a psychiatric hospital. So yes, it would be good to inform people." – I.9

#### In prison

"I don't know it was... What kind of mattresses were there? You could see that like some homeless people lived there, everything was wet with urine. I didn't know how to lie on such a mattress, I spent a day on a metal bed, I don't know, I didn't sleep." – I.9

### 02 Defendants' with disabilities experiences

"I don't know, maybe I didn't dig deep enough, but when that other woman was with me, she told me that when they took me to my cell, they should have allowed me to shower. But nobody told me that, that you can get a shower. I didn't know. (...) So, when the other woman arrived, she asked someone to be allowed to shower. So, I got a shower." – I.5

#### Psychiatric hospital / institution

"They brought me to Rokiškis to examine me, they also asked me several questions. I didn't even understand that the Commission was there, the Commission of doctors was there." – I.10

#### » The right to be present at trial

"So, the court announced sanctions, from what I understood, but it was also very emotional. To be honest, I cried and I didn't fully understand what was happening." – I.5

"The final trial took place without me at all. I was in the hospital at that time. (...) I would have liked to participate but it didn't work." – I.6

"I didn't participate in the trial." - I.8

### Voices heard and positive and /or negative experiences

"Naturally, when arrested, it was natural that there was a shock, it was so unusual when facing such a situation for the first time, but I would say that the investigator was really nice, not just saying anything bad." – I.5

"Well, they didn't have cameras before. It's only now they don't have the right to beat detainees. And before they used to mock and beat." – I.8

"I don't know, I don't like it how they did it, treated me like an idiot and all." – I.9

02 Defendants' with disabilities experiences

"When the police took me, they didn't communicate much, but we had talked on the phone with them. They said that they would like to do an interview. So, they took me, took me to the police station and questioned me there. Of course, I felt at first that it was a little bit, well, that they pressed me a little bit morally. With such phrases like "tell it like it was, because we know more than you think". A little bit of extra pressure. And because the crime itself was traumatic, talking with them made me feel even more scared." – I.5

"They put handcuffs on, my legs hurt, and they shoved them underneath... I couldn't put my shoes on and they took me outside and then into detention. And my roommate thought that I had a problem with my head, you know?" – I.8

"They keep their distance immediately, beware of me." – 1.9

"Overall, it was okay, later I was taken to [name of a city] detention centre, everyone was acting politely there too. I cannot say that anything was bad." – I.5

"The conditions are excellent, warm, clean, I bathe every day, I make my bed like a soldier, lie down, read, it's very good here." – I.10

"I communicated with a psychologist, with a psychiatrist." - I.6

"Mainly when I was in [name of a town], they did the expertise, so there the doctor told me that I'll be sent to Rokiškis hospital, that they will treat me there, there will be a review every half a year. She informed me about all of those questions. She calmed me down as well. And when I came to Rokiškis, the experience has been good, the personnel are very good, and I don't know, they welcomed me very warmly so it wasn't as scary. And the social worker allowed me to call my brother straight away. (...) They can visit me whenever they can. Even every day, and we get opportunities to call, we have phones as well. It's a huge bonus. That we can keep in touch." – I.5

"We communicated in Russian, in Lithuanian. With an interpreter." - I.8

"They explained it to me that there was a lawyer, the investigator, such a polite woman. I could also see badly, but they bought me glasses to the hospital. When I was in the building, I asked social services for them, I said, I have very bad eyesight, I would really like to read. So, thanks to them." – I.10

02 Defendants' with disabilities experiences

### Intersectionality

"I think they maybe didn't pay much attention to my condition, perhaps because it felt like they looked at me as a person who was never ill in their life, never had any psychological issues. And that's a very big difference, to understand that a person who was never ill, will find it difficult to understand things. Because especially in such stressful situations people who have psychological problems are very... Everything looks scarier than it actually is. Maybe that just wasn't looked at, well that I needed medicine and help, and reassurance, to explain why everything is so and so." – I.5

"They didn't know anything. They didn't know that I was sick, that I was not conscious anymore. They thought I might have taken drugs." – I.9

### Main reccommendations

The main recommendations expressed by the research participants with disabilities were mostly to do with the need to improve channels and ways of communication by professionals, ensure more respectful and humane treatment of defendants, and foster ways of providing easy-to-understand information to defendants at all stages of the process.

"Mostly in custody maybe. It would have been a big bonus if they would have informed me. For example, one thing I needed the most, was that I could have gotten in touch with my family. That I could have communicated with them. That was missing. Because I was very confused, I didn't know how to behave, what was happening, what will happen next, that was missing. Not to scare me but to inform. (...) People could take into account and consider that maybe a person was never convicted before, calm them down, explain things. More explanation. And, for example, to say what rights the person has, because maybe it's the first time, maybe they didn't know what's allowed, what options are out there for them." – I.5



# 03 Criminal justice professionals' experiences



Similar to the interviewed defendants, the criminal justice professionals were quite aware of and open about the low quality of state guaranteed legal aid and the differences that exist between the public and private sectors to this regard. The lack of alternatives to imprisonment was quite a common theme and the lack of in-person contact and participation of defendants with disabilities was regularly mentioned. Communication difficulties, the lack of specialised knowledge and training, as well as judgemental attitudes based on negative stereotypes among criminal justice professionals were all referred to in several interviews.

Generally, semi-structured interviews with the criminal justice professionals provided more information on positive aspects when compared to interviews with defendants with disabilities.

Please see selected quotes from semi-structured interviews below.

### Experiences, challenges and areas of improvement identified

### Main challenges identified

"Taking into account the fact that very often, since the participation of a lawyer is necessary, there is the state-guaranteed legal aid and, of course, there are quite a few complaints and dissatisfaction with it." – I.1

"One of the main challenges would be the quality of the secondary legal aid received and their effort to delve into the situation." – I.11

"Now there is some protection and protection precisely because of the very strong data protection. Hence, that data is not developed and is not collected." – I.12

03 Criminal justice professionals' experiences

"Actually, now after the quarantine, it's remote work. We really have little in-person contact. It's wrong. I meet sometimes with a person only in court." – I.1

"There is not much alternatives to imprisonment. I will say that basically it has not changed much since the Soviet era. Not much has changed, basically the process has not changed." – I.1

### **Process of identification of disability**

"There is a lack of experience of the entire judiciary and officials, lawyers, prosecutors to assess the vulnerability of such persons." – I.11

"Yes, and again I say, the judge is not a medical professional and the judge has no special knowledge as far as the person's psychiatric psychological health is concerned. In all cases, the judge is guided by the conclusions and recommendations of the medical staff." – I.12

### **Provision of procedural accommodations**

#### » The right to information

"They have all the rights to familiarise themselves with, all the material of the pre-trial investigation, documents. (...) Surely, they can be a full participant in the process." – I.3

"This is all about communication outside the protocol because the text itself is quite clear and understandable." – I.11

#### » The right to interpretation and communication support

"It all really depends on the investigator. I think that there are cases when relatives are involved but they also avoid such things, because they think that maybe a stranger will have some influence here." – I.11

03 Criminal justice professionals' experiences

"The process is the same, except that immediately for such a person (despite the fact that possibly they do not want a defender), it is necessary to appoint a defender for such a person." – I.3

"In other words, it doesn't actually exist, we communicate like ordinary people." - I.1

### Attitudes and trainning / awareness

"I think that there are no guidelines. I think that many people don't really understand the terms you use with 'intellectual disabilities' and the like, because for them it's not an essential matter if it's not related to the understanding of criminal actions themselves." – I.11

"This is purely my personal opinion, but maybe I say this because my specifics was dealing with crimes of a sexual nature, namely sexual exploitation of children. In my opinion, when it comes to those individuals [persons with disabilities], we tend to immediately prosecute them, as if they have done something that is bad, but it may not necessarily be the case." – I.3

### **Positive practices**

"In principle, I can only be happy that, at least recently, the criminal process is very strongly focused on the protection of the rights of all individuals, both victims and suspects, many safeguards are certainly provided. (...) The law obliges really a lot of safeguards. Recent legislative changes and improvements have included that individuals are informed of their rights as soon as an arrest occurs or when they encounter an officer, whether it is a police patrol or pre-trial investigator. The prosecutor must immediately explain their rights to the person, we even have a mountain of leaflets and they are usually handed out all the time." – I.3

03 Criminal justice professionals' experiences

"Yes, we require a protocol and a personal explanation of rights for both witnesses and suspects, and they are explained often enough, sometimes even too much. I would say that because every time the rights are explained, I don't see a problem. (...) the case law also says what concerns the interpretation of rights, that it is not only necessary to explain formally, but also in reality, so that the person understands it." – I.11

"It's getting better little by little. Those psychologists have completed their specialisations and are already starting to work in courts. I really liked the interviews of the psychologists, very fine, everything is very good with them. (...) But I also know that judges are already specialised, and the prosecutors, who have seen the interviews, are specialised, it is good with them" – I.11

### **Main recommendations**

The interviewed criminal justice professionals focused their recommendations for improvements mostly on the need for more specialised training, general awareness raising and changes in negative attitudes; the development of more alternatives to imprisonment; more priority to be given to rehabilitation and resocialisation following deprivation of liberty and serving sentences; and fostering inter-sectoral collaboration.

"I would think that people with disabilities should be given more attention here. For example, recently, we give more attention to women in cases of domestic violence. I think, for these individuals with disabilities we should also pay more attention, because so far, I have not seen that these people would somehow get more help." – I.1

"Well, it's a completely different approach, I would like it to be similar here [like in Scandinavia]. We have to move in that direction, not east but west." – I.1

"Is should be focused not only on punishment and sentencing, but also on providing that help so that in the future we don't keep them in prisons forever, right? And when they leave, it's natural, a lot of people say that other factors arise where both living and being able to reintegrate into society is difficult. (...) In prisons, they say if they leave, they won't know how to live." – I.3

03 Criminal justice professionals' experiences

"Training is always very good. Even if you have heard something before, you hear it again, repetition is the mother of science. It is really very good and I really think it would be useful. Perhaps, for the officers to undergo training about communicating with persons who are in that mental state, who are perhaps psychotic at the time, who have a certain or long-term mental health condition. (...) Training should be given about how to recognise such a person, how to communicate with them properly, what tactics to choose for communication, so that you can calm them down or just provide help to them at that time, so that they could survive that mental state and then be able to participate." – I.3

"I would say, evaluating cooperation among various institutions and various non-governmental organizations at the same time. Help centres, help is complex, it could certainly be provided." – I.3

"Both in the public space and those social advertisements, increase the knowledge about these troubles of people. There will never be too much education. (...) We need to talk about sensitive things. It is necessary to talk so that those who have not encountered it, at least hear about it from somewhere and know that it does happen. Where can one go to get help, what should be done in such a case and, of course, apparently, another aspect is that there should be enough specialists for the state, who are able to help with these problems, because really there is a lack of psychiatrists and psychologists of such specialisation. (...) And well, as I have already mentioned, it would be necessary to put a lot of effort into properly training specialists who are suitable enough, so that there are many of them, so that the help is really available." – I.3

"It's one thing with psychosocial disability and intellectual disability. The situation here is such that criminal justice officers do not understand these concepts themselves and they do not think that it can be important. At this point it should be considered after identifying behavioural problems during their communication. When the investigator can immediately sense that there is a difficult communication, when they cannot describe the circumstances in detail and coherently, cannot understand things. They should use a local person to help relieve the tension, either psychologists or some other trained persons could do it. But then the legislations should also be looked at because it is some kind of outsider in the investigation and there is the question of who is responsible and so on. Although it could also, for example, be for communication before or after the interview. But again, it poses very big challenges, so that the person is neither influenced nor formed an opinion." – I.11

# 04 Support services and other professionals' experiences



Semi-structured interviews with support staff and other professionals revealed quite a few challenges in the justice system concerning the situation of defendants with mental health conditions, psychosocial and/or intellectual disabilities. Firstly, the lack of priority given to such cases and lack of statistical data collection about persons with disabilities in the system is significant.

Research participants also talked about the right of defendants with disabilities to accessible information regularly being violated; general communication difficulties; negative attitudes, stereotypes and stigma; the non-existence of the concept of a 'vulnerable person' or 'vulnerability' in legislation and practice; distribution of funds in the justice system being geared mostly towards improvements of infrastructure and not so much on human resources and increasing competences of professionals; the lack of effective resocialisation programmes; and the use of outdated practices and terminology that is sometimes derogatory.

Please see selected quotes from semi-structured interviews below.

### Experiences, challenges and areas of improvement identified

"So to speak, one should start with the fact that in our criminal justice system, in our entire system, it is not statistically some kind of big problem. I say that statistically, there is really a very small number of such cases. (...) Maybe in Lithuania this problem is not paid more attention because the number of cases is small." – I.2

04 Support services and other professionals' experiences

"It is all justified there, for example, not getting a trip after the death of a loved one. It is not too expensive to escort someone who submitted the request, it is such an injustice that they experience, we constantly hear about it." – I.4

"The Code of Criminal Procedure doesn't even use the term "vulnerable participants in the criminal procedure". There is no such term in the Code, we don't even have such a term at all. (...) We defined 'a minor' and specified the criteria, but there are many parallels in the criminal process. Namely, when talking about vulnerable persons with disabilities, with mental, intellectual disabilities. The meaning of this condition is that the model of the criminal process is very similar to that of a minor." – I.2

### **Procedural accommodations**

#### » Accessible information

"It is that so-called Letter of Rights as we it. (...) It could be presented in an understandable language and for such a person, for example, a person with intellectual disabilities." – I.2

"I think they don't have any accessible information at all, (...) in reality, we know how complicated the legal documents are." – I.4

"Well, they are informed, but is it considered that not all persons can understand that information properly (...). For example, I don't know about the refusal to testify here. (...) I would think that maybe a good choice of a term is that it is 'implemented mechanically', because the Code of Criminal Procedure itself does not break it down somehow, there are simply suspects and others in a general sense, and only the minor suspects are singled out." – I.13

#### » Support services

"There is no such thing as being singled out, and vulnerability is not perceived very much." - I.4

04 Support services and other professionals' experiences

"It is even possible to simply open the Code of Criminal Procedure. We have nothing in the sense of a concept of a 'vulnerable person', there is no concept of a vulnerable person in general." – I.13

"Those people who have, let's say, a mild intellectual disability, it is difficult to identify them, to recognise them." – I.2

"Yes, I see it as a problem indeed. As described by such people, it is even hopelessness, because the system is inoperative. Sometimes there are people who see that specific help is needed and we don't have it for them either. Yes, this is a big problem, but how to solve it?" – I.4

"That's why, I think that their rights are more violated. Then I really have complaints saying that it is very difficult to get to see a psychiatrist in correctional facilities, in prisons, while serving a sentence, because somehow, they don't pay attention there, and I've certainly heard more than once, that you have to injure yourself, to hurt yourself in order for you to see a psychiatrist. (...) For example, they run out of medication, they do not receive treatment. When they don't get a visit, then they hurt themselves, so they can automatically go to a psychiatrist. Then you get medicine." – I.4

### **Distribution of funds**

"Well, it seems to me that more is always allocated to reorganisation, buildings, but not to the quality itself, in terms of employment or improving services, accessibility for convicts, this seems very disproportionate to me. I would say there is 80 vs. 20 percent. (...) I am not saying that there is no need to improve the premises, but it is very sad that the later is not covered. (...) There are funds, but their distribution, it seems to me, is wrong." – I.4



04 Support services and other professionals' experiences

#### Awareness and attitude

"Call it that he's a danger to public, that he's threatening you, that he's verbally inadequate, but I say he's not. It's just a person who can't live alone. If someone were to appear, whom we would appoint to be responsible, someone would take it on, (...) like personal assistants (...). But it should be 24/7 care for that person. I would see, I would absolutely see, that he could live in society. Instead, there is this interpretation as if he is literally every kind of criminal." – I.4

"The novelty of terms in our country is difficult (...). Specifically, in the criminal process, in criminal cases (...), we have to see elementary things in this area. The terminology issues are not sorted out in the Code of Criminal Procedure. First of all, a lot of things have been written a long time ago, and myself I now teach a lot that you cannot say disabled [Lt. *neigalus*]. Let's talk about 'a person with a disability'. Well, let's start with that. And the fact that we have translated the Convention on the Rights of Persons with Disabilities badly and titled it the wrong way. (...) This is a confusion of terminology in our legal system. This is very important here, because in the Code of Criminal Procedure, (...) we still have 'mental deficiencies' [Lt. *psichiniai trūkumai*]. It doesn't change the essence of the practice of ensuring rights but at the same time, changing the wording changes the attitudes towards it. It is very important." – 1.2

"And this is also very interesting that we consider a person from paper. It's very strange to me. (...) This is my experience and I cannot say that this is the case in the whole of Lithuania. I have attended hearings in all the correctional facilities, but in neither of them have I seen the defendants being present. There are such strange nuances, there is a lot of paperwork and the absence of people. Also, a lack of communication between institutions, well, I think that's probably where the feeling of injustice comes from for them as well." – I.4

"What does the specific form of criminal procedure mean, which was transferred from the Soviet code. Everything was 'copy-paste' moved and it wasn't changed much (...). We do not have any significant changes in the legal regulation. (...) it's a pity that those problems remain the same for many years." – I.2

"This is such an elementary literacy and somehow, I would think that if we recognised them better, we would understand them better. Then that help would reach them in a completely different way, because it is definitely not the category of people (...) who will come to look for help themselves. (...) Most likely, we have to go towards them and spot them." – I.4

04 Support services and other professionals' experiences

"This kind of stereotypical assessment appears. (...) What is wrong with that person? (...) How does that stereotype play into it? At some point, it's probably immediately upon encountering the person that you immediately have a preconceived notion. And how does it manifest itself? Well, it's negative. (...) You pay attention only to some negative things in order to confirm your belief." – I.13

"And in fact, we have no knowledge or very minimal knowledge of how to work with people with psychosocial disabilities. In fact, it is all down to self-education and interest." – I.4

### **Positive practices**

"And now we can say that the topic does not lose its relevance, on the contrary, society and communities are changing. The approach to disabilities and inclusion of society... Of course, it requires fulfilment of obligations assumed by the state, let's say, the Convention on the Rights of Persons with Disabilities and the like." – I.2

"I can say that the revolution has taken place in the judicial practice in this process because since 2020, these have appeared one after another. The decision[11] of the Lithuanian Supreme Court on the process of application of compulsory medical measures; there it was very clearly emphasised that gap in the legal regulation regarding the participation of such a person in this process. That it is not enough to rely solely on the opinion of an expert. It is the judge, who has all the comprehensive information, making the decision to invite (or not) the person to participate in the process." – I.2

"It is known that those decisions were influenced by the lost cases at the European Court of Human Rights. And quite a few of those also showed that the attitudes are also changing." – I.2

"Services of a psychologist are more available, there are more and more of them, and they are becoming more and more available when serving a prison sentence, which is very much appreciated." – I.4

"If you talk about those rights and the like, there are not so many so-called legal regulation problems. Probably mainly it is focused on implementation problems (...) to make the criminal justice process accessible." – I.2

04 Support services and other professionals' experiences

### **Main recommendations**

Here, main recommendations included using the best practice examples from other countries to improve the system in Lithuania. Also, to ensure more specialised, regular and mandatory trainings to professionals working in the justice system.

"Such things like clarifying the rights of the suspect and clarifying the rights of the prosecution, for example, can be done." – I.2

"As an example, is what they have in Great Britain. There are both legal acts and recommendations, guidelines. And they call that 'vulnerability'. (...) Well, I can just give you an example that is closest to my area of interest. For example, in Great Britain, the suspect is informed of their rights and the procedure before questioning, and there is just like a script, how it should be said verbally and those rights are explained. Not only are they explained but then they ask whether the person being interviewed actually understood it. And if that person says that they understood, it is still not enough. The officer must also make sure that the suspect really understood the meaning, because it is also known that individuals are vulnerable and they tend to be more responsive as needed, they might say what they think that you may to hear. For example, (...) the officer asks for them to say it back in their own words what they just heard. We don't really have those things yet. This here is as an example of good practice." – I.13

"A very good example is what was done in the Code of Criminal Procedure concerning minors interviewed by the judge of pre-trial investigation. The questioning is conducted by a child psychologist who knows how to communicate with the child, and the judge simply prepares those questions and discusses them with the psychologist. (...) In the same way and in such a case, an adult person could be explained by a specialist. (...) It is easier for them to present common rights in a simpler language, perhaps even in such a way that it would really help certain people." – I.2

"Well, training and training again, but plus those trainings must be based on science. (...) I often see that the knowledge of some colleagues is outdated, so here I am talking about the same thing again. (...) I would think that many people may not even know about the Convention in that sense. (...) The first thing is that the proper training of professionals must be ensured." – I.13

04 Support services and other professionals' experiences

"Well, training and training again, but plus those trainings must be based on science. (...) I often see that the knowledge of some colleagues is outdated, so here I am talking about the same thing again. (...) I would think that many people may not even know about the Convention in that sense. (...) The first thing is that the proper training of professionals must be ensured." – I.13

"And then, you know, we don't know anything, we are so illiterate in this area. I would think, first of all, let's start by talking about it to sensitise the public and then things will come in all areas bit by bit. Just the first reaction is always harsh, especially when it comes to all kinds of crimes. If we don't know it, we are insensitive, that's a big deal. We write off the subjects. The sign of stigma is put on very quickly and that's it." – I.4

"There are trainings or not, but the question is – are they mandatory for everyone? Or are they just like that – you have passed the trainings and that's it, or not? After completing the course, what's next? Is there some kind of a system that those who have completed that course have to update their knowledge later or not? Maybe the test to pass those things. Currently, here everything seems to me to be based on how much the individual professionals themselves are motivated to acquire that knowledge or use it." – I.13

"PERSONS WITH DISABILITIES ARE INDIVIDUALS
WITH LONG-TERM PHYSICAL, MENTAL,
INTELLECTUAL OR SENSORY IMPAIRMENTS
WHICH IN INTERACTION WITH VARIOUS
BARRIERS MAY HINDER THEIR FULL AND
EFFECTIVE PARTICIPATION IN SOCIETY"

Article 1 of the UN CRPD

### 01 Conclusions

The general aim of this national briefing paper was to provide an overview of the main national barriers and good practices to overcome the main gaps regarding access to justice and provision of procedural accommodations to defendants with mental health conditions, psychosocial and/or intellectual disabilities in Lithuania. The study was based, among others, on 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.

In civil law, legal incapacity is usually determined exclusively in cases of mental health conditions and can be declared permanently. Therefore, a decision to declare a person incapacitated in Lithuania may condemn them for life.

In the criminal justice system, apart from the limitations outlined in Article 471 of the Criminal Procedure Code, the court must require the person's outpatient psychiatric examination when considering whether to recognise their restricted competence in particular areas and when using medical measures. A person can only be subject to an inpatient forensic psychiatric evaluation when the court is considering whether to declare them incapable. This means that an inpatient forensic psychiatric examination cannot be assigned if the case involves the recognition of a limited capacity in some areas, but the court does not find that the person cannot understand the meaning of their actions in that area or manage them because of a mental health condition.

66

"IT IS REALLY ABOUT THE HUMANISATION OF THE JUSTICE SYSTEM ITSELF AND MAKING IT ACCESSIBLE FOR ALL."

Gábor Gombos, former member of the United Nations Committee on the Rights of Persons with Disabilities

Despite the fact that Article 14 of the CRPD prohibits the restriction of freedom based on disability, there are some circumstances in Lithuania where access to justice and full participation in the criminal proceedings can be limited by law for people with mental health conditions, intellectual and/or psychosocial disabilities.

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

Besides translation, interpretation and mandatory participation of an attorney, no formal provisions regarding the procedural accommodations exist within the criminal justice system in Lithuania. In practice, procedural measures are left to the discretion of judges, prosecutors, and other criminal justice professionals. For example, although disability issues are not directly referenced in the Code of Ethics for Judges of the Republic of Lithuania or supporting documents, in the most recent Court Practice Bulletin (No. 55, 2021 January-June) by the Supreme Court of Lithuania, information is provided about the treatment of persons with disabilities.

From the information obtained during semi-structured interviews, the current situation causes challenges for the defendants with mental health conditions, intellectual and/or psychosocial disabilities, such as, not being able to fully understand the proceedings and implications they have on individual rights. Whilst some criminal justice professionals are aware of the best international practices in the area, nevertheless, the lack of legal regulations and official guidelines causes reluctance in applying procedural accommodations as their effect on legal proceedings is unclear and could in theory be used as evidence of mistrial.

**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.

Most research participants spoke about legal notices being provided in a timely manner, however, there is a clear lack of accessible measures, easy-to-understand formats and of certain specialist communication skills on the part of criminal justice professionals. As with Principle 3, only interpreter responsibilities are outlined in the Criminal Procedure Code of the Republic of Lithuania with no specific references made to adjustments needed when interpreting for persons with disabilities. In

addition, the generally low quality of legal aid provided by the public sector's lawyers has been highlighted by most of the participants during the semi-structured interviews.

**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.

As previously noted, it is left largely to the discretion of judges and prosecutors to determine if the defendant requires procedural accommodations and if the safeguards have been met. This is subjective because it is based on the knowledge and experience of the specific criminal justice professional. If an individual is deemed to be either fully or partially irresponsible for the crime or develops a mental health condition that impairs their ability to comprehend or regulate their actions after committing a criminal act, then the legal proceedings will involve the enforcing of medical treatment measures.

This can happen during the pre-trial investigation or in court and a person can only be sent for a forensic psychiatric evaluation if there is enough evidence to prove that they have committed the specific crime that is being investigated and that is prohibited by the criminal law. Once the forensic psychiatric evaluation has been concluded, according to the Code of Criminal Procedure, neither the court nor the public prosecutor is required to inform the person in question about the expert's report or the referral of the case to trial. However, the judge is obligated to inform the person's legal representatives, family members, or next-of-kin, as well as the defence and the public prosecutor.

The court decides which particular medical measures are applicable to an individual who has committed a crime. This decision is based on an evaluation of the level of dangerousness of the act committed, the person's level of dangerousness as an individual, and the findings and recommendations provided in the psychiatric examination.

The discussion of the above process during the semi-structured interviews with individuals who have mental health conditions, intellectual and/or psychosocial disabilities and are currently subject to compulsory medical measures revealed that the absence of proper procedural safeguards and accommodations creates a sense of helplessness and inability to participate during the decision-making processes. This is inconsistent with due process and the European Commission's recommendations on procedural guarantees for vulnerable persons.

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

The Code of Criminal Procedure of the Republic of Lithuania outlines 10 situations where having a lawyer is compulsory, and in those instances, legal aid is granted to suspects or accused individuals regardless of their financial status. For instance, those with disabilities are considered vulnerable and required to have legal representation in the interests of justice. In addition, the Code of Criminal Procedure sets out extra protections for vulnerable persons by mandating the presence of a lawyer for individuals who are unable to exercise their right to defend themselves due to 'physical or mental disabilities'. The court and police officers are not allowed to disregard the right to legal counsel, even if the individual waives this right.

However, semi-structured interviews highlighted issues concerning the quality of state guaranteed legal aid and allocation of lawyers. Research participants indicated that they were given insufficient time to communicate with their appointed lawyers before, during, and after their trial. Additionally, they experienced inconsistencies in assistance due to different lawyers attending each review meeting for the compulsory medical measures.

**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.

In 2010, the Lithuanian police organised "Communicating with Victims" training which included the topic of disability discrimination. Fifteen seminars were held, with 223 police officers participating. Additionally, 110 more officials participated in the 8 seminars organised in 2011. Currently, 50 court volunteers have undergone training on effective communication with vulnerable visitors. No information could be found about systemic trainings that may have occurred more recently, apart from some project-based efforts by human rights NGOs.

The Prosecutor General's Office confirmed that training for prosecutors on various topics is ongoing. However, qualitative research revealed that many prosecutors lack the necessary skills or knowledge on how to communicate with individuals with intellectual and/or psychosocial disabilities, nor do they possess knowledge on the procedural safeguards and accommodations recommended by the European Commission.

In 2021, 33 judges and 6 assistant judges participated in the "Mental Health Literacy" training organised by the Lithuanian National Courts Administration, while 25 judges took part in a seminar in 2022 focused on "Vulnerable Litigants". NGO Mental Health Perspectives delivered training to 60 judges and assistant judges in 2022 titled "Vulnerable Participants of the Criminal Justice Process: Ensuring Interests in Court and Effective Communication". These training sessions covered a variety of topics, including mental health conditions, social and human rights models of disability, crisis management, communication skills, de-escalation techniques, and supported decision-making models.

Despite these efforts, it is evident from the interviews with the criminal justice professionals that more awareness-raising and training programmes are needed to ensure timely recognition of special needs and implementation of procedural accommodations for individuals with disabilities. These training programs need to be delivered regularly to ensure that new employees are included and that the knowledge of current professionals remains up to date.



### **02 Recommendations**

The final aim of this national briefing paper was 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.

### Recommendations for governmental institutions

- 1. In order to adhere to the provisions of Article 1 of the UN Convention on the Rights of Persons with Disabilities, it is imperative to undertake a thorough review and modification of all current legal definitions of disability. It is necessary to eliminate the use of the outdated and discriminatory term of "mental deficiencies" (Lt. psichiniai trūkumai) in relevant sections of the Code of Criminal Procedure, including Articles 51, 52, 79, 200, 312, 316, 367, and 368. In addition, all legislation relating to persons with disabilities must be reviewed and amended to remove any language that is discriminatory and to ensure that it conforms with the UN CRPD Committee's recommendations by using language that is consistent with international standards and upholds the dignity of persons with disabilities.
- 2. The Code of Criminal Procedure currently does not allow for individuals who have been subjected to compulsory medical measures to seek a review of the decision or to have the measures revoked. It is recommended that the law is amended to provide for such rights and ensure that individuals can exercise them.
- 3. It is important to include the healthcare needs of detained persons with mental health conditions, intellectual and/or psychosocial disabilities in public health policies and plans. This includes adequately supporting prison health services to meet the requirements of those who need treatment for their physical and mental health.
- 4. In order to provide better support mechanisms for individuals with disabilities, it is recommended that the definition and role of support persons be expanded in relevant regulations. This will provide clarity for the criminal justice professionals regarding the role of the support persons within the process and ensure that individuals have adequate support and assistance to fully participate in criminal proceedings.

- 5. The State Guaranteed Legal Aid Service should improve the quality of legal aid provided to the most vulnerable individuals. This can be achieved by implementing best international practices and providing training on the recognition of disabilities, effective communication, and available accessibility measures.
- 6. The Letter of Rights (Lt. teisių išaiškinimo protokolas) should be updated to ensure that information is presented in a manner that can be easily understood by individuals with disabilities. This may include providing information in an Easy-to-Read format or Braille.
- When allocating funds, there is a need to distribute them in a manner that takes into consideration the needs of individuals with mental health conditions, intellectual and/or psychosocial disabilities and improves their access to necessary services and supports. This can be achieved by considering international standards, best practises, and consulting relevant stakeholders.
- 7. When allocating funds, there is a need to distribute them in a manner that takes into consideration the needs of individuals with mental health conditions, intellectual and/or psychosocial disabilities and improves their access to necessary services and supports. This can be achieved by considering international standards, best practises, and consulting relevant stakeholders.
- 8. It is important to review the current process for exchanging medical records to establish a clear system for passing on of information as individuals move through the criminal justice system. This would help to minimise the risk of errors and ensure that individuals receive appropriate care and access to medication at different stages of the criminal process.
- 9. Introducing sentencing alternatives for offenders with mental health conditions, intellectual and/or psychosocial disabilities who have committed more serious crimes, which incorporate comprehensive medical care and supervision, is recommended. This would ensure that these individuals receive appropriate treatment while also being held accountable for their actions.

### Recommendations for the judiciary and criminal justice institutions

- 1. It is important to ensure that criminal justice professionals working in courts and detention centres receive sufficient training and knowledge for identifying and communicating with individuals with mental health conditions, intellectual and/or psychosocial disabilities. This is especially relevant for police officers who are often the first responders in cases of individuals experiencing a mental health crisis.
- 2. A procedure should be put in place for identifying, evaluating, and providing necessary individual support for vulnerable individuals who are accused, detained, or sentenced for a crime. This should include individuals with mental health conditions, intellectual and/or psychosocial disabilities. The procedure should cover the entire process from recognition to assessment and provision of necessary supports.
- 3. Police officers and court volunteers should be educated on how to explain legal rights and responsibilities to individuals with intellectual and/or psychosocial disabilities in alternative formats, to ensure that they fully understand the criminal process and their rights. This should include posing additional questions to confirm the person's understanding. For example, instead of asking 'Do you understand your rights?', ask open questions to establish the person's comprehension. This role should be separate from the officers conducting interviews to avoid any conflict of interest.
- 4. Systemic collection of disaggregated data on individuals with mental health conditions and disabilities who are suspects, accused, detained, or sentenced is necessary to better understand the prevalence and needs of this population in the criminal justice system.
- 5. In order to ensure that defendants with mental health conditions, intellectual and/or psychosocial disabilities receive adequate care and support, it is crucial to conduct regular assessments of the quality of mental health services provided in detention centres and evaluation centres. It is recommended to establish an independent monitoring mechanism that reports to overseeing institutions to ensure accountability and transparency. Such assessments can help to identify areas that need improvement and ensure that defendants with disabilities receive proper care and support. The regular assessments and reporting mechanisms would also help to reduce stigmatisation and increase awareness among criminal justice professionals, the general population, and families of defendants.

- 6. Guidelines supported by evidence should be issued to criminal justice professionals to reduce stigma and fear of acting wrongly towards individuals with mental health conditions, intellectual and/or psychosocial disabilities.
- 7. A channel for inquiries from criminal justice professionals should be established to ensure that they have access to information and support when working with defendants with mental health conditions, intellectual and/or psychosocial disabilities.

### Recommendations for criminal justice professionals

- 1. Defendants with mental health conditions, intellectual and/or psychosocial disabilities should be proactively engaged to provide them with information about their legal options and the support available to them. This should include providing information in accessible formats, such as Easy-to-Read or Braille.
- 2. Issues related to the treatment and care of defendants with mental health conditions, intellectual and/or psychosocial disabilities should be reported to appropriate authorities or oversight bodies to ensure accountability and transparency.
- 3. When making strategic decisions about resource allocation, consideration should be given to the needs and procedural accommodations required for defendants with mental health conditions, intellectual and/or psychosocial disabilities, as well as other vulnerable individuals.
- 4. Before implementing new policies or procedures, risk assessments should be conducted to identify and address any potential risks or challenges they could impose on individuals with mental health conditions, intellectual and/or psychosocial disabilities.
- 5. Close and regular collaboration with civil society organisations, human rights and disability NGOs can help to design and implement quality programs suitable for the needs of individuals with mental health conditions, intellectual, psychosocial and/or other disabilities.

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# ANNEXES

# ANNEXES Annex 1 - Profile of the interviewees

No.	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
l.1	LT/J/M/01	Prosecutor	Male	58	1:01:09	30	Online	
1.2	LT/L/F/02	Lawyer, Researcher	Female	47	56:48		Online	
1.3	LT/P/F/03	Police, pre- trial investigator	Female	43	50:00		Online	
1.4	LT/S/F/04	Social Worker	Female	43	41:54	2	Online	
1.5	LT/DPS/F /05	Person with a psychosocial disability	Female	21	35:23	3	In-person	Defendant and experience of compulsory treatment
I.6	LT/DPS/F /06	Person with a psychosocial disability	Female	33	17:33	1	In-person	Defendant and experience of compulsory treatment
1.7	LT/DI/M/0 7	Person with an intellectual disability	Male	46	22:30	25	In-person	Defendant and experience of compulsory treatment

### **ANNEXES**

### Annex 1 - Profile of the interviewees

No.	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
1.8	LT/DPS/ M/08	Person with a psychosocial disability	Male	47	20:06	25	In-person	Defendant and experience of compulsory treatment
1.9	LT/DPS/ M/09	Person with a psychosocial disability	Male	36	37:19	10	In-person	Defendant and experience of compulsory treatment
l.10	LT/DI/M/1 0	Person with an intellectual disability	Male	58	22:09	3	In-person	Defendant and experience of compulsory treatment
l.11	LT/L/M/11	Attorney	Male	39	56:54		Online	
l.12	LT/J/M/12	Judge	Male	47	34:36		Online	
l.13	LT/S/M/1 3	Legal psychologist	Male	38	54:34		Online	

<sup>\*</sup> 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.

# ANNEXES Annex 2: Results of the analysis of patterns in interviews

Themes	l.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	I.10	l.11	l.12	I.13
Coded segments	24	46	34	48	37	8	4	17	36	12	37	14	26
A sense of injustice				х							x		
Absence of procedural accommodations		x									X	x	x
Absence of the concept of a 'vulnerable person'		X		X									X
Challenges with identification/ assessment of individual needs		X	x	x	x			x	X		x		x
Communication challenges	x	x	x		x			x	x		x	х	x
Equal treatment of all suspects and defendants		x	x	x	x			x					x
Geographical differences across the country	x			Х									
Implementation problems		x											
Issues concerning legal capacity		x											
Judgmental attitudes based on stereotypes and stigma		x	x	x					x				x
Lack of alternatives to imprisonment and resocialisation	x		x	х					x	x			
Lack of in-person contact and participation	x	x		x	X	x		x	x	x		X	
Lack of inter-sectoral collaboration	x	x	x	x									x
Lack of knowledge about communication aid		х										х	x

# ANNEXES Annex 2: Results of the analysis of patterns in interviews

Themes	l.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	I.10	l.11	l.12	I.13
Coded segments	24	46	34	48	37	8	4	17	36	12	37	14	26
Lack of specialised knowledge and training	X	x	X	x	x				X		X	x	x
Lack of statistical data	x	x										x	
Outdated terminology and practices	x	x	x	x							x		
Participation of a psychologist			x	x	x	x				х	x	x	x
Personal experiences of defendants					x				x	х			
Positive practices	x	x	x	x	x	x	x	x	x	x	x	x	
Recommendations for improvement	x	x	x	x	x						x		x
Shortage of human resources I Distribution of funds	x		x	x							x		
The human factor	x		x	x							x		
Varied quality of legal aid and representation	x	x			x		x	х	х	x	x		
Challenges concerning the right to information		x	x	x	x	x		х	x	x	x		x
Physical punishment, pressure, inhumane treatment of defendants				X	X			x	X		X		

ANNEXES
Annex 3: Letter of Rights

APPROVED

Order by the Prosecutor General of the Republic of Lithuania Ref. No. I-288

Date: 2014-12-29

(Edition of the Order by the Prosecutor General of the Republic of Lithuania Ref.

No. I-107 Date: 2020-04-28)

### ANNEX TO THE RECORD OF NOTIFICATION OF THE RIGHTS OF THE SUSPECTED PERSON

As provided for in Article 21 paragraph 4 of the Code of Criminal Procedure of the Republic of Lithuania the suspected person shall have the following rights:

### 1. Receive information on the status of criminal proceedings involving him/her and to be informed about the suspicion against him/her.

The suspected person shall have the right to be notified, urgently, thoroughly and in the language he/she speaks or understands, about the nature of and grounds for the suspicions brought against him/her.

The notification of suspicion, the decision to recognise the person as the suspected person passed by a pre-trial investigation officer or a prosecutor, or the order to recognise the person as the suspected person rendered by a pre-trial judge must specify the criminal offence (place, time and other circumstances of commission of the offence) and the criminal law, which defines the said criminal offence, as well as the rights of the suspected person.

The new notification of suspicion must be served only if the essence of the suspicion has changed.

#### 2. A right of access to a lawyer from the moment of detention or first interrogation.

The suspected person shall have the right to defend himself/herself in person or through a defence counsel of his/her own choice. This right shall be guaranteed from the moment of detention or first interrogation. In the event the suspected person does not have sufficient means to pay for legal assistance, he/she shall be provided it free of charge in accordance with the procedure laid down in the law regulating provision of legal aid guaranteed by the State.

The detained or arrested suspect shall have the right to meet his/her defence counsel in private. The number and duration of meetings between the suspected person and his/her defence counsel shall not be limited during the working hours of temporary detention or arrest facilities.

#### 3. A right to interpretation and translation.

Criminal proceedings in the Republic of Lithuania are conducted in the state language.

The suspected person, who does not speak or understand the Lithuanian language, shall have the right to make statements, bear testimony and give explanations, submit applications and complaints, and to speak in court using his/her native language or any other language that he/she speaks or understands. In all the above mentioned cases, including in the event of being granted access to the case material, the suspected person shall ave the right to be provided with interpretation services in the procedure laid down in the Code of Criminal Procedure.

The case documents, which must be served upon the suspected person in the procedure laid down in laws, shall



### Annex 3: Letter of Rights

be translated into the native language of the suspected person or into any other language that he/she speaks or understands.

#### 4. A right to have consular authorities and one person informed.

Following the detention or arrest of the suspected person, the pre-trial investigation officer or the prosecutor, who has detained him/her, or the prosecutor who has attended the procedure of imposing arrest upon him/her must usually notify one of the family members or close relatives named by the suspected person. If the suspected person does not name any persons, but wishes that notification be given about his/her detention or arrest, the pre-trial investigation officer or the prosecutor must notify, at his/her own discretion, one of the family members or close relatives of the suspected person, if such a person is identified. If the suspected person wishes to notify about his/her detention or arrest any other person, who is not the family member or the close relative, the pre-trial investigation officer or the prosecutor shall notify such a person only if, in the opinion of the pre-trial investigation officer or the prosecutor, this shall not prejudice the success of the pre-trial investigation.

The pre-trial investigation officer or the prosecutor may refuse to notify, if the suspected person presents a well-reasoned explanation that such a notification may endanger safety of his/her family members, close relatives or any other person.

The suspected person must be provided with a possibility to notify his/her family members or close relatives about his/her detention or arrest personally.

Following the detention or arrest of a foreign national, the pre-trial investigation officer or the prosecutor, who has detained him/her, or the prosecutor who has attended the procedure of imposing arrest upon him/her, shall immediately notify the Ministry of Foreign Affairs of the Republic of Lithuania and, if the detained or arrested suspect wishes, the diplomatic representation or consular authority of his/her state.

#### 5. A right of access to urgent medical assistance.

Restriction of the suspected person's liberty or movement may not cause artificial barriers for the suspected person to receive immediate medical assistance in the general procedure. Immediate medical assistance shall be provided irrespective of the suspected person's nationality.

Immediate medical assistance shall be provided to the suspected person, who is detained or held under arrest, in the procedure laid down in the legal acts, which regulate the activities of detention or arrest facilities.

### 6. A right to know the maximum term in hours or days he/she may be deprived of liberty before being brought before a judicial authority.

The maximum term of temporary detention is 48 hours. This term shall be calculated from the moment of the actual detention of the person at the place of commission of the offence or at any other place.

The maximum term of detention is 18 months (12 months, when the suspected person is a minor). The term of detention may be imposed and later extended for no longer than the period of 3 months.

The term of detention, when the case has been referred to court, shall not be limited.

### 7. A right to testify, to remain silent and/or refuse to testify on the criminal offence allegedly committed by himself/herself.

Making a testimony is the right but not the obligation of the suspected person. If the suspected person decides to make a testimony he/she shall have the right not to answer certain specific questions.



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#### 8. A right to submit documents and items relevant to the investigation.

The suspected person shall have the right to submit, on his/her own initiative, the items and documents, which are relevant for the investigation or hearing of the case, to the pre-trial investigation officer, the prosecutor or the court, or, on the grounds laid down in the Code of Criminal Procedure, to file a request to the pre-trial investigation officer or the prosecutor and demand that such items and documents be obtained.

#### 9. A right to submit requests.

The suspected person shall have the right to submit requests related with the pre-trial investigation to the pre-trial investigation officer, the prosecutor or the pre-trial judge. Such requests shall be examined, based on competence, in the procedure and within the terms laid down in the Code of Criminal Procedure and other legal acts.

### 10. A right to make challenges.

The suspected person shall have the right to raise an objection to the pre-trial investigation officer, prosecutor, pre-trial judge, lawyer, assistant lawyer, translator/interpreter, expert and specialist on the ground and in the procedure laid down in the Code of Criminal Procedure.

The objection shall be made and reasoned in writing.

An objection to the translator/interpreter, expert or specialist shall be decided upon by a pre-trial investigation officer or prosecutor, who is conducting the pre-trial investigation. An objection to the pre-trial investigation officer shall be decided upon by a prosecutor. An objection to the prosecutor, lawyer and assistant lawyer shall be decided upon by a pre-trial judge. An objection to the pre-trial judge shall be decided upon by the Chairman of the District Court.

#### 11. A right to have access to the material of the pre-trial investigation case.

investigation is completed and the act of indictment is being drawn up.

At any time during the pre-trial investigation the suspected person and his/her defence counsel shall have the right to have access to the data of the pre-trial investigation case, except the data of the parties to the proceedings, which are kept separately from the material of the pre-trial investigation case, and to make copies of or extracts from the material of the pre-trial investigation case.

A written request to have access to the material of the pre-trial investigation case or to make copies of or extracts from the material of the pre-trial investigation case shall be submitted to the prosecutor. The prosecutor shall have the right to disallow to have access to all the data of the pre-trial investigation case or any part thereof, and to disallow to make copies of or extracts from the material of the pre-trial investigation case, if the prosecutor believes that such access would be detrimental to the successful outcome of the pre-trial investigation.

The prosecutor may not disallow access to all the data of the pre-trial investigation case, when the pre-trial

If the suspected person is held in custody, the right to have access to the data of the pre-trial investigation case and to make copies of or extracts from the material of the pre-trial investigation case shall be granted to his/her defence counsel, and in the event of waiver of the defence counsel – to the suspected person.

While having access to the material of the pre-trial investigation case it shall be prohibited to make copies of the material of the pre-trial investigation case, wherein the data describe minor suspects and victims; private life of the parties to the proceedings; criminal acts against freedom of human sexual self-determination and inviolability; are entered in the records of procedural acts and the annexes thereof, when the information was obtained by applying the methods and means of collection of criminal intelligence information in accordance with the



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Republic of Lithuania Law on Criminal Intelligence or by performing covert acts of pre-trial investigation and the prosecutor has exercised the right to have access to the information in accordance with the Code of Criminal Procedure; when the information constitutes the state, service-related, professional or commercial secret. In such cases, making extracts from the material of the pre-trial investigation case shall also be prohibited.

### 12. A right to appeal against the actions and decisions of the pre-trial investigation officer, the prosecutor or the pre-trial judge.

The suspected person shall have the right to appeal against the procedural actions and decisions of the pre-trial investigation officer to the prosecutor, who organises and leads the pre-trial investigation. If the prosecutor dismisses the appeal, his/her decision may be appealed against to a superior prosecutor, and the decision of the superior prosecutor may be appealed against to a pre-trial judge.

The suspected person shall have the right to appeal against the procedural actions and decisions of the prosecutor to a superior prosecutor. If the superior prosecutor dismisses the appeal, his/her decision may be appealed against to a pre-trial judge.

The suspected person shall have the right to appeal against the procedural actions and orders of the pre-trial judge, except the orders that are not subject to appeal, to a superior court in the procedure laid down in the Code of Criminal Procedure