

Enhancing Procedural Safeguards for suspects and accused with intellectual and psychosocial disabilities

Nora KATONA

Ludwig Boltzmann Institute of Fundamental and
Human Rights



OPSIDIANET, 15 December 2020

Dignity at Trial

Project

Dignity at Trial

Dignity at Trial – Enhancing procedural safeguards for suspects with intellectual and psychosocial disabilities (08/2016 – 07/2018)*

**This project was co-funded by the Justice Programme of the European Union*



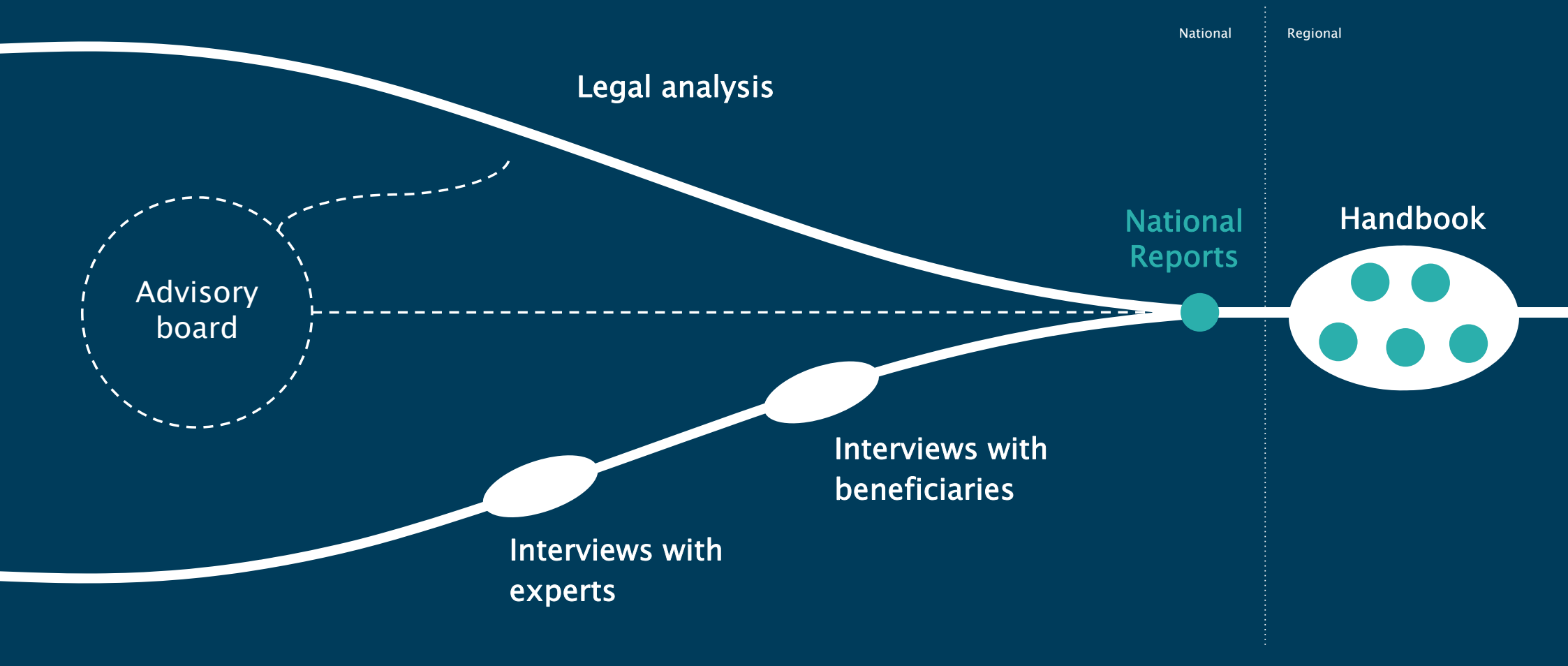
Dignity at Trial

- [EC Recommendation](#) on safeguards for vulnerable persons suspected or accused in criminal proceedings
- Consortium:
 - [Boltzmann Institute of Fundamental and Human Rights](#) (Barbara Linder)
 - [Bulgarian Helsinki Committee](#) in Bulgaria
 - [League of Human Rights](#) in the Czech Republic
 - [Organisation Mental Health Perspectives](#) in Lithuania
 - [Peace Institute](#) in Slovenia

Scope

- **Criminal proceedings:** From the moment a person is suspected of having committed a crime until the conclusion of the proceedings (≠ preventive detention/measures)
- Persons in vulnerable situations who are not able to fully understand and to **effectively participate** in criminal proceedings
 - Adult persons with intellectual and/or psychosocial disabilities

Dignity at Trial- Methodology



Dignity at Trial

Main Findings

General Aspects

- National criminal laws in the light of Recommendation
 - > Directive?
- Terminology, definitions and concepts
 - > suspects in vulnerable situations?
 - > Psychosocial – intellectual disability?
- Lack of training opportunities
 - > examples from Austria

Assessment

- No standardised assessment mechanism or procedures for identification
 - > Checklist
- Practical challenges in identifying intellectual and/or psychosocial disabilities in a timely manner
 - > medical assessment

**ANNEX I:
CHECKLIST: FIRST INDICATIONS FOR A PERSON'S POTENTIAL INTEL-
LECTUAL AND/OR PSYCHOSOCIAL DISABILITIES**

I. Screening for the police

1. Is the questioned person able to comprehend complex information and express himself/herself?
2. Does the questioned person have temporal and local orientation?
3. Does the questioned person suffer from an obvious thinking disorder (e.g. person is talking in a confusing manner) or affect disorder (e.g. person reacts in an exaggerated way or shows hardly any emotion)?

II. Questions for the suspect

1. Does the person get any kind of professional psychosocial support (social work, guardian, supported living, working in a therapy programme)?
2. Is it possible to call a person of trust, to get further information about the questioned person?

III. Further indications the police might refer to

- » Deprivation of liberty in a psychiatric hospital in the past
- » Information about ambulant psychiatric treatment
- » Already existing psychiatric or psychological assessments of other trials
- » Actual medication
- » Drug screening
- » Alcohol screening
- » Reports from police colleagues about previous official actions
- » Information from relatives, close persons or caretakers about the person's disability
- » Suicide attempts

Assessment

- No standardised assessment mechanism or procedures for identification -> Checklist
- Practical challenges in identifying intellectual and/or psychosocial disabilities in a timely manner -> medical assessment
- Challenges and shortcomings in the context of expert opinions

Pre-trial Phase:

- No information in an accessible format ->Documentation sheet

**ANNEX II:
DOCUMENTATION SHEET ABOUT THE RIGHTS AND OBLIGATIONS
DURING A CRIMINAL PROCEDURE: POLICE***

EASY TO READ INFORMATION

The authorities need to go through this documentation sheet with the suspect. The authority must hand out a copy of this document to the suspect.³³¹

- 1. The police can take you to a police station when they think that you have done something forbidden. The police must explain to you why they arrested you.**

I understand the reason why the police arrested me.

YES / NO

- 2. The police need to explain you your rights immediately. Everybody has rights. They are very important. Because of these rights, you are allowed to do the following:**

a You are allowed to call one person (for example: family member/ care giver/ guardian). You have to be able to talk to this person on the phone. If there is an important reason, the police can make the phone call for you.

I want to call somebody.

YES / NO

b During the phone call you are allowed to tell the person that you got arrested and where you are. On the phone you are not allowed to tell the reason why you got arrested.

I will speak German/Bulgarian/Czech/Lithuanian/Slovenian.

YES / NO

I want the police to call somebody for me.

YES / NO

* needs to be adapted according to national regulations

Pre-trial Phase:

- No information in an accessible format
 - > Documentation sheet
- Appropriate adults, legal representatives or lawyers are rarely present during police interrogations
 - > timely identification
 - > „person of trust“
- Interrogations and hearings are not audio-visually recorded
 - > remedies

Trial phase

- Lack of effective participation
 - > (soft skill) training?
- Frequently poor quality of legal representation, esp. legal aid
 - > specialised lawyers?

Case of Mr O.

Suspect is a person living with an intellectual and psychosocial disability.

-> police interrogation without a third person

General
mandatory
presence of a
lawyer



Right to a lawyer



Waive right



Mandatory
presence if
vulnerability is
identified



Effective
Remedy



Way forward

Thank you for your attention!

nora.katona@univie.ac.at