



Photo: © UNICEF/NYHQ2011-1044/Holt

# Barriers children with mental disabilities face in accessing justice in Slovenia



# Barriers children with mental disabilities face in accessing justice in Slovenia



2015



ISBN 978-615-5577-03-1

Copyright statement:

© Mental Disability Advocacy Center (MDAC), 2015. All rights reserved.

This factsheet is based on research conducted between 2013 and 2015 within a European project on access to justice for children with mental disabilities, which took place in ten EU Member States. Full information can be found on the project website: [www.mdac.org/accessing-justice-children](http://www.mdac.org/accessing-justice-children).

April 2015

Population:	2,062,874 <sup>1</sup>
People under the age of 18:	358,773 <sup>2</sup>
Children with disabilities:	No available data.
Children in institutions:	No available data.
Children with disabilities in institutions:	1,300 <sup>3</sup>
Children with mental disabilities in residential care:	1,043 <sup>4</sup>
Date of CRC ratification:	6 July 1992
Date of CRPD ratification:	24 April 2008

## Inadequate access to information on rights

Children have the right to be informed directly of their rights (e.g. their rights to express a preference, to choose between alternative support methods, etc.), the nature of the proceedings, their possible outcome and about decisions on placements, but only where they have attained the age of fifteen and are considered to be capable of understanding the meaning and legal consequences of the acts they perform. In

all other cases, children are considered to be informed via their legal representative.

## Lack of appropriate monitoring

There is an inadequate regulatory framework for the prevention of violence against children in institutions. There are no specific action plans, legislation or data on violence in institutions, or prevention measures. This is despite reports which show that children with disabilities and children in institutions experience high rates of abuse.<sup>5</sup> The Slovenian Ombudsman is designated to monitor all institutions where people, including children, are deprived of their liberty.<sup>6</sup> However, the Ombudsman has no

particular expertise on monitoring the rights of children with disabilities (or children more generally). The Human Rights Ombudsman has been advocating for several years for the establishment of a Children's Rights Ombudsman which would provide information, advice, advocacy and support for children in institutions on their rights. None of the existing schemes provide advocacy to children with disabilities in institutions.

- 1 On 1 January 2015. Data available on the Statistical Office of the Republic of Slovenia, <http://www.stat.si/StatWeb/en/show-news?id=5148&title=Prebivalstvo-Slovenija-1.-januar-2015> (last accessed 27 April 2015), Table 1.
- 2 In the second half of the year 2014. Data available on the SI-STAT Data Portal of the Statistical Office of the Republic of Slovenia, at [http://pxweb.stat.si/pxweb/Dialog/varval.asp?ma=05C1002E&ti=&path=../Database/Demographics/05\\_population/10\\_Number\\_Population/05\\_05C10\\_Population\\_kohez/&lang=1](http://pxweb.stat.si/pxweb/Dialog/varval.asp?ma=05C1002E&ti=&path=../Database/Demographics/05_population/10_Number_Population/05_05C10_Population_kohez/&lang=1) (last accessed 27 April 2015).
- 3 In 2011. Neža Kogovšek Šalamon, Country Report on Slovenia for the Study on Member States' Policies for Children with Mental Disabilities (Brussels: European Parliament, Policy Department C - Citizens' Rights and Constitutional Affairs, Civil liberties, justice and home affairs, 2013), available at: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474431/IPOL-LIBE\\_ET%282013%29474431\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474431/IPOL-LIBE_ET%282013%29474431_EN.pdf) (last accessed 28 April 2015), p. 6.
- 4 Including 445 children and young people between the age of 0 and 20+ with "moderate, severe and the most severe mental health issues", 201 children with "minor mental health issues" and 397 children with "emotional and behavioural disorders" in 2012. Statistical Office of the Republic of Slovenia, "Institutions, child and youth homes and other establishments for lodging of children and youth with special needs, Slovenia, 2012 - final data" (6 July 2013), available at: <http://www.stat.si/StatWeb/en/mainnavigation/data/show-first-release-old?idNovice=5528> (last accessed 27 April 2015).
- 5 Neža Kogovšek Šalamon, Country Report on Slovenia for the Study on Member States' Policies for Children with Mental Disabilities, p.23.
- 6 For annual reports of the Human Rights Ombudsman of the Republic of Slovenia on the Implementation of the Tasks of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, see <http://www.varuh-rs.si/publikacije-gradiva-izjave-porocila-varuha-v-logic-dpm/?L=6> (last accessed 10 April 2014).

# Child participation

A pilot project, "Child Advocate – Voice of the Child", was launched in 2006 by the Ombudsman's Office. Although it is only a pilot project, the advocates work all over Slovenia. However, if a child wants to have an advocate, the Centre for Social Work has to allocate one to them and the parents have to agree, meaning that the child cannot have direct access to an advocate of their own choice. The advocates cannot take any legal actions for the child; their primary role is to facilitate the voice of the child to be heard. From 2007 to 2012, about 237 children had an advocate (the number increased each year). A report on the service does not mention how many children with mental disabilities have received advocacy services but a few case studies described support provided to children with "special needs", children with epilepsy, children with "emotional disturbances" and "mental health troubles", etc.<sup>7</sup> Advocates themselves stated that few children with mental disabilities benefit from their services, although they also said that they would like to extend their services to include these children as well.

There are proceedings in which, according to the law, it is mandatory to listen to the child's opinion, such as disputes concerning the care and upbringing of the child and contact with parents and relatives,<sup>8</sup> and in relation to decisions about where education will be provided.<sup>9</sup> The child's wishes and expressed preferences might not be considered if it is thought that it would go against their perceived "best interests".<sup>10</sup>

In other proceedings, such as admission to institutional or foster care or placement under guardianship, there is no legal obligation to obtain an opinion from a child below the age of 15, although it has been adopted as an expected standard by Centres for Social Work. In practice, however, children are not always heard, even when required by law.

Children have the right to participate and be heard when the competent authority considers that the child is capable of understanding the meaning of the procedure in which they are participating.<sup>11</sup> The child has independent legal standing under the civil procedure where he/she "has attained the age of 15 and is capable of understanding the meaning and legal consequences of the acts he performs."<sup>12</sup> Children who do not fulfil these two conditions can participate only through their legal representative or, in case of conflict of interest between the child and the representative, through a so-called "conflict representative".<sup>13</sup>

Only children who have reached the age of fifteen and have given their opinion during the proceedings have a right to object to decisions. Other children can only object indirectly, via legal or special representatives.



7 M. Jenkole, *Posebno poročilo o projektu – Zagovornik glas otroka /special report of a project – advocate the children's voice* (Ljubljana: Varuh človekovih pravic, 2013).

8 Marriage and Family Relations Act, Official Gazette of the Republic of Slovenia, no. 69/04 UPB, available at: [http://www.mdds.gov.si/fileadmin/mdds.gov.si/pageuploads/dokumenti\\_pdf/zakonodaja/law\\_on\\_marriage\\_and\\_family\\_relations.pdf](http://www.mdds.gov.si/fileadmin/mdds.gov.si/pageuploads/dokumenti_pdf/zakonodaja/law_on_marriage_and_family_relations.pdf) (last accessed 15 October 2013).

9 Kogovšek Šalamon, *Country Report on Slovenia for the Study on Member States' Policies for Children with Mental Disabilities*.

10 Information gathered through an interview with a family court judge working in the Department of Family Justice District Court of Ljubljana on 31 March 2014.

11 Ibid.

12 Civil Procedure Act, Article 409.

13 Ibid.

# Reasonable and procedural accommodations

Child-friendly interview rooms are special rooms where children can be questioned in a child-friendly and safe way.<sup>14</sup> They are furnished in a non-intimidating way in order to provide a child-friendly space for questioning children who have been the victims of crimes. There are 11 such rooms in Slovenia.<sup>15</sup> Some are managed by State authorities and some by civil society organisations, within pilot projects. Audio and video recording are used to ensure the child is questioned only once.<sup>16</sup> The recorded hearing is securely stored for the needs of the

courts and other bodies taking part in the procedure.<sup>17</sup> As there is no legal or policy framework, child-friendly rooms are not available for all children involved in criminal procedures. Also, not all judges and prosecutors are aware of their existence and therefore they are not used consistently.<sup>18</sup>

Children are not provided psycho-social or psycho-therapeutic support during the proceedings. Slovenia also has a lack of specialised psychotherapists for working with children – victims of abuse, which are difficult to find and require additional waiting time.

---



## Length of proceedings

The involvement of experts in criminal and civil cases concerning children with mental disabilities sometimes results in lengthy proceedings, according to parents of children with mental disabilities. Parents who were interviewed for this project recommended involving one expert maximum in order to avoid such delays.<sup>19</sup>

---

14 Ministrstvo za pravosodje, *Priporočila - Razgovor z otrokom s pomočjo videokonferenc in drugih tehničnih sredstev* [Ministry of Justice, Recommendations - Conversation with a child with the help of videoconferences and other technical gadgets] (Ljubljana: Ministry of Justice, 2011).

15 Sabina Klaneček, *Children and justice* (personal material, 2014).

16 Interview with Head of the Department of Juvenile, Sexual, and Family Crime of the District State Prosecutor of Ljubljana at the District Court of Ljubljana on 21 March 2014.

17 Kogovšek Šalomon, *Children's involvement in criminal judicial proceedings in the EU: Contextual Overview for the Criminal Justice Phase - Slovenia*.

18 Interview with the Slovene Human Rights Ombudsman, Republic of Slovenia - Human Rights Ombudsman, 3 March 2014 and interview with Head of the Department of Juvenile, Sexual, and Family Crime of the District State Prosecutor of Ljubljana, District Court of Ljubljana, 21 March 2014.

19 Statement was given in a focus group interview by the President of a Council of Experts at the Association Sonček; a mother of a child with cerebral palsy and mild intellectual disability, Sonček - Cerebral Palsy Association of Slovenia, 10 March 2014.

# Lack of training of professionals

Many professionals lack knowledge or training on working with children, including lawyers, prosecutors and judges. To respond to this, the Ombudsman and the government are involved in an ongoing programme of professional and interdisciplinary training.<sup>20</sup> Regrettably, none of the training provides information or materials on how to work with children with mental disabilities.

Children have, in certain circumstances, a right to a legal aid lawyer,<sup>21</sup> but legal representation is problematic when the lawyer is not trained to communicate with the child with a disability or when they lack awareness of the rights of the child.

---

## Lack of inclusive education

Slovenian legislation provides for the right of children with disabilities to education by stating that “[p]hysically or mentally handicapped children and other severely disabled persons have the right to education and training for an active life in society. The education and training referred to in the preceding paragraph shall be financed from public funds.”<sup>22</sup> The decision about where children with disabilities are educated is made by Commissions for the Placement of Children with Special Needs working under the National Education Institute.<sup>23</sup>

The law allows schools to refuse access to children with disabilities where they state that they are unable to provide

reasonable accommodations for the child.<sup>24</sup> While the National Education Institute recognises that there are in delays in making decisions, they consider that parents and children are sufficiently involved in the decision making process. Some parents and social workers, however, disagree: “They do not see the parents or the children unless the parent is very aggressive.”<sup>25</sup> Therefore, access to education is contingent on the actions of the parent of the child, their level of involvement, knowledge and connections. Children who are not perceived as able to achieve certain academic standards are not even considered for placement in mainstream education, being directed automatically to special schools or home schooling.<sup>26</sup>

---

20 Interview with Head of the Department of Juvenile, Sexual, and Family Crime of the District State Prosecutor of Ljubljana at the District Court of Ljubljana on 21 March 2014; interview with a Senior Criminal Police Inspector - Specialist at Police - Ministry of Interior, General Police Directorate, Criminal Police Directorate, Juvenile Crime Section on 13 March 2014; interview with Slovene Human Rights Ombudsman, Republic of Slovenia - Human Rights Ombudsman on 3 March 2014; interview with the person responsible at the Ministry for Justice for the implementation of “children friendly justice”, specifically for the project “children friendly rooms for hearings” and for training for judges and other staff working in the court and a specialist for Juvenile Criminal Law at the Ministry of Justice on 13 March 2014.

21 Pursuant to Article 65 of the Criminal Procedure Act (Official Gazette 32/07), in criminal procedures which are taking place due to criminal offences against sexual inviolability, the criminal offence of neglect of minors and cruel treatment, and the criminal offence of trafficking in human beings, a victim who is a minor must have, for the entire duration of the procedure, a legal representative who protects his/her rights, in particular in relation to the protection of his/her personal integrity during the hearing before the court and in claiming fair compensation.

22 Constitution of Slovenia, Article 52.

23 See The National Education Institute, “It’s all about education”, available on the webpage of the National Education Institute of the Republic of Slovenia, at <http://www.zrss.si/default.asp?link=ang> (last accessed 10 April 2014).

24 B. Opara et al, *Analiza vzgoje in izobraževanja otrok s posebnimi potrebami v Sloveniji* [Analysis of the education of children with special needs] (Ljubljana: Pedagoški inštitut, 2010).

25 Focus group with the participation of the Head of Institutional Care at Association Sonček; president of the Council of Experts at the Association Sonček; and a mother of a child with cerebral palsy and mild intellectual disability and user representative, Sonček - Cerebral Palsy Association of Slovenia, 10 March 2014.

26 Bela knjiga o vzgoji in izobraževanju v Republiki Sloveniji [White paper on education in the Republic of Slovenia] (2011) available at: [http://www.belaknjiga2011.si/pdf/bela\\_knjiga\\_2011.pdf](http://www.belaknjiga2011.si/pdf/bela_knjiga_2011.pdf) (last accessed 10 April 2014).

# Institutionalisation

Institutionalisation is perpetuated by entrenched practices and through legislation. A social work centre may on its own, or in agreement with the parents, place a child in an institution because of “personality or mental disturbance which essentially threatens its healthy personal development.”<sup>27</sup> The measure may last for a maximum of three years and can be “exceptionally extended ... beyond that time limit” on the basis of the opinion of the institution.<sup>28</sup> Also, the Placement of Children with Special Needs Act 2000 states that children can be

placed into an institution or foster care “if it is too far for them to travel daily to the special school”. Moreover, according to interviews conducted during this research, in Slovenian practice, institutionalisation is the most common option offered to people who need more complex support. People with a long-term condition arising for any reason (such as old age, mental or physical disability, behavioural issues) frequently end up in institutional settings.<sup>29</sup>

---



## Lack of disaggregated data

There is very little data on children with mental disabilities outside the area of institutional placement education. The Statistical Office collects data on education-related non-judicial proceedings, however not in every year. The latest data available is from 2008, which states that 2,916 children with disabilities applied for special needs adjustments in schools, of which only 1,638 were received special support. Of these cases, were 0.6% related to children with “mental health distress”, 11.3% were regarding children with intellectual disabilities, and 5.2% concerned “children with borderline intellectual capacities”. 25.4% of cases related to children

with multiple disabilities, which is likely to include children with intellectual or psycho-social impairments.<sup>30</sup>

On the number of judicial proceedings involving children with mental disabilities, such as family and care proceedings, administrative proceedings and criminal proceedings-, there is no data available. With regard to criminal and civil proceedings, the numbers of child victims, witnesses and alleged offenders with mental disabilities are unknown. It is therefore impossible to compare outcomes for children with mental disabilities in the criminal justice system.

---

27 Marriage and Family Relations Act, Official Gazette of the Republic of Slovenia, no. 69/04 UPB, available at: [http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti\\_pdf/zakonodaja/law\\_on\\_marriage\\_and\\_family\\_relations.pdf](http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/zakonodaja/law_on_marriage_and_family_relations.pdf) (last accessed 15 October 2013), Article 121(1).

28 Marriage and Family Relations Act, Article 121(2) and (3).

29 Interview with the Social Worker at the Department for Protection of Children and Youth at the Center of Social Work, 10 March 2014; Interview with Head of the Department of Juvenile, Sexual, and Family Crime of the District State Prosecutor of Ljubljana, 21 March 2014.

30 B. Opara et al, *Analiza vzgoje in izobraževanja otrok s posebnimi potrebami v Sloveniji [Analysis of the education of children with special needs]* (Ljubljana: Pedagoški inštitut, 2010).



