

## *Submission Template*

# **The right to interpretation and translation and the right to information in criminal proceedings in the EU**

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# QUESTIONS

As envisaged in the section on Research Methodology, please note that some questions require consultation with organisations and/or practitioners working in relevant fields covered by the research to cross-check findings from the desk research with respect to the way in which the examined rights are applied in practice (such as judges, lawyers, interpreters and translators or civil society organisations active in the field of legal assistance in criminal proceedings).

## Article I. SECTION A: The right to interpretation and translation in criminal proceedings

1.	RIGHT TO INTERPRETATION <sup>1</sup>	Brief Description
1.1	<p>Please provide answers to the following for each stage of proceedings as indicated below:</p> <p>a) Who has the responsibility for determining the need of interpretation at each stage of the proceedings?</p> <p>b) How it works in practice for the various stages of the proceedings to ascertain whether suspected or accused persons speak and understand the language of the proceedings?</p> <p>c) Who bears the cost of interpretation at each stage?</p> <p>d) What is the timeframe (deadline) for providing information at each stage of the proceedings?</p> <p><b>.Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>	
1.1.1	<ul style="list-style-type: none"> <li>• police questioning;</li> </ul>	<p>a) Prior to interrogation of the suspected person it is to be checked whether interpretation is needed according to § 164 (1) Criminal Procedure Act (<i>Strafprozessordnung</i>, StPO<sup>2</sup>). In the pre-trial stages of proceedings the prosecutor has to assess whether interpretation is needed according to § 56 StPO, based on the information provided by the accused. In order to safeguard the right to defense, interpretation will be provided anyhow according to the legal commentary on §56 StPO.<sup>3</sup> In practice translations at police interrogations are also conducted by laypersons, being police officers with foreign language knowledge.<sup>4</sup></p>

<sup>1</sup> See in particular Articles 2 and 4 and related recitals of Directive 2010/64/EU.

<sup>2</sup> Austria, Criminal Procedure Act (*Strafprozessordnung*, StPO), BGBl. Nr. 631/1975, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002326](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002326).

<sup>3</sup> Bachner-Foregger, H., (2014), '§ 56 Übersetzungshilfe', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 11.

<sup>4</sup> A report by the public broadcaster ORF in February 2015 stated, that due to massively reducing the amount of money paid for translation, in the last time obviously translation at police interrogations was conducted by laypersons, being police officers with foreign language knowledge. Wien.orf.at (2015), 'Fatale Folgen: Polizei setzt auf Laien-Dolmetscher', 14 February 2015, available at: <http://wien.orf.at/news/stories/2694676/>.

		<p>b) The prosecutor at the pre-trial stages assesses based on the information given by the accused whether or not he/she understands the language of proceedings.<sup>5</sup></p> <p>c) According to § 49 (12) Criminal Procedures Act (<i>Strafprozessgesetz, StPO</i>) it is one of the rights of the accused to receive interpretation. Costs are covered by the State according to § 381 (6) StPO.</p> <p>d) According to the commentary on § 56 StPO the interpretation has to be available within a short period of time (<i>kurzer Frist</i>). This right to interpretation applies for all criminal procedures also for the investigative proceedings.<sup>6</sup></p>
1.1.2	<ul style="list-style-type: none"> <li>• court hearings;</li> </ul>	<p>a) At the trial stage the judge has to assess whether interpretation is needed. To safeguard the right to defense interpretation will be provided anyhow according to the opinion stated in the legal commentary on §56 StPO.<sup>7</sup></p> <p>b) There are no specific legal rules on this but in practice, the judge at the trial stage assess based on the information given by the accused whether or not he/she understands the language of proceedings.<sup>8</sup> Following an information request, a member of the Higher Regional Court of Graz stated, that if the file contains information about an interpreter used, then the judges will take up this need for interpretation and use interpretation. Only when it becomes clear, that the accused understands German sufficiently an interpreter will be sent home. The fact that an interpreter was used should be laid down in the respective protocols of the police or prosecution.<sup>9</sup></p> <p>c) According to § 49 (12) StPO it is one of the rights of the accused to received interpretation. Costs are covered by the State according to § 381 (6) StPO.</p> <p>d) According to the legal commentary on § 56 StPO the interpretation has to be available within a short period of time (<i>kurzer Frist</i>). This right to interpretation applies for all criminal procedures also for the investigative proceedings.<sup>10</sup></p>

<sup>5</sup> Bachner-Foregger, H., (2014), '§ 56 Übersetzungshilfe', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 11.

<sup>6</sup> Bachner-Foregger, H., (2014), '§ 56 Übersetzungshilfe', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 1.

<sup>7</sup> Bachner-Foregger, H., (2014), '§ 56 Übersetzungshilfe', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 11.

<sup>8</sup> Bachner-Foregger, H., (2014), '§ 56 Übersetzungshilfe', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 11.

<sup>9</sup> Austria, representative of the Higher Regional Court Graz.

<sup>10</sup> Bachner-Foregger, H., (2014), '§ 56 Übersetzungshilfe', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 1.

1.1.3	<ul style="list-style-type: none"> <li>• any necessary interim hearings;</li> </ul>	<p>a) The same as listed in 1.1.2. applies for any necessary interim hearings.</p> <p>b) The same as listed in 1.1.2. applies for any necessary interim hearings.</p> <p>c) The same as listed in 1.1.2. applies for any necessary interim hearings..</p> <p>d) The same as listed in 1.1.2. applies for any necessary interim hearings.</p>
1.1.4	<ul style="list-style-type: none"> <li>• any communication between suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings?</li> </ul>	<p>a) At the pre-trial stages of proceedings the prosecutor has to assess whether interpretation is needed, based on the information provided by the accused.<sup>11</sup> At the trial stage the judge has to assess whether interpretation is needed.<sup>12</sup> Prior to the implementation of Directive 2010/64/EU the right to interpretation during contact with attorneys was only given for contact with the public defenders. Due to implementing the Directive this was extended to any defender, but the contact between suspects and the attorney has to be in direct connection with “relevant steps of proceedings”, as e.g. the gathering of evidence, hearings, legal remedies or claims.<sup>13</sup></p> <p>According to § 56 (2) StPO contains a provision stating explicitly “interpretation is to be provided [...] on request also for the contact of the accused with his attorney, insofar this contact is in direct connection with gathering of evidence, a hearing, filing a remedy or another request (<i>und auf Verlangen auch für den Kontakt des Beschuldigten mit seinem Verteidiger, sofern dieser Kontakt in einem unmittelbaren Zusammenhang mit einer Beweisaufnahme, einer Verhandlung, der Erhebung eines Rechtsmittels oder einem sonstigen Antrag steht</i>).</p> <p>b) Upon request of the accused interpretation is also to be provided for contact between the accused and his/her legal counsel according to § 56 (2) StPO.</p>

<sup>11</sup> Bachner-Foregger, H., (2014), ‘§ 56 Übersetzungshilfe’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 11.

<sup>12</sup> Bachner-Foregger, H., (2014), ‘§ 56 Übersetzungshilfe’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 11.

<sup>13</sup> Bachner-Foregger, H., (2014), ‘§ 56 Übersetzungshilfe’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 5 and Rz 23.

		<p>c) According to § 49 (12) StPO it is one of the rights of the accused to received interpretation. Costs are covered by the State according to § 381 (6) StPO.</p> <p>d) According to the legal commentary on § 56 StPO the interpretation has to be available within a short period of time (<i>kurzer Frist</i>). This right to interpretation applies for all criminal procedures also for the investigative proceedings.<sup>14</sup></p>
1.2	<p>How do authorities ensure interpretation into rare/lesser known languages where no certified interpreters exist? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>	<p>Interpretation has to be provided in the mother tongue of the accused or in another understandable language, if there is no interpreter available for mother tongue interpretation. If there is no interpreter available at this place, video conferences are allowed. If there are no certified interpreters available also other persons, without certificate may be used as interpreters.<sup>15</sup></p>
1.3	<p>Please describe procedures in place, if any, to ensure that suspects or accused persons have the right to challenge the decision that no interpretation is needed? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>	<p>According to § 106 (1) StPO every person, who claims that his/her subjective rights were violated during investigation or by the prosecutor can raise objection (<i>Einspruch</i>), e.g. if his/her rights under the criminal procedures act were refused (i.a. also right to interpretation according to §§ 49 and 56 StPO).</p> <p>The commentary on the criminal procedures act states, that interpretation will be provided in any case, where there are suspicions, that a person does not understand German sufficiently, as to not violate the rights of defence.<sup>16</sup></p> <p>Procedural deficits can be challenged through filing an appeal against judgements of the provincial courts or single judges (§§ 463, 489 StPO) or an appeal for nullity (<i>Nichtigkeitsbeschwerde</i>) according to §281 and § 345 StPO against the judgements of a lay judges tribunal or a jury court.</p>

<sup>14</sup> Bachner-Foregger, H., (2014), '§ 56 Übersetzungshilfe', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 1.

<sup>15</sup> Bachner-Foregger, H., (2014), '§ 56 Übersetzungshilfe', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 11; Austria, representative of the Higher Regional Court of Graz.

<sup>16</sup> Bachner-Foregger, H., (2014), '§ 56 Übersetzungshilfe', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 11; Austria, representative of the Higher Regional Court Graz.

1.4	With regard to remote interpretation via communication technologies :	
	a) Can communication technologies for the purpose of remote interpretation be used? If so, at what stage(s) of the proceedings?	If no interpreter is available on the spot video-conference is allowed at any stage of proceeding. <sup>17</sup> According to § 56 (2) StPO technical devices may be used, unless the personal presence of the interpreter is necessary to guarantee fair trial for the accused.
	b) Which technologies are used, if any (videoconference, telephone, internet, etc.)	Videoconference
	c) Do competent authorities rely on the tools developed in the context of European e-Justice (e.g. information on courts with videoconferencing equipment provided on the European E-justice Portal)? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	Austria is very active with regards to the E-justice portal. For example, it participated in pilot projects on EU-dunning-system ( <i>Mahnverfahren</i> ), as well as small claims procedures and secure data transfer. Furthermore, the insolvency register was integrated into the European interconnection of insolvency registers. Regarding videoconferences already in 2002 the first eleven videoconference equipments were installed in prisons; in 2003 the rest of the prisons were equipped. In 2005 it was started to equip the courts and prosecution, which was finalised in 2011. As of 2012 video conferences are available over ISDN and over IP. In 2012, 3.594 video conferences were held. <sup>18</sup> As of 1 May 2011 video conferences interrogations are obligatory (This requirement of being obligatory applies with regard to the fact, that they should always be conducted instead of asking for judicial assistance), judicial assistance interrogations are only allowed in exceptional cases (§ 153 (4) StPO). On 19 June 2015 the Federal Ministry of Justice clarified in a response to an information request that no data is available on the number of video conferences used for the purpose of remote interpretation. <sup>19</sup> The European E-Justice Portal is used in the judiciary, as was already indicated in a press release in 2012 following the “judges-week” ( <i>RichterInnenwoche</i> ). <sup>20</sup>

<sup>17</sup> Bachner-Foregger, H., (2014), ‘§ 56 Übersetzungshilfe’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 11; Austria, representative of the Higher Regional Court of Graz.

<sup>18</sup> Austria, Federal Ministry of Justice, Dr. Martin Schneider, ‘EU e-Justice Portal – Ideen – Anfänge – Gegenwart – Zukunft, available at: [www.univie.ac.at/zib/pdf/EU\\_e\\_Justice\\_2013.pdf](http://www.univie.ac.at/zib/pdf/EU_e_Justice_2013.pdf); This is a number regarding use of video-conferences in criminal proceedings in total, not regarding the purpose of remote interpretation.

<sup>19</sup> Austria, representative of the Federal Ministry of Justice.

<sup>20</sup> Austria, Federal Ministry of Justice (2012), *RichterInnenwoche 2012: E-Justice und die Diskussion über die Justiz in Europa*, press release, 25 May 2012, available at: [www.justiz.gv.at/web2013/html/default/2c948485371225d60137855b473c02f6.de.html](http://www.justiz.gv.at/web2013/html/default/2c948485371225d60137855b473c02f6.de.html). Because of this and other similar information found the question was not further checked with practitioners.

	TRAINING <sup>21</sup>	Yes	No	Brief Description
1.5	Are providers of judicial training requested to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication? If yes, briefly provide details.		X	<p>There is no general obligation to do so, but in the course of the obligatory three day course on fundamental rights for pre-service judges the role of interpreters and how to interact with them is discussed. For example in the trainings for the area of Styria and Carinthia an interpretation expert from the University conducts a two hour training session with the pre-service judges to raise awareness regarding how to ensure efficient, effective and high-quality standard communication with the assistance of an interpreter. Furthermore possible problematic situations with regard to interpretation situations are discussed (e.g. how does a judge check whether the accused and the interpreter really understand each other, how to assess whether the content translated really reflects the statements of the accused, etc.).</p> <p>In the current training curriculum for judges and prosecutors no specialised trainings on this issue could be found.<sup>22</sup></p>

<sup>21</sup> See in particular Article 6 and relevant recitals of Directive 2010/64/EU.

<sup>22</sup> Austria, Justizministerium (2015), *Fortbildung für Richter/Innen und Staatsanwält/Innen – ihr Fortbildungsprogramm 2015*, available at: [www.justiz.gv.at/web2013/file/8ab4a8a422985de30122a920178362d7.de.0/fortbildungsprogramm2015.pdf](http://www.justiz.gv.at/web2013/file/8ab4a8a422985de30122a920178362d7.de.0/fortbildungsprogramm2015.pdf).



2.	RIGHT TO TRANSLATION OF DOCUMENTS <sup>23</sup>	Brief Description
2.1		<p><b>Please provide answers to the following for each stage of proceedings as indicated below:</b></p> <p>a) Which documents (according to national law or established practice) are considered essential to translate in order to safeguard the fairness of the proceedings?</p> <p>b) Who bears the cost of translation at each stage?</p> <p>c) What is the timeframe (deadline) for the translation of documents at each stage of the proceedings?</p> <p><b>Please cross-check findings from the desk-research by consulting relevant organisations and/or practitioners.</b></p>
2.1.1	<ul style="list-style-type: none"> <li>• police questioning;</li> </ul>	<p>a) Generally speaking, according to § 56 (2) StPO translation is provided orally. Furthermore, the right to written translation is foreseen for essential pieces of the file (e.g. order and permission of arrest, order on implementing or continuing custody prior to trial, the indictment) according to § 56 (3) StPO. The list in § 56 (3) StPO names the order and permission of arrest, in the case of § 171 (2) StPO the written justification of the criminal police, order on implementing or continuing custody prior to trial, the indictment as well as the copy of the not final judgement as essential pieces of the file. This list is exhaustive.</p> <p>b) According to § 49 (12) StPO it is one of the rights of the accused to receive interpretation and translation. The right to written translation is foreseen for essential pieces of the file (e.g. order and permission of arrest, order on implementing or continuing custody prior to trial, the indictment) according to § 56 (3) StPO. Costs are carried by the State according to § 381 (6) StPO.</p> <p>c) There is no timeframe foreseen in § 56 StPO. The Supreme Court talks about “a reasonable time frame” (<i>innerhalb einer angemessenen Frist</i>).<sup>24</sup></p>
	<ul style="list-style-type: none"> <li>• court hearings;</li> </ul>	<p>a) Generally speaking according to § 56 (2) StPO translation is provided orally. The commentary states, that for accused persons with a lawyer oral summaries are allowed, for accused persons without lawyers oral translation is allowed.<sup>25</sup> Furthermore, the right to written translation is only foreseen for essential pieces out of the file (the indictment, the not final judgment). The list in § 56 (3) StPO names the order and permission of arrest, in the case of § 171 (2) StPO the written justification of the criminal police, order on implementing or</p>

<sup>23</sup> See in particular Articles 3 and 4 and relevant recitals of Directive 2010/64/EU.

<sup>24</sup> Austria, OGH (2013), 15Os157/12w, available at:

[www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20130424\\_OGH0002\\_0150OS00157\\_12W0000\\_000](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20130424_OGH0002_0150OS00157_12W0000_000).

<sup>25</sup> Bachner-Foregger, H., (2014), ‘§ 56 Übersetzungshilfe’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 15.

2.1.2		<p>continuing custody prior to trial, the indictment as well as the copy of the not final judgement as essential pieces of the file. This list is exhaustive. There is no rule foreseen which orders the written translation of the final judgement. On request of the accused also other relevant pieces of the file have to be translated. Those pieces have to be specifically named and their written translation has to be justified or has to be obvious to guarantee the rights of fair trial (§ 56 (4) StPO. Written translation may be replaced by oral interpretation if this does not contradict the right to fair trial (§ 56 (5) StPO).</p> <p>b) According to § 49 (12) StPO it is one of the rights of the accused to receive interpretation. Costs are carried by the State according to § 381 (6) StPO.</p> <p>c) There is no timeframe foreseen in § 56 StPO. The Supreme Court talks about “a reasonable time frame” (<i>innerhalb einer angemessenen Frist</i>).<sup>26</sup></p>
2.1.3	<ul style="list-style-type: none"> <li>• any necessary interim hearings;</li> </ul>	<p>a) The same applies as for 2.1.2.</p> <p>b) The same applies as for 2.1.2.</p> <p>c) The same applies as for 2.1.2.</p>
2.1.4	<ul style="list-style-type: none"> <li>• any communication between suspects and accused persons and their legal counsel in direct</li> </ul>	<p>a) Generally speaking according to § 56 (2) StPO translation is provided orally. Furthermore, the right to written translation is foreseen for essential pieces out of the file (e.g. order and permission of arrest, order on implementing or continuing custody prior to trial, the indictment).</p>

<sup>26</sup> Austria, OGH (2013), 15Os157/12w, available at: [www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20130424\\_OGH0002\\_0150OS00157\\_12W0000\\_000](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20130424_OGH0002_0150OS00157_12W0000_000).

	<p>connection with any questioning or hearing during the proceedings?</p>	<p>b) According to § 49 (12) StPO it is one of the rights of the accused to received interpretation. Costs are covered by the State according to § 381 (6) StPO.</p> <p>c) There is no timeframe foreseen in § 56 StPO. The Supreme Courts talks about “a reasonable time frame” (<i>innerhalb einer angemessenen Frist</i>).<sup>27</sup></p>
<p>2.2</p>	<p>How do the competent authorities ascertain whether oral translation or oral summary of essential documents may be provided instead of a written translation? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>	<p>The legal commentary states, that as a rule oral translation is sufficient for the accused, apart from those essential documents listed in § 56 (3) StPO which have to be always translated in writing.<sup>28</sup> In case a person has an attorney an oral summary is sufficient. In case the accused does not have legal representation oral translation is allowed, insofar this is compatible with the right to fair trial. If the accused is imprisoned, he/she can also waive written translation; this is invalid if the waiving was done without presence of a defense lawyer.<sup>29</sup></p>
<p>2.3</p>	<p>Please describe procedures in place, if any, to ensure that suspects or accused persons have the right to challenge the decision that no translation is needed? <b>Please cross-check findings from the desk research by consulting</b></p>	<p>According to § 106 (1) StPO every person, who claims that his/her subjective rights were violated during investigation or by the prosecutor can raise objection (<i>Einspruch</i>), e.g. if his/her rights under the criminal procedures act were refused (i.a. also right to interpretation according to §§ 49 and 56 StPO). According to § 106 StPO either the prosecutor decides to follow the objections, or if it does not follow the objection within four weeks it has to send it to the courts for decision.</p> <p>The legal commentary on the criminal procedures act states that interpretation will be provided in any case, where there are suspicions, that a person does not understand German sufficiently, as to not violate the rights of defence.<sup>30</sup></p> <p>Procedural deficits can be challenged through filing an appeal against judgements of the provincial courts or single judges (§§ 463, 489 StPO) or an appeal for nullity (<i>Nichtigkeitsbeschwerde</i>) according to §281 and § 345 StPO against the judgements of a lay judges tribunal or a jury court.</p>

<sup>27</sup> Austria, OGH (2013), 15Os157/12w, available at:

[www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20130424\\_OGH0002\\_0150OS00157\\_12W0000\\_000](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20130424_OGH0002_0150OS00157_12W0000_000).

<sup>28</sup> Bachner-Foregger, H., (2014), ‘§ 56 Übersetzungshilfe’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 1.

<sup>29</sup> Bachner-Foregger, H., (2014), ‘§ 56 Übersetzungshilfe’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 15; Austria, representative of the Higher Regional Court of Graz.

<sup>30</sup> Bachner-Foregger, H., (2014), ‘§ 56 Übersetzungshilfe’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 11; Austria, representative of the Higher Regional Court of Graz.

relevant organisations and/or practitioners.				
		Yes	No	Brief Description
2.4	Do all documents that the suspected or accused person has to sign during the proceedings have to be translated?		X <sup>31</sup>	Generally speaking according to § 56 (2) StPO translation is provided orally. Furthermore the right to written translation is foreseen for essential pieces out of the file (e.g. order and permission of arrest, order on implementing or continuing custody prior to trial, the indictment). Furthermore on the request of the accused also other documents can be translated in writing.
2.5	Is it possible to waive the right to translation of documents and if so, what form can it have and under which conditions can it be accepted?	X		Waiving the right to written translation is only permitted, if the accused was informed about his rights and about the consequences of waiving. The provision of information and waiving have to be recorded in writing according to § 56 (6) StPO. The necessity of the lawyer to be present is only named with regard to waiving written translation while being imprisoned, as mentioned right in the sentence below.  If the accused is imprisoned, he/she can also waive written translation; this is invalid if the waiving was done without presence of a defense lawyer. <sup>32</sup>

<sup>31</sup> Austria, representative of the Higher Regional Court of Graz.

<sup>32</sup> Bachner-Foregger, H., (2014), '§ 56 Übersetzungshilfe', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 15.

3.	<b>RIGHTS CONCERNING BOTH INTERPRETATION AND TRANSLATION<sup>33</sup></b>			
3.1	<b>With regard to use of registers of interpreters and translators in EU Member States:</b>	<b>Yes</b>	<b>No</b>	<b>Brief Description</b>
	a) Do national databases or registers exist for legal translators and interpreters?	X		<p>There is the Court appointed specialists and interpreters database (<i>Gerichtssachverständigen- und Gerichtsdolmetscherliste</i>) available. It is accessible for the public at <a href="http://www.sdgliste.justiz.gv.at">www.sdgliste.justiz.gv.at</a>. For the area of criminal law for Vienna the Justizbetreuungsagentur was installed, which provides interpretation services for Bosnian/Croatian/Serbian, Polish, Rumanian, Russian, Slovakian, Czech, Turkish, Hungarian and English.<sup>34</sup></p> <p>§126 (2a) StPO states that persons from the <i>Justizbetreuungsagentur</i> have to be used. With regards to the criminal police it has to be a person from the Federal Ministry for the Interior or a person sent by them. If a persons according to §126 (2a) StPO is not available or not available in time, also another person may be used as an interpreter, preferably one from the list of experts and interpreters. The database of Court appointed specialists and interpreters existed before the Justizbetreuungsagentur was installed. It was initially planned to provide services all over Austria. Since July 2011 the Justizbetreuungsagentur provides services for the Regional Criminal Court Vienna, the Labour Court in Vienna and sporadically also for the prosecution in Vienna.</p>
	b) Do translators and interpreters have to be listed in databases/registers for their services to be used? In other words, is membership/registration mandatory?		X	If there are no interpreters available for a certain language also other persons may be used.
	c) Who has access to these databases?	It is available for the public at <a href="http://www.sdgliste.justiz.gv.at">www.sdgliste.justiz.gv.at</a> .		

<sup>33</sup> See in particular Article 5 and relevant recitals of Directive 2010/64/EU.

<sup>34</sup> Austria, Justizbetreuungsagentur, 'Amtsdolmetscher', website available at: [www.jba.gv.at/?amtsdolmetsch\\_allgemeines](http://www.jba.gv.at/?amtsdolmetsch_allgemeines).

<p>d) Which professional qualifications are needed by:</p> <ul style="list-style-type: none"> <li>• translators and</li> <li>• interpreters</li> </ul> <p>in order to be registered in the database?</p>	<p><b>Brief Description:</b> According to the Federal Act on court appointed experts and interpreters (<i>Bundesgesetz über die allgemein beeideten und gerichtlich zertifizierten Sachverständigen und Dolmetscher</i>) persons wishing to be put on the list have to have professional expertise as interpreters. This professional expertise amounts to two years for persons who finalised the academic studies of “translation and interpretation” and five years for all other persons. The persons have to take an exam in front of a commission and have to pay € 400 as a fee for taking the exam.<sup>35</sup></p>		
<p>e) Are there any requirements in place to ensure the independence of interpreters and translators? If yes, provide a brief overview (for both translators and interpreters).</p>		X	<p>It lies at the discretion of the judge to assess whether an interpreter or translator is independent or biased. According to § 126 StPO the same reasons for bias apply for interpreters and translators as for judges and prosecutors (as foreseen in § 47 StPO). If such suspicion of bias exist they are to be deposed from their work either by the judge or prosecutor on their own initiative or based on objections by a party (§ 126 (4) StPO).</p>
<p>f) Is access to existing databases provided through the <a href="https://e-justice.europa.eu/">European e-Justice portal</a>?<sup>36</sup> How is this register available to legal counsel and relevant authorities?</p>	X		<p>Yes, access ist provided through the E-Justice Portal at the link: <a href="https://e-justice.europa.eu/content_find_a_legal_translator_or_an_interpreter-116-at-en.do?init=true&amp;member=1">https://e-justice.europa.eu/content_find_a_legal_translator_or_an_interpreter-116-at-en.do?init=true&amp;member=1</a>.<sup>37</sup> The database is available for the public, so it is anyhow available for legal counsel and authorities.</p>
<p>g) Are criminal justice institutions required to use interpreters and translators listed in these registers?</p>	X		<p>§126 (2a) StPO states that persons from the <i>Justizbetreuungsagentur</i> have to be used. This de facto only provides services in Vienna. Still the norm in the law is framed in a general way, foreseeing the Justizbetreuungsagentur first. With regards to the criminal police it has to be a person from the Federal Ministry for the Interior or a person sent by them. If a persons according to §126 (2a) StPO is not available or not available in time, also another person may be used as an interpreter, preferably one from the list of Court appointed specialists and interpreters, which was already mentioned above. This database is installed by the Federal Ministry of Justice.</p>

<sup>35</sup> Austria, Österreichischer Verband der Allgemein Beeideten und Gerichtlich Zertifizierten Dolmetscher, ‘Merkblatt für Eintragungswerber’, available at: [www.gerichtsdolmetscher.at/index.php?option=com\\_content&view=article&id=51&Itemid=58&lang=de](http://www.gerichtsdolmetscher.at/index.php?option=com_content&view=article&id=51&Itemid=58&lang=de).

<sup>36</sup> <https://e-justice.europa.eu/home.do?plang=en&action=home>

<sup>37</sup> E-Justice portal, *How to find a legal translator or interpreter in Austria*, available at: [https://e-justice.europa.eu/content\\_find\\_a\\_legal\\_translator\\_or\\_an\\_interpreter-116-at-en.do?init=true&member=1](https://e-justice.europa.eu/content_find_a_legal_translator_or_an_interpreter-116-at-en.do?init=true&member=1).

3.2	With regard to other mechanisms/procedures:	Yes	No	Brief Description
	a) Are there other mechanisms or procedures in place to ensure the quality and independence of interpretation and translation during the course of the proceedings? Are there any quality checks? Who is responsible for carrying them out?		X	Quality checks are conducted by the judge/prosecutor in charge only. The person in question can complain about the interpreter, and in then the case is checked by the judge, and if there are doubts that the interpretation is conducted correctly the interpreter can be changed. <sup>38</sup>
	b) Is there any procedure in place to ensure that suspects or accused persons have the possibility, when interpretation and translation has been provided, to complain about the quality and independence of the interpretation and translation?	X		The rules on bias in § 47 (1) StPO apply analogously for interpreters (§ 126 (4) StPO). If there is a doubt about their expertise, they have to be displaced by the prosecutor, or if named by the court, by the judge. This also has to happen if there are objections by the parties. <sup>39</sup> This is stated explicitly in § 126 (4) stop. The law states that “either the interpreter is biased OR his/her expertise is in doubt” in § 126 (4) StPO.
	c) Are there any mechanisms in place that allow for the replacement of the appointed interpreter or a new translation when the quality of the interpretation or the independence of the interpreter	X		The rules on bias in § 47 (1) StPO apply analogously for interpreters (§ 126 (4) StPO). If there is a doubt about their expertise, the have to be displaced by the prosecutor, or if named by the court, by the judge. This has also to happen if there are objections by the parties. <sup>40</sup>

<sup>38</sup> Austria, representative of the Higher Regional Court of Graz.

<sup>39</sup> Hinterhofer, H., (2011), ‘§ 126. Sachverständige und Dolmetscher’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 57.

<sup>40</sup> Hinterhofer, H., (2011), ‘§ 126. Sachverständige und Dolmetscher’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 57.

	is considered insufficient? If yes, briefly provide information.			
3.3	Are there special procedures designed to take into account the special needs of vulnerable suspects or vulnerable accused persons which affect their ability to communicate effectively? <sup>41</sup> If yes, briefly provide information on those mechanisms considering the following vulnerable groups:			According to § 61 (2) 2 Criminal Procedures Act, if the accused applies for a defense counsel (Verfahrenshilfeverteidiger) this has to be granted in any case, when the person is blind, hearing impaired or unable to speak, etc. <sup>42</sup>
	a) suspect or accused persons with physical impairment or disability;	X		According to § 56 (7) StPO in a case where an accused who is unable to hear or unable to speak, a sign language interpreter has to be provided, in the case that the accused is able to communicate in sign language. Otherwise it has to be tried to communicate with the accused in writing or in other suitable ways. According to § 61 (2) 2 Criminal Procedures Act a defensive counsel has to be given to an accused in any case if he/she is blind, hearing impaired or unable to speak, or impaired in any other way or not able to talk the language of the court and therefore not able to defend him-/herself. This is only done in case the accused applies for defense counsel (Verfahrenshilfeverteidiger), the accused has to be “guided” (angeleitet) to do so. <sup>43</sup>
	b) suspect or accused persons with intellectual impairment or disability;	X		According to § 61 (2) 2 Criminal Procedures Act a defensive counsel has to be given to an accused in any case if he/she is blind, hearing impaired or unable to speak, or impaired in any other way or not able to talk the language of the court and therefore not able to defend him-/herself. This is only done in case the accused applies for defense counsel (Verfahrenshilfeverteidiger), the accused has to be “guided” (angeleitet) to do so. <sup>44</sup>
	c) i) children who are suspects/defendants, and/or ii) holders of parental responsibility (please distinguish between the two).	X		i) Young persons between 14 and 18 years of age can bring a person of trust to the interrogations, if they are not represented by counsel. Those persons of trust can be legal representatives, a relative, a teacher, an educator or a representative of the child- and youth aid authority. For an underage accused/suspect an attorney can be assigned by the legal representative, even without consent of the minor according to § 58 (4) Criminal Procedures Act. ‘For underage offenders the Youth Court Act (Judgendgerichtsgesetz, JGG) applies.

<sup>41</sup> See in particular recital 27 of Directive 2010/64/EU.

<sup>42</sup> Achammer, C., (2009), ‘§ 61. Beigebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 46.

<sup>43</sup> Achammer, C., (2009), ‘§ 61. Beigebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 46.

<sup>44</sup> Achammer, C., (2009), ‘§ 61. Beigebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 46.



				ii) In § 38 Youth Court Act the participation of the legal representative is laid down. In so far the juvenile accused has the right to be heard or present at gathering of evidence this right also applies to the legal representative. The same applies for the right to access of data, insofar as the legal representative is not suspect to have participated in a crime. The participation in the procedure is not act of legal representation, the legal representative has a independent standing in the proceedings. <sup>45</sup>
3.4	Is there any recording procedure to note that interpretation and translation have occurred and in which form? <sup>46</sup> If yes, briefly provide information on how this procedure is organised in practice.	X		The fact that interpretation is needed is recorded by the judge/prosecutor on digital recording files during the process. This is then transposed to a written protocol. In case translation of written documents is provided, this translation is taken into the file and the proof of translation is therefore available in the file itself. <sup>47</sup>

<sup>45</sup> Schroll, C., (2010), '§ 38. Mitwirkung des gesetzlichen Vertreters', in: Höpfel, F., Ratz, E., (eds.), *Wiener Kommentar zur StGB, Jugendgerichtsgesetz - JGG (online version)*, Rz 6.

<sup>46</sup> See in particular Article 7 and relevant recitals of Directive 2010/64/EU.

<sup>47</sup> Austria, representative of the Higher Regional Court of Graz.

## SECTION B: RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

1.	PROVISION OF INFORMATION ON THE PROCEDURAL RIGHTS <sup>48</sup>	Brief Description
1.1		<p>Please provide answers to the following for each stage of proceedings as indicated below:</p> <p>a) What information is provided?</p> <p>b) How is it provided (e.g. orally or in writing)?</p> <p>c) What is the timeframe (deadline) for providing information at each stage of the proceedings?</p> <p><b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>
	<ul style="list-style-type: none"> <li>• police questioning;</li> </ul>	<p>a) The information provided is about the fact that an investigation has been launched; that the person is suspected; the exact crime which is suspected and information about the rights in the procedure (§ 50 StPO). The rights in the procedure are laid down in § 49 StPO and entail information about the suspicions against him/her, basic rights; right to defense, right to access to files, right to speak or remain silent, right to contact an attorney, right to have an attorney present at interrogation, right to ask for taking up of evidence, right to file a complaint because of violation of subjective rights, file a complaint against judicial approval of means of force (<i>Zwangsmittel</i>), right to file for cessation of investigative procedure, right to participate in main proceedings, rights to use legal remedies, right to receive interpretation. Furthermore, in the course of an arrest information has to be provided in written form regarding (if he/she is not release) the fact, that he/she will be brought to a prison and then be summoned to the courts. Information is also provided, that he/she is entitled to inform a relative or person of trust about the arrest; file a complaint against judicial approval of arrest or against arrest by the criminal police; inform the consulate; has access to medical care (§ 171 (3) StPO).</p> <p>b) In case written information is not available in an understandable language, information can also be provided orally, but the written information has to be provided without unreasonable delay (§ 171 (4) StPO). Information is to be provided in a language which the accused understands and in an understandable way, whereby personal needs have to be taken into account (§ 50 (2) StPO).</p> <p>c) This should be done within a timeframe as short as possible to fulfil the guarantees of Art. 6 ECHR.<sup>49</sup></p>
		<p>a) According to § 6 StPO each suspect has the right to right to be heard. This enshrines the right to participate in the procedure and the obligation to be present at the main stage of procedure (<i>Hauptverhandlung</i>). According to § 6 (2) StPO this also entails the right to</p>

<sup>48</sup> See in particular Article 3 and relevant recitals of Directive 2012/13/EU.

<sup>49</sup> Wiederin, E., (2014), '§ 6. Rechtliches Gehör', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 15.

	<ul style="list-style-type: none"> <li>• court hearings;</li> </ul>	<p>information regarding reason of procedural acts as well as basic rights within the procedure. The suspect has the right to be informed about the suspicions and the possibility to justify. The suspect has the right to defend himself/herself according to § 7 StPO and make use of a counsellor. It is not allowed to force the suspect to incriminate him-/herself.</p> <p>b) Art. 6 StPO does not foresee a certain format (written, orally) in which the information has to be provided. Art 6 (3) ECHR does not foresee a special format in which information is provided. Thus, it is not relevant according to the legal commentary on §6 StPO how the person is informed, but it is important THAT the person is informed. The language of information does not have to be the mother tongue but a language the person understands well.<sup>50</sup></p> <p>c) Art. 6 StPO does not foresee a timeframe. According to the legal commentary on §6 StPO this should be done within a timeframe as short as possible to fulfil the guarantees of Art. 6 ECHR.<sup>51</sup></p>
	<ul style="list-style-type: none"> <li>• any necessary interim hearings;</li> </ul>	<p>a) see above at court hearings.</p> <p>b) see above at court hearings.</p> <p>c) see above at court hearings.</p>
	<ul style="list-style-type: none"> <li>• any communication between suspects and accused persons and their legal counsel in direct connection</li> </ul>	<p>a) The information provided during arrest or police questioning is about the fact that an investigation has been launched; that the person is suspected; the exact crime which is suspected and information about the rights in the procedure (§ 50 StPO). The rights in the procedure are laid down in § 49 StPO and entail information about the suspicions against him/her, basic rights; right to defense, right to access to files, right to speak or remain silent, <b>right to contact an attorney, right to have an attorney present at interrogation</b>, etc. The right to have legal counsel is one of the basic guarantees of Art. 6 ECHR and is not limited to the main proceedings.<sup>52</sup></p>

<sup>50</sup> Wiederin, E., (2014), '§ 6. Rechtliches Gehör', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 21.

<sup>51</sup> Wiederin, E., (2014), '§ 6. Rechtliches Gehör', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 15.

<sup>52</sup> Wiederin, E., (2014), '§ 6. Rechtliches Gehör', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 89.

	with any questioning or hearing during the proceedings?	<p>According to § 7 StPO the accused has the right to defend him/herself or use a legal counsel in any stage of proceedings. The right to defense is one of the basic guarantees of fair trial.</p> <p>b) Art 6 (3) ECHR does not foresee a special format in which information is provided. Thus, it is not relevant according to the legal commentary on §6 StPO how the person is informed, but it is important THAT the person is informed. The language of information does not have to be the mother tongue but a language the person understands well.<sup>53</sup></p> <p>c) This should be done within a timeframe as short as possible to fulfil the guarantees of Art. 6 ECHR.<sup>54</sup></p>
1.2	Do authorities provide information about any other procedural rights (apart from those established in Article 3 of the Directive)? If yes, briefly provide information.	<p>The information provided is about the fact that an investigation has been launched; that the person is suspected; the exact crime which is suspected and information about the rights in the procedure (§ 50 StPO). The rights in the procedure are laid down in § 49 StPO and entail information about the suspicions against him/her, basic rights; right to defense, right to access to files, right to speak or remain silent, right to contact an attorney, right to have an attorney present at interrogation, right to ask for taking up of evidence, right to file a complaint because of violation of subjective rights, file a complaint against judicial approval of means of force (<i>Zwangsmittel</i>), right to file for cessation of investigative procedure, right to participate in main proceedings, rights to use legal remedies, right to receive interpretation. So, in addition to those points listed in Art. 3 of the Directive, information on the right to access to files, right to remain silent, right to taking up evidence, right to file a complaint because of violation of subjective rights, file a complaint against judicial approval of means of force, right to file for cessation of investigative procedure, right to participate in main proceedings, right to use legal remedies.</p>
2.	<b>LETTER OF RIGHTS<sup>55</sup></b>	<b>Brief Description</b>
2.1	What rights does the letter of rights provide information about? What information is included in the letter of rights when children are arrested or detained?	<p>The rights enshrined in the letter of rights are information on duration of detention, notification of a person of trust and of a defending counsel, representation by counsel, interrogation and presence of a counsel, communication assistance, consular representation, medical care and judicial remedies. In the regular letter of rights also specific parts are foreseen in case a juvenile is arrested. Regarding persons below the age of 18, the letter of rights foresees a certain section, stating that, prior to arrest (and no immediate release is planned), a legal guardian, or a relative living in the same household, the child- and youth welfare authority have to be contacted. In the</p>

<sup>53</sup> Wiederin, E., (2014), '§ 6. Rechtliches Gehör', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 21.

<sup>54</sup> Wiederin, E., (2014), '§ 6. Rechtliches Gehör', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 15.

<sup>55</sup> See in particular Article 4 and relevant recitals of Directive 2012/13/EU.

		case that a parole officer has already been assigned in the past he/she has also to be contacted. This notification can only be refused by the suspected person due to severe (justified) objections.
2.2	At what stage of the proceedings is the letter of rights provided? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	The letter of rights is provided when a person is arrested. <sup>56</sup>
2.3	Is the letter of rights drafted in simple and accessible language? How do competent authorities verify whether the language is simple and accessible enough for the suspects or accused persons and/or that the suspects or accused persons understand the language? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	The question whether the letter is also available in simple language was not answered by the Federal Ministry of the Interior. No simple language edition of the letter was transferred to the national focal point. <sup>57</sup>

<sup>56</sup> Austria, representative of the Higher Regional Court of Graz.

<sup>57</sup> No reply to the question whether or not a letter of rights is also available in simple language from the Ministry of the Interior or the Higher Regional Court of Graz.

3.	RIGHT TO INFORMATION ABOUT THE ACCUSATION <sup>58</sup>	Brief Description
3.1	What information is provided to the suspects or accused persons regarding what they have been accused of and how is it provided (e.g. orally or in writing)	As stated in the letter of rights, the suspect is informed about the accusations orally in advance, before receiving the letter of rights. <sup>59</sup> § 6 (2) StPO states the right to receive information. § 50 (1) StPO furthermore states that every accused is to be informed by the police or the prosecution about the proceedings and the suspicion as well as the rights in proceeding as soon as possible. According to the commentary a more exact determination of the time of information was not put into the provision on purpose to leave the authorities with a certain room for manoeuvre. (Wiederin, E., (2014), '§ 6. Rechtliches Gehör', in: Fuchs, H., Ratz, E., (eds.), <i>Wiener Kommentar zur StPO (online version)</i> , Rz 156). Each person arrested is to be informed right after arrest about the reasons for arrest. This lies basically in the competence of the executive officer and is normally done orally right at the point of arrest. Within 24 hours he/she receives either the written justification of the arrest by the courts or a written justification of the criminal police regarding suspicion and reasons for arrest. According to a decree by the Federal Ministry of the Interior from 6 November 2014 the fact of information about rights is to be laid down in writing. There is an additional "information sheet for persons taken into custody" which foresees written information about suspicion and reasons for arrest. The suspect receives a copy of this sheet. <sup>60</sup>
3.2	At which stage of the proceedings is the information provided? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	At the point of arrest.
3.3	How are suspects or accused persons informed when, in the course of the criminal	The prosecutor may extend the accusations orally during the main proceedings. This is then directly translated to the accused and it is checked by the judge whether he/she understood this change. <sup>61</sup>

<sup>58</sup> See in particular Article 6 and relevant recitals of Directive 2012/13/EU.

<sup>59</sup> Pursuant to § 6 (2) StPO states the right to receive information. § 50 (1) StPO furthermore states that every accused is to be informed by the police or the prosecution about the proceedings and the suspicion as well as the rights in proceeding as soon as possible.

According to the commentary a more exact determination of the time of information was not put into the provision on purpose to leave the authorities with a certain room for manoeuvre. (Wiederin, E., (2014), '§ 6. Rechtliches Gehör', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 156).

<sup>60</sup> Austria, representative of the Federal Ministry of the Interior.

<sup>61</sup> Austria, representative of the Higher Regional Court of Graz.

	proceedings, the details of the accusation change?	
<b>4.</b>	<b>RIGHT OF ACCESS TO CASE MATERIALS<sup>62</sup></b>	<b>Brief Description</b>
<b>4.1</b>	What material evidence can be accessed by suspected or accused persons (e.g. documents, photographs, audio, video, summaries...)?	According to § 51 StPO the accused is allowed to look into the results of the investigation and main proceedings. The right to inspect the court files entails the right to look at pieces of evidence, as far as this is possible without negative effects on the investigation. As far as inspection of files is allowed, copies of the pieces can be made (at the costs of the accused) or he/she may make copies on their own. Audio- and video recordings, where possession is prohibited, or which are not part of inspection of files according to § 51 (2) StPO are exempted. In case they contain secrecy interests meriting the protection of others, the accused is also obliged to keep them confidential.
<b>4.2</b>	At what stage of the proceedings is access to case materials granted? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	At the stages of investigation and of the trial according to § 51 StPO. <sup>63</sup>
<b>4.3</b>	Under what circumstances is access to material refused? Who takes the decision of refusal?	The access to materials can be refused according to § 51 (2) StPO in case a witness was kept anonymous. In this case personal data of the endangered person has to be excluded from access to data and copies have to be handed out, where those data is not recognisable. Other than that access to files may only be limited prior to ending the investigation procedure and only insofar as specific circumstances would suspect that imminent knowledge of parts of the file would lead to endangerment of investigations. If the accused is in prison such limitation of access to files, which are relevant for judging about suspicion or reason for imprisonment, is not allowed starting from the point where imprisonment on remand ( <i>Untersuchungshaft</i> ) was imposed. According to § 106 (1) StPO every person, who claims that his/her subjective rights were violated during investigation or by the prosecutor can raise objection ( <i>Einspruch</i> ), e.g. if his/her rights under the criminal procedures act were refused (also right to access to files) According to § 53 StPO access to files during investigative procedures is done at the office of the prosecution, until filing the final report according to § 100 (2) Z4 StPO also at the criminal police. There is a possibility for an individual to challenge before a judge the decision in

<sup>62</sup> See in particular Article 7 and relevant recitals of Directive 2012/13/EU.

<sup>63</sup> Austria, representative of the Higher Regional Court of Graz.

		<p>which the office of the prosecution refuses the access. According to § 106 (1) StPO every person, who claims that his/her subjective rights were violated during investigation or by the prosecutor can raise objection (<i>Einspruch</i>), e.g. if his/her rights under the criminal procedures act were refused (also right to access to files)</p> <p>In the main proceedings this is done at the competent court. As long as the accused is in pre-trial detention the court has to grant access to files in those pieces of the file listed in § 52 (2) Z2 StPO (that is all pieces of the files which are relevant for judging the suspicion and the reasons for imprisonment).</p>
<b>5.</b>	<b>CROSS-CUTTING ISSUES: LANGUAGES, COMPLAINT MECHANISMS, RECORDING &amp; SPECIAL MEASURES<sup>64</sup></b>	<b>Brief Description</b>
<b>5.1</b>	In which languages can information be provided for the following?	
	a) information on procedural rights	This is provided in German. If needed interpreters can translate the information for the person concerned. <sup>65</sup>
	b) letter of rights	<p>The letter of rights for criminal procedures is available in 49 other languages than German at the moment, due to the large amount of languages those letters were not transferred to the national focal point, but only the German and English versions. The languages are: Albanian, Arabic, Armenian, Bengali, Bosnian, Bulgarian, Chinese, Danish, Dari, English, Farsi, Finnish, French, Georgian, Greek, Hebrew, Hindi, Igbo, Italian, Croatian, Kurdish-Kurmani, Kurdish-Sorani, Lithuanian, Macedonian, Mongolian, Nepali, Dutch, Norwegian, Pashto, Polish, Portugese, Panjab, Rumanian, Moldovian, Russian, Swedish, Serbian, Slovakian, Slovene, Spanish, Tamil, Czech, Cechen, Turkish, Ukrainian, Hungarian, Urdu, Vietnam, Yoruba.</p> <p>If the person does not understand any of those languages, the interpreter, who will be present at interrogation might already be contacted by telephone and will translate the relevant information for the suspect. He/she will later on translate the whole information of the information sheet to the suspect in the course of the interrogation. The Federal Ministry of the Interior states, that such situations hardly ever happen due to the fact that the letter of rights exists in such a large number of languages.<sup>66</sup></p>

<sup>64</sup> See in particular Articles 3 - 8 and relevant recitals of Directive 2012/13/EU.

<sup>65</sup> Austria, representative of the Higher Regional Court of Graz.

<sup>66</sup> Austria, representative of the Ministry of the Interior.



	c) information about the accusation	This is provided in German. If needed interpreters can translate the information for the person concerned. <sup>67</sup>		
	d) case materials	This is provided in German. If needed interpreters can translate the information for the person concerned. <sup>68</sup> The relevant pieces of the files are translated for the accused, as already stated above at 2.4.		
		<b>Yes</b>	<b>No</b>	<b>Brief Description</b>
<b>5.2</b>	Is there any procedure to ensure that suspects or accused persons have the right to challenge the failure or refusal to provide information on the following? <b>If yes, briefly describe the procedure where relevant.</b>	X		According to § 106 (1) StPO every person, who claims that his/her subjective rights were violated during investigation or by the prosecutor can raise objection ( <i>Einspruch</i> ), e.g. if his/her rights under the criminal procedures act were refused (also right to information on procedural rights according to § 49 Z1 and § 50 StPO). Procedural deficits can be challenged through filing an appeal against judgements of the provincial courts or single judges (§§ 463, 489 StPO) or an appeal for nullity ( <i>Nichtigkeitsbeschwerde</i> ) according to §281 and § 345 StPO against the judgements of a lay judges tribunal or a jury court.
	a) information on procedural rights	X		According to § 106 (1) StPO every person, who claims that his/her subjective rights were violated during investigation or by the prosecutor can raise objection ( <i>Einspruch</i> ), e.g. if his/her rights under the criminal procedures act were refused (also right to information on procedural rights according to § 49 Z1 and § 50 StPO). Procedural deficits can be challenged through filing an appeal against judgements of the provincial courts or single judges (§§ 463, 489 StPO) or an appeal for nullity ( <i>Nichtigkeitsbeschwerde</i> ) according to §281 and § 345 StPO against the judgements of a lay judges tribunal or a jury court.
	b) letter of rights	X		According to § 106 (1) StPO every person, who claims that his/her subjective rights were violated during investigation or by the prosecutor can raise objection ( <i>Einspruch</i> ), e.g. if his/her rights under the criminal procedures act were refused (also right to information on procedural rights according to § 49 Z1 and § 50 StPO). Procedural deficits can be challenged through filing an appeal against judgements of the provincial courts or single judges (§§ 463, 489 StPO) or an appeal for nullity ( <i>Nichtigkeitsbeschwerde</i> ) according to §281 and § 345 StPO against the judgements of a lay judges tribunal or a jury court.
	c) information about the accusation	X		According to § 106 (1) StPO every person, who claims that his/her subjective rights were violated during investigation or by the prosecutor can raise objection ( <i>Einspruch</i> ), e.g. if his/her rights under the criminal procedures act were refused (also right

<sup>67</sup> Austria, representative of the Higher Regional Court of Graz.

<sup>68</sup> Austria, representative of the Higher Regional Court of Graz.

				to information about the accusation according to § 106 (1) StPO every person, who claims that his/her subjective rights were violated during investigation or by the prosecutor can raise objection (Einspruch), e.g. if his/her rights under the criminal procedures act were refused (also right to access to files) according to § 49 Z1 and § 50 StPO). Procedural deficits can be challenged through filing an appeal against judgements of the provincial courts or single judges (§§ 463, 489 StPO) or an appeal for nullity ( <i>Nichtigkeitsbeschwerde</i> ) according to §281 and § 345 StPO against the judgements of a lay judges tribunal or a jury court.
	d) access to case materials	X		According to § 106 (1) StPO every person, who claims that his/her subjective rights were violated during investigation or by the prosecutor can raise objection ( <i>Einspruch</i> ), e.g. if his/her rights under the criminal procedures act were refused (also right to access to case materials according to § 49 Z3 and §§ 51-53 StPO). Procedural deficits can be challenged through filing an appeal against judgements of the provincial courts or single judges (§§ 463, 489 StPO) or an appeal for nullity ( <i>Nichtigkeitsbeschwerde</i> ) according to §281 and § 345 StPO against the judgements of a lay judges tribunal or a jury court.
<b>5.3</b>	Is any official record kept to note the provision of information about the following? <b>If yes, briefly describe where relevant.</b>			
	a) information on procedural rights	X		These facts are recorded by the police or judges/prosecutors on the protocols. According to a decree by the Federal Ministry of the Interior from 6 November 2014 (not publicly accessible) the fact of information about rights is to be laid down in writing. There is an additional “information sheet for persons taken into custody” which foresees written information about suspicion and reasons for arrest. The suspect receives a copy of this sheet. The question whether or not the suspect/accused has to sign this protocol or information sheet was not clearly answered by the Federal Ministry of the Interior. <sup>69</sup>
	b) letter of rights	X		These facts are recorded by the police or judges/prosecutors on the protocols. According to a decree by the Federal Ministry of the Interior from 6 November 2014 the fact of information about rights is to be laid down in writing. There is an additional “information sheet for persons taken into custody” which foresees written

<sup>69</sup> Austria, representative of the Federal Ministry of the Interior.

				information about suspicion and reasons for arrest. The suspect receives a copy of this sheet. The question whether or not the suspect/accused has to sign this protocol or information sheet was not clearly answered by the Federal Ministry of the Interior. <sup>70</sup>
	c) information about the accusation	X		These facts are recorded by the police or judges/prosecutors on the protocols. According to a decree by the Federal Ministry of the Interior from 6 November 2014 the fact of information about rights is to be laid down in writing. There is an additional “information sheet for persons taken into custody” which foresees written information about suspicion and reasons for arrest. The suspect receives a copy of this sheet. The question whether or not the suspect/accused has to sign this protocol or information sheet was not clearly answered by the Federal Ministry of the Interior. <sup>71</sup>
	d) access to case materials	X		These facts are recorded by the police or judges/prosecutors on the protocols. The question whether or not the suspect/accused has to sign it was not clearly answered by the Federal Ministry of the Interior. But out of the description of procedure it seems clear, that it does not have to be signed by the suspect/accused.
5.4	Are there special procedures designed to take into account the special needs of vulnerable suspects or vulnerable accused persons (e.g. because of any physical impairments which affect their ability to communicate effectively (persons with hearing, sight or speech impediments), intellectual disabilities or in		X	<b>Those questions are all answered at this point and not in the subquestions, as this would lead to multiplication of information.</b> a) No, there are no special rules regarding procedures taking into account special needs of vulnerable suspects or accused persons. The commentary on § 61 StPO states, that in case inability to follow the procedure ( <i>Verhandlungsunfähigkeit</i> ) can be opposed by adapted conduct of the proceedings, this can be done in the individual cases regarding the clinical picture in question and is manageable through applying the rules of procedure creatively. <sup>72</sup> However, according to § 61 (2) Criminal Procedures Act persons who are blind, unable to hear or talk or in any other way disabled have to be given an legal aid defence counsel. Blind or other highly visually impaired persons are not able to defend themselves and have to aided to apply for this legal counsel and in case of “need” ( <i>Bedürftigkeit</i> ) be given a legal-aid counsel. <sup>73</sup> According to § 79a Court Organisation Act ( <i>Gerichtsorganisationsgesetz, GOG</i> ) <sup>74</sup> the court has to – if necessary – use technical aid (Braille, etc) to ensure that a blind person without legal aid understands the content of the documents, if this is not sufficient legal aid counsel has to be provided, without looking at the financial situation of the person concerned. Deaf

<sup>70</sup> Austria, representative of the Federal Ministry of the Interior.

<sup>71</sup> Austria, representative of the Federal Ministry of the Interior.

<sup>72</sup> Ratz, E., (2011), ‘§ 281. [Begriffsbestimmungen]’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 379.

<sup>73</sup> Achammer, C., (2009), ‘§ 61. Begebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 43.

<sup>74</sup> Austria, Court Organisation Act (*Gerichtsorganisationsgesetz, GOG*), RGBI. Nr. 217/1896, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000009](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000009).

<p>case of children and the holder of parental responsibility) in relation to:</p> <p>a) suspect or accused persons with physical impairment or disability;</p> <p>b) suspect or accused persons intellectual impairment or disability;</p> <p>c) suspect or accused children who are suspects/defendants and/or the holder of parental responsibility.</p> <p><b>If yes, briefly provide information on those mechanisms in relation to each of the listed vulnerable groups. Is this information in simple and accessible language?</b></p>	<p>and mute people are in no case able to defend themselves, and a sign language interpreter has to be provided. In case he/she applies for it and does not have sufficient financial means also legal aid counsel has to be provided additionally. The law does not specify what is meant by “disabled in another way”, but it is relevant insofar as the disability infringes the possibility to defend oneself. According to the Supreme Court a generous standard should be applied.<sup>75</sup></p> <p>b) No, there are no special rules regarding procedures taking into account special needs of vulnerable suspects or accused persons. The commentary on § 61 StPO states, that in case inability to follow the procedure (<i>Verhandlungsunfähigkeit</i>) can be opposed by adapted conduct of the proceedings, this can be done in the individual cases regarding the clinical picture in question and is manageable through applying the rules of procedure creatively.<sup>76</sup> However, according to § 61 (2) StPO persons who are blind, unable to hear or talk or in any other way disabled have to be given an legal aid defence counsel. Blind or other highly visually impaired persons are not able to defend themselves and have to aided to apply for this legal counsel and in case of “need” (<i>Bedürftigkeit</i>) be given a legal-aid counsel.<sup>77</sup> According to § 79a Court Organisation Act (<i>Gerichtsorganisationsgesetz, GOG</i>) the court has to – if necessary – use technical aid (Braille, etc) to ensure that a blind person without legal aid understands the content of the documents, if this is not sufficient legal aid counsel has to be provided, without looking at the financial situation of the person concerned. Deaf and mute people are in no case able to defend themselves, and a sign language interpreter has to be provided. In case he/she applies for it and does not have sufficient financial means also legal aid counsel has to be provided additionally. The law does not specify what is meant by “disabled in another way”, but it is relevant insofar the disability infringes the possibility to defend oneself. According to the Supreme Court a generous standard should be applied.<sup>78</sup> Severe disability might amount to inability to stand trial.<sup>79</sup> Someone is unable to stand trial if he/she is not able due to psychological or physical reasons to follow the proceedings, to articulate in an understandable way or fulfil his/her rights reasonably.<sup>80</sup></p> <p>c) Minors until the age of 14 are not liable. Starting from the age of 14 they are liable, but the court is obliged to assess every time – prior to sentencing – whether he/she was mature enough at the time of the act to understand the wrongness of the act and act on it. If this is negated the minor is not liable. The sentences are much lower for youth in most cases. In case the</p>
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<sup>75</sup> Austria, Supreme Court, 13 Os 46/03, available at:

[www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20030514\\_OGH0002\\_0130OS00046\\_0300000\\_000](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20030514_OGH0002_0130OS00046_0300000_000).

<sup>76</sup> Ratz, E., (2011), ‘§ 281. [Begriffsbestimmungen]’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 379.

<sup>77</sup> Achammer, C., (2009), ‘§ 61. Begebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 43.

<sup>78</sup> Austria, Supreme Court, 13 Os 46/03, available at:

[www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20030514\\_OGH0002\\_0130OS00046\\_0300000\\_000](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20030514_OGH0002_0130OS00046_0300000_000).

<sup>79</sup> Achammer, C., (2009), ‘§ 61. Begebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 43..

<sup>80</sup> Ratz, E., (2011), ‘§ 281. [Begriffsbestimmungen]’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 378.

				endangerement of the personal development of a minor accused of a crime, is expected, the guardianship court has to assess whether acts on guardianship are necessary. <sup>81</sup> There are several particularities for youth-proceedings. A defense counsel has to be provided obligatory, for the whole procedure in front of the regional court and for the procedures in front of the district court, if it is necessary to guarantee the rights of the minor in question, in any case if no legal representative can be present at the proceeding. If a minor has the right to be heard or present at investigations or gathering of evidence, this right is also applicable for the legal representative. The public can be excluded ex-officio or on request from proceedings if this is necessary for protecting the interests of the minor (§ 42 Youth Court Act, <i>Jugendgerichtsgesetz, JGG</i> ) <sup>82</sup> .
• information on procedural rights	a)		X	No. There are no special rules regarding procedures taking into account special needs of vulnerable suspects or accused persons. The commentary on § 61 StPO states, that in case inability to follow the procedure ( <i>Verhandlungsunfähigkeit</i> ) can be opposed by adapted conduct of the proceedings, this can be done in the individual cases regarding the clinical picture in question and is manageable through applying the rules of procedure creatively. <sup>83</sup> However, according to § 61 (2) Criminal Procedures Act persons who are blind, unable to hear or talk or in any other way disabled have to be given an legal aid defence counsel. Blind or other highly visually impaired persons are not able to defend themselves and have to aided to apply for this legal counsel and in case of “need” ( <i>Bedürftigkeit</i> ) be given a legal-aid counsel. <sup>84</sup> According to § 79a Court Organisation Act ( <i>Gerichtsorganisationsgesetz, GOG</i> ) <sup>85</sup> the court has to – if necessary – use technical aid (Braille, etc) to ensure that a blind person without legal aid understands the content of the documents, if this is not sufficient legal aid counsel has to be provided, without looking at the financial situation of the person concerned. Deaf and mute people are in no case able to defend themselves, and a sign language interpreter has to be provided. In case he/she applies for it and does not have sufficient financial means also legal aid counsel has to be provided additionally. The law does not specify what is meant by “disabled in another way”, but it is relevant insofar as the disability infringes the possibility to defend oneself. According to the Supreme Court a generous standard should be applied. <sup>86</sup>
	b)		X	No, there are no special rules regarding procedures taking into account special needs of vulnerable suspects or accused persons. The commentary on § 61 StPO states, that in case inability to follow the procedure ( <i>Verhandlungsunfähigkeit</i> ) can

<sup>81</sup> Austria, help.gv.at, ‘Strafbarkeit von Jugendlichen (Deliktsfähigkeit)’, website available at: [www.help.gv.at/Portal.Node/hlpd/public/content/194/Seite.1740313.html](http://www.help.gv.at/Portal.Node/hlpd/public/content/194/Seite.1740313.html).

<sup>82</sup> Austria, Youth Court Act (*Jugendgerichtsgesetz 1988, JGG*), BGBl. Nr. 599/1988, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825).

<sup>83</sup> Ratz, E., (2011), ‘§ 281. [Begriffsbestimmungen]’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 379.

<sup>84</sup> Achammer, C., (2009), ‘§ 61. Begebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 43.

<sup>85</sup> Austria, Court Organisation Act (*Gerichtsorganisationsgesetz, GOG*), RGBl. Nr. 217/1896, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000009](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000009).

<sup>86</sup> Austria, Supreme Court, 13 Os 46/03, available at: [www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20030514\\_OGH0002\\_0130OS00046\\_0300000\\_000](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20030514_OGH0002_0130OS00046_0300000_000).

			<p>be opposed by adapted conduct of the proceedings, this can be done in the individual cases regarding the clinical picture in question and is manageable through applying the rules of procedure creatively.<sup>87</sup></p> <p>However, according to § 61 (2) StPO persons who are blind, unable to hear or talk or in any other way disabled have to be given an legal aid defence counsel. Blind or other highly visually impaired persons are not able to defend themselves and have to aided to apply for this legal counsel and in case of “need” (<i>Bedürftigkeit</i>) be given a legal-aid counsel.<sup>88</sup> According to § 79a Court Organisation Act (<i>Gerichtsorganisationsgesetz, GOG</i>) the court has to – if necessary – use technical aid (Braille, etc) to ensure that a blind person without legal aid understands the content of the documents, if this is not sufficient legal aid counsel has to be provided, without looking at the financial situation of the person concerned. Deaf and mute people are in no case able to defend themselves, and a sign language interpreter has to be provided. In case he/she applies for it and does not have sufficient financial means also legal aid counsel has to be provided additionally. The law does not specify what is meant by “disabled in another way”, but it is relevant in how far the disability infringes the possibility to defend oneself. According to the Supreme Court a generous standard should be applied.<sup>89</sup> Severe disability might amount to inability to stand trial.<sup>90</sup> Someone is unable to stand trial if he/she is not able due to psychological or physical reasons to follow the proceedings, to articulate in an understandable way or fulfil his/her rights reasonably.<sup>91</sup></p>
c)		X	<p>Minors until the age of 14 are not liable. Starting from the age of 14 they are liable, but the court is obliged to assess every time – prior to sentencing – whether he/she was mature enough at the time of the act to understand the wrongness of the act and act on it. If this is negated the minor is not liable. The sentences are much lower for youth in most cases. In case the endangerment of the personal development of a minor accused of a crime, is expected, the guardianship court has to assess whether acts on guardianship are necessary.<sup>92</sup> There are several particularities for youth-proceedings. A defense counsel has to be provided obligatory, for the whole procedure in front of the regional court and for the procedures in front of the district court, if it is necessary to guarantee the rights of the minor in question, in any case if no legal representative can be present at the proceeding. If a minor has the right to be heard or present at investigations or gathering of evidence, this</p>

<sup>87</sup> Ratz, E., (2011), ‘§ 281. [Begriffsbestimmungen]’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 379.

<sup>88</sup> Achammer, C., (2009), ‘§ 61. Begebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 43.

<sup>89</sup> Austria, Supreme Court, 13 Os 46/03, available at: [www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20030514\\_OGH0002\\_0130OS00046\\_0300000\\_000](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20030514_OGH0002_0130OS00046_0300000_000).

<sup>90</sup> Achammer, C., (2009), ‘§ 61. Begebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 43..

<sup>91</sup> Ratz, E., (2011), ‘§ 281. [Begriffsbestimmungen]’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 378.

<sup>92</sup> Austria, help.gv.at, ‘Strafbarkeit von Jugendlichen (Deliktsfähigkeit)’, website available at: [www.help.gv.at/Portal.Node/hlpd/public/content/194/Seite.1740313.html](http://www.help.gv.at/Portal.Node/hlpd/public/content/194/Seite.1740313.html).

				right is also applicable for the legal representative. The public can be excluded ex-officio or on request from proceedings if this is necessary for protecting the interests of the minor (§ 42 Youth Court Act, <i>Jugendgerichtsgesetz, JGG</i> ) <sup>93</sup> .
• letter of rights	a)	X	No, there are no special rules regarding procedures taking into account special needs of vulnerable suspects or accused persons. The commentary on § 61 StPO states, that in case inability to follow the procedure ( <i>Verhandlungsunfähigkeit</i> ) can be opposed by adapted conduct of the proceedings, this can be done in the individual cases regarding the clinical picture in question and is manageable through applying the rules of procedure creatively. <sup>94</sup> However, according to § 61 (2) Criminal Procedures Act persons who are blind, unable to hear or talk or in any other way disabled have to be given an legal aid defence counsel. Blind or other highly visually impaired persons are not able to defend themselves and have to aided to apply for this legal counsel and in case of “need” ( <i>Bedürftigkeit</i> ) be given a legal-aid counsel. <sup>95</sup> According to § 79a Court Organisation Act ( <i>Gerichtsorganisationsgesetz, GOG</i> ) <sup>96</sup> the court has to – if necessary – use technical aid (Braille, etc) to ensure that a blind person without legal aid understands the content of the documents, if this is not sufficient legal aid counsel has to be provided, without looking at the financial situation of the person concerned. Deaf and mute people are in no case able to defend themselves, and a sign language interpreter has to be provided. In case he/she applies for it and does not have sufficient financial means also legal aid counsel has to be provided additionally. The law does not specify what is meant by “disabled in another way”, but it is relevant insofar as the disability infringes the possibility to defend oneself. According to the Supreme Court a generous standard should be applied. <sup>97</sup>	
	b)	X	No, there are no special rules regarding procedures taking into account special needs of vulnerable suspects or accused persons. The commentary on § 61 StPO states, that in case inability to follow the procedure ( <i>Verhandlungsunfähigkeit</i> ) can be opposed by adapted conduct of the proceedings, this can be done in the individual cases regarding the clinical picture in question and is manageable through applying the rules of procedure creatively. <sup>98</sup> However, according to § 61 (2) StPO persons who are blind, unable to hear or talk or in any other way disabled have to be given an legal aid defence counsel. Blind or other highly visually impaired persons are not able to defend themselves and	

<sup>93</sup> Austria, Youth Court Act (*Jugendgerichtsgesetz 1988, JGG*), BGBl. Nr. 599/1988, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825).

<sup>94</sup> Ratz, E., (2011), ‘§ 281. [Begriffsbestimmungen]’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 379.

<sup>95</sup> Achammer, C., (2009), ‘§ 61. Begebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 43.

<sup>96</sup> Austria, Court Organisation Act (*Gerichtsorganisationsgesetz, GOG*), RGBL. Nr. 217/1896, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000009](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000009).

<sup>97</sup> Austria, Supreme Court, 13 Os 46/03, available at: [www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20030514\\_OGH0002\\_0130OS00046\\_0300000\\_000](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20030514_OGH0002_0130OS00046_0300000_000).

<sup>98</sup> Ratz, E., (2011), ‘§ 281. [Begriffsbestimmungen]’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 379.

			<p>have to aided to apply for this legal counsel and in case of “need” (<i>Bedürftigkeit</i>) be given a legal-aid counsel.<sup>99</sup> According to § 79a Court Organisation Act (<i>Gerichtsorganisationsgesetz, GOG</i>) the court has to – if necessary – use technical aid (Braille, etc) to ensure that a blind person without legal aid understands the content of the documents, if this is not sufficient legal aid counsel has to be provided, without looking at the financial situation of the person concerned. Deaf and mute people are in no case able to defend themselves, and a sign language interpreter has to be provided. In case he/she applies for it and does not have sufficient financial means also legal aid counsel has to be provided additionally. The law does not specify what is meant by “disabled in another way”, but it is relevant in how far the disability infringes the possibility to defend oneself. According to the Supreme Court a generous standard should be applied.<sup>100</sup> Severe disability might amount to inability to stand trial.<sup>101</sup> Someone is unable to stand trial if he/she is not able due to psychological or physical reasons to follow the proceedings, to articulate in an understandable way or fulfil his/her rights reasonably.<sup>102</sup></p>
c)		X	<p>The general letter of rights contains a specific paragraph on suspected persons who are minors. A legal representative or a relative living in the household, the child- and youth authority and –if applicable –an already available probation officer – have to be informed about the arrest.</p> <p>Minors until the age of 14 are not liable. Starting from the age of 14 they are liable, but the court is obliged to assess every time – prior to sentencing – whether he/she was mature enough at the time of the act to understand the wrongness of the act and act on it. If this is negated the minor is not liable. The sentences are much lower for youth in most cases. In case the endangerment of the personal development of a minor accused of a crime, is expected, the guardianship court has to assess whether acts on guardianship are necessary.<sup>103</sup> There are several particularities for youth-proceedings. A defense counsel has to be provided obligatory, for the whole procedure in front of the regional court and for the procedures in front of the district court, if it is necessary to guarantee the rights of the minor in question, in any case if no legal representative can be present at the proceeding. If a minor has the right to be heard or present at investigations or gathering of evidence, this</p>

<sup>99</sup> Achammer, C., (2009), ‘§ 61. Beigebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 43.

<sup>100</sup> Austria, Supreme Court, 13 Os 46/03, available at:

[www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20030514\\_OGH0002\\_0130OS00046\\_0300000\\_000](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20030514_OGH0002_0130OS00046_0300000_000).

<sup>101</sup> Achammer, C., (2009), ‘§ 61. Beigebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 43.

<sup>102</sup> Ratz, E., (2011), ‘§ 281. [Begriffsbestimmungen]’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 378.

<sup>103</sup> Austria, help.gv.at, ‘Strafbarkeit von Jugendlichen (Deliktsfähigkeit)’, website available at: [www.help.gv.at/Portal.Node/hlpd/public/content/194/Seite.1740313.html](http://www.help.gv.at/Portal.Node/hlpd/public/content/194/Seite.1740313.html).



				right is also applicable for the legal representative. The public can be excluded ex-officio or on request from proceedings if this is necessary for protecting the interests of the minor (§ 42 Youth Court Act, <i>Jugendgerichtsgesetz, JGG</i> ) <sup>104</sup> .
<ul style="list-style-type: none"> <li>information about the accusation</li> </ul>	a)		X	<p>No, there are no special rules regarding procedures taking into account special needs of vulnerable suspects or accused persons. The commentary on § 61 StPO states, that in case inability to follow the procedure (<i>Verhandlungsunfähigkeit</i>) can be opposed by adapted conduct of the proceedings, this can be done in the individual cases regarding the clinical picture in question and is manageable through applying the rules of procedure creatively.<sup>105</sup></p> <p>However, according to § 61 (2) Criminal Procedures Act persons who are blind, unable to hear or talk or in any other way disabled have to be given an legal aid defence counsel. Blind or other highly visually impaired persons are not able to defend themselves and have to aided to apply for this legal counsel and in case of “need” (<i>Bedürftigkeit</i>) be given a legal-aid counsel.<sup>106</sup> According to § 79a Court Organisation Act (<i>Gerichtsorganisationsgesetz, GOG</i>)<sup>107</sup> the court has to – if necessary – use technical aid (Braille, etc) to ensure that a blind person without legal aid understands the content of the documents, if this is not sufficient legal aid counsel has to be provided, without looking at the financial situation of the person concerned. Deaf and mute people are in no case able to defend themselves, and a sign language interpreter has to be provided. In case he/she applies for it and does not have sufficient financial means also legal aid counsel has to be provided additionally. The law does not specify what is meant by “disabled in another way”, but it is relevant insofar as the disability infringes the possibility to defend oneself. According to the Supreme Court a generous standard should be applied.<sup>108</sup></p>
	b)		X	<p>No, there are no special rules regarding procedures taking into account special needs of vulnerable suspects or accused persons. The commentary on § 61 StPO states, that in case inability to follow the procedure (<i>Verhandlungsunfähigkeit</i>) can be opposed by adapted conduct of the proceedings, this can be done in the individual cases regarding the clinical picture in question and is manageable through applying the rules of procedure creatively.<sup>109</sup></p> <p>However, according to § 61 (2) StPO persons who are blind, unable to hear or talk or in any other way disabled have to be given an legal aid defence counsel. Blind or other highly visually impaired persons are not able to defend themselves and</p>

<sup>104</sup> Austria, Youth Court Act (*Jugendgerichtsgesetz 1988, JGG*), BGBl. Nr. 599/1988, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825).

<sup>105</sup> Ratz, E., (2011), ‘§ 281. [Begriffsbestimmungen]’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 379.

<sup>106</sup> Achammer, C., (2009), ‘§ 61. Beigebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 43.

<sup>107</sup> Austria, Court Organisation Act (*Gerichtsorganisationsgesetz, GOG*), RGBl. Nr. 217/1896, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000009](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000009).

<sup>108</sup> Austria, Supreme Court, 13 Os 46/03, available at:

[www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20030514\\_OGH0002\\_0130OS00046\\_0300000\\_000](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20030514_OGH0002_0130OS00046_0300000_000).

<sup>109</sup> Ratz, E., (2011), ‘§ 281. [Begriffsbestimmungen]’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 379.

			<p>have to aided to apply for this legal counsel and in case of “need” (<i>Bedürftigkeit</i>) be given a legal-aid counsel.<sup>110</sup> According to § 79a Court Organisation Act (<i>Gerichtsorganisationsgesetz, GOG</i>) the court has to – if necessary – use technical aid (Braille, etc) to ensure that a blind person without legal aid understands the content of the documents, if this is not sufficient legal aid counsel has to be provided, without looking at the financial situation of the person concerned. Deaf and mute people are in no case able to defend themselves, and a sign language interpreter has to be provided. In case he/she applies for it and does not have sufficient financial means also legal aid counsel has to be provided additionally. The law does not specify what is meant by “disabled in another way”, but it is relevant in how far the disability infringes the possibility to defend oneself. According to the Supreme Court a generous standard should be applied.<sup>111</sup> Severe disability might amount to inability to stand trial.<sup>112</sup> Someone is unable to stand trial if he/she is not able due to psychological or physical reasons to follow the proceedings, to articulate in an understandable way or fulfil his/her rights reasonably.<sup>113</sup></p>
	c)	X	<p>Minors until the age of 14 are not liable. Starting from the age of 14 they are liable, but the court is obliged to assess every time – prior to sentencing – whether he/she was mature enough at the time of the act to understand the wrongness of the act and act on it. If this is negated the minor is not liable. The sentences are much lower for youth in most cases. In case the endangerment of the personal development of a minor accused of a crime, is expected, the guardianship court has to assess whether acts on guardianship are necessary.<sup>114</sup> There are several particularities for youth-proceedings. A defense counsel has to be provided obligatory, for the whole procedure in front of the regional court and for the procedures in front of the district court, if it is necessary to guarantee the rights of the minor in question, in any case if no legal representative can be present at the proceeding. If a minor has the right to be heard or present at investigations or gathering of evidence, this right is also applicable for the legal representative. The public can be excluded ex-officio or on request from proceedings if this is necessary for protecting the interests of the minor (§ 42 Youth Court Act, <i>Jugendgerichtsgesetz, JGG</i>)<sup>115</sup>.</p>

<sup>110</sup> Achammer, C., (2009), ‘§ 61. Beigebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 43.

<sup>111</sup> Austria, Supreme Court, 13 Os 46/03, available at:

[www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20030514\\_OGH0002\\_0130OS00046\\_0300000\\_000](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20030514_OGH0002_0130OS00046_0300000_000).

<sup>112</sup> Achammer, C., (2009), ‘§ 61. Beigebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 43..

<sup>113</sup> Ratz, E., (2011), ‘§ 281. [Begriffsbestimmungen]’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 378.

<sup>114</sup> Austria, help.gv.at, ‘Strafbarkeit von Jugendlichen (Deliktsfähigkeit)’, website available at: [www.help.gv.at/Portal.Node/hlpd/public/content/194/Seite.1740313.html](http://www.help.gv.at/Portal.Node/hlpd/public/content/194/Seite.1740313.html).

<sup>115</sup> Austria, Youth Court Act (*Jugendgerichtsgesetz 1988, JGG*), BGBl. Nr. 599/1988, available at:

[www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825).

<ul style="list-style-type: none"> <li>access to case materials</li> </ul>	a)	X	<p>No, there are no special rules regarding procedures taking into account special needs of vulnerable suspects or accused persons. The commentary on § 61 StPO states, that in case inability to follow the procedure (<i>Verhandlungsunfähigkeit</i>) can be opposed by adapted conduct of the proceedings, this can be done in the individual cases regarding the clinical picture in question and is manageable through applying the rules of procedure creatively.<sup>116</sup></p> <p>However, according to § 61 (2) Criminal Procedures Act persons who are blind, unable to hear or talk or in any other way disabled have to be given an legal aid defence counsel. Blind or other highly visually impaired persons are not able to defend themselves and have to aided to apply for this legal counsel and in case of “need” (<i>Bedürftigkeit</i>) be given a legal-aid counsel.<sup>117</sup> According to § 79a Court Organisation Act (<i>Gerichtsorganisationsgesetz, GOG</i>)<sup>118</sup> the court has to – if necessary – use technical aid (Braille, etc) to ensure that a blind person without legal aid understands the content of the documents, if this is not sufficient legal aid counsel has to be provided, without looking at the financial situation of the person concerned. Deaf and mute people are in no case able to defend themselves, and a sign language interpreter has to be provided. In case he/she applies for it and does not have sufficient financial means also legal aid counsel has to be provided additionally. The law does not specify what is meant by “disabled in another way”, but it is relevant insofar as the disability infringes the possibility to defend oneself. According to the Supreme Court a generous standard should be applied.<sup>119</sup></p>
	b)	X	<p>No, there are no special rules regarding procedures taking into account special needs of vulnerable suspects or accused persons. The commentary on § 61 StPO states, that in case inability to follow the procedure (<i>Verhandlungsunfähigkeit</i>) can be opposed by adapted conduct of the proceedings, this can be done in the individual cases regarding the clinical picture in question and is manageable through applying the rules of procedure creatively.<sup>120</sup></p> <p>However, according to § 61 (2) StPO persons who are blind, unable to hear or talk or in any other way disabled have to be given an legal aid defence counsel. Blind or other highly visually impaired persons are not able to defend themselves and have to aided to apply for this legal counsel and in case of “need” (<i>Bedürftigkeit</i>) be given a legal-aid counsel.<sup>121</sup> According to § 79a Court Organisation Act (<i>Gerichtsorganisationsgesetz, GOG</i>) the court has to – if necessary – use technical aid (Braille, etc) to ensure that a blind person without legal aid understands the content of the documents, if this is not sufficient legal aid counsel has to be provided, without looking at the financial situation of the person concerned. Deaf and mute people are in no case able to defend themselves, and a sign language interpreter has to be provided. In case he/she applies for it and</p>

<sup>116</sup> Ratz, E., (2011), ‘§ 281. [Begriffsbestimmungen]’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 379.

<sup>117</sup> Achammer, C., (2009), ‘§ 61. Beigebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 43.

<sup>118</sup> Austria, Court Organisation Act (*Gerichtsorganisationsgesetz, GOG*), RGBI. Nr. 217/1896, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000009](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000009).

<sup>119</sup> Austria, Supreme Court, 13 Os 46/03, available at: [www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20030514\\_OGH0002\\_0130OS00046\\_0300000\\_000](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20030514_OGH0002_0130OS00046_0300000_000).

<sup>120</sup> Ratz, E., (2011), ‘§ 281. [Begriffsbestimmungen]’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 379.

<sup>121</sup> Achammer, C., (2009), ‘§ 61. Beigebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 43.

			does not have sufficient financial means also legal aid counsel has to be provided additionally. The law does not specify what is meant by “disabled in another way”, but it is relevant in how far the disability infringes the possibility to defend oneself. According to the Supreme Court a generous standard should be applied. <sup>122</sup> Severe disability might amount to inability to stand trial. <sup>123</sup> Someone is unable to stand trial if he/she is not able due to psychological or physical reasons to follow the proceedings, to articulate in an understandable way or fulfil his/her rights reasonably. <sup>124</sup>
	c)	X	Minors until the age of 14 are not liable. Starting from the age of 14 they are liable, but the court is obliged to assess every time – prior to sentencing – whether he/she was mature enough at the time of the act to understand the wrongness of the act and act on it. If this is negated the minor is not liable. The sentences are much lower for youth in most cases. In case the endangerment of the personal development of a minor accused of a crime, is expected, the guardianship court has to assess whether acts on guardianship are necessary. <sup>125</sup> There are several particularities for youth-proceedings. A defense counsel has to be provided obligatory, for the whole procedure in front of the regional court and for the procedures in front of the district court, if it is necessary to guarantee the rights of the minor in question, in any case if no legal representative can be present at the proceeding. If a minor has the right to be heard or present at investigations or gathering of evidence, this right is also applicable for the legal representative. The public can be excluded ex-officio or on request from proceedings if this is necessary for protecting the interests of the minor (§ 42 Youth Court Act, <i>Jugendgerichtsgesetz, JGG</i> ) <sup>126</sup> .

<sup>122</sup> Austria, Supreme Court, 13 Os 46/03, available at:

[www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20030514\\_OGH0002\\_0130OS00046\\_0300000\\_000](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20030514_OGH0002_0130OS00046_0300000_000).

<sup>123</sup> Achammer, C., (2009), ‘§ 61. Begebung eines Verteidigers’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 43..

<sup>124</sup> Ratz, E., (2011), ‘§ 281. [Begriffsbestimmungen]’, in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 378.

<sup>125</sup> Austria, [help.gv.at](http://help.gv.at), ‘Strafbarkeit von Jugendlichen (Deliktsfähigkeit)’, website available at: [www.help.gv.at/Portal.Node/hlpd/public/content/194/Seite.1740313.html](http://www.help.gv.at/Portal.Node/hlpd/public/content/194/Seite.1740313.html).

<sup>126</sup> Austria, Youth Court Act (*Jugendgerichtsgesetz 1988, JGG*), BGBl. Nr. 599/1988, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825).