

Sign language, translation and rule of law – deaf people’s experiences from encounters with the Norwegian criminal justice system

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The UN Convention on the Rights of Persons with Disabilities was ratified in Norway, June 2013. Nordic countries are generally associated with the promotion of human rights as well as disability rights. The Rule of Law Index from the World Justice Project ranks the Nordic countries among the top nations when it comes to high standards of justice (both civil and criminal justice) and rule of law. However, there are also well-known examples of grave miscarriages of justice in cases where disabled people have been involved. These cases address issues of access to justice and questions barriers to effective communication in criminal justice. Taking the situation of deaf people in Norway as a case, this study asks what barriers deaf people face when reporting a crime, being accused of a crime or being a witness in court. The methodological approach is semi-structured, open-ended interviews with deaf persons, professional sign language interpreters, judges, prosecutors, police officers and lawyers. All the informants have personal experiences from encounters between deaf people and the criminal justice system. This paper discusses this situation in terms of language and communication problems, access to justice, non-discrimination and equal recognition before the law.

Keywords: deaf; disability; sign language; rule of law; criminal justice

Introduction

This paper takes as its point of departure the United Nations’ Convention on the Rights of Persons with Disabilities (UNCRPD), particularly Articles 12 and 13 which states equal recognition before the law and access to justice for persons with disabilities (United Nations 2006). Even if these basic principles may seem self-evident in a modern state governed by law, we argue here that this is not the case. Norway has recently ratified the Convention (June 2013), marking the end of a long process of adapting national law to accommodate those commitments referred to in the Convention.¹

Implementation of the UN Convention implies that the judicial system must address accessibility for disabled people. The requirements that the judicial system is supposed to comply with include equal protection for disabled people and equal benefits when reporting a crime, when being accused of a crime, when being interrogated or when testifying in court.

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The Nordic countries are generally associated with high legal standards for their police and court services. In a comparative index on legal matters recently published by The World Justice Project, the Nordic countries are generally ranked at the top in matters such as order and security, open government, due processes, trustworthiness, predictability and general confidence in the police and courts (The World Justice Project 2014). However, even if the Nordic countries seem to perform rather well generally, as mentioned in the Editor's introduction to this volume, Norway and Sweden are home to some of the worst examples of miscarriages of justice in modern times in cases where disabled people have been involved. It is thus relevant to study closely how disabled people are treated when, for one reason or another, they face the police or the criminal justice system. This seeming paradox makes it particularly relevant to take a closer look at the situation for disabled people in encounters with the criminal justice system.

Aim and research questions

This paper addresses two main issues. The first issue deals with the general challenges presented during individual deaf people's encounters with the judicial system (police interrogations, witnessing in court, etc.). The other issue concerns questions and dilemmas relating to language, understanding and interpretation when deaf people interact with the criminal justice system as victims or suspects/offenders.

The main research question is formulated as follows: How do persons who are deaf, and have Norwegian sign language (NSL) as their first language, experience encounters with the Norwegian criminal justice system? Research on deaf people as crime victims, criminals or suspects in Norway is limited. Hence there is a need for a deeper understanding of the barriers that exist: What barriers do deaf people face when it comes to reporting a crime, being accused of a crime or being a witness in court?

Our point of departure is that barriers come in many forms. Describing and discussing them presupposes the possibility to detect them empirically. Some barriers may relate to physical obstacles; curbs or staircases are frequently used as examples of barriers faced by people in wheelchairs. More relevant in the context of this paper, however, are those barriers that relate to cultural and social entities such as language, communications, knowledge, organizational routines, procedures and principles of legality. These are barriers that appear to be more difficult to change and involve far more than just one decision to induce change. One example of this is the more or less taken-for-granted model of thought applied in the judicial system. Revising this model for the purpose of making criminal law administration more accessible to disabled people would give rise to a much broader discussion on the general functioning of these traditions. Even though standards of consistent and transparent language are generally highly valued in the court system, the chances of revising these traditions seem very remote.

The paper is organized as follows. First we provide a short description of the methodological approach and we discuss earlier research in this area. This is followed by a discussion of the role and function of sign language interpreters in the Norwegian judicial system. In the following section we discuss the experiences of deaf informants in encounters with the judicial system as victims, suspects, defendants or convicted persons. The paper concludes with a discussion on the results of the study.

Background: rule of law

In the most general and basic sense the concept of ‘rule of law’ implies that individual citizens are protected from discriminatory or arbitrary treatment by the government or other authorities (Echhoff and Smith 1997). In the case of criminal law, this also depends more specifically on the context within which an individual faces the criminal justice system. It implies a guarantee for the protection of basic civil rights. The concept includes the domains of both civil and criminal law, and it implies very different things in different contexts and situations. The principle of citizens’ legal protection is embedded in several sections of Norwegian law, including police legislation and legislation relating to the treatment of psychiatric patients, as well as in the Norwegian Constitution, which regulates due processes in cases where citizens are accused of crimes.

Legal protection for citizens constitutes a basic principle implied in the European Convention on Human Rights and Fundamental Freedoms (1950) and the United Nations’ International Covenant on Civil and Political Rights (1966). These principles are explained in greater detail in Articles 12–15 of the UNCRPD, where it is emphasized that those involved should be treated as independent and competent subjects, with a right to be informed about their case and to have their voice heard.² The concept of *legal protection* concerns two aspects of law: (1) certain requirements relating to the legal rules; and (2) the application of such rules. The procedural requirements imply that decisions must be made by impartial persons; and the parties concerned must be given the opportunity to defend their interests (the principle of contradiction). The principle of legality means that the administration and the courts are required to apply legal rules that have been declared beforehand, and that they shall be bound by rules when making decisions affecting individuals or other legal entities. In order to enable individuals to predict their legal position, the rules should be formulated so precisely that they leave little room for misinterpretation.

In cases where deaf people are involved, either as victims or in having been accused of a crime, the legal justice system’s ability to meet these demands is put to a test. The legal justice system is based on specific communicative practices which are challenged when a client (victim or suspect) does not have immediate access to the language used.

Methods and data

The methodological approach used in this study is qualitative. The empirical data were gathered from a total of 22 semi-structured, open-ended interviews conducted with deaf persons (7 interviews), professionals involved with the administration of criminal law (7 interviews) and professional sign language interpreters (8 interviews). All the deaf informants had personal experiences from encounters with the administration of criminal law, either as victims, witnesses, suspects or convicted persons.

Table 1 provides an overview of the deaf informants and the different kinds of experiences they have with the criminal justice system in Norway. Some of the informants could be regarded as being particularly vulnerable when compared to other deaf persons, due to their background, family resources or lack of education. The majority, however, had completed their compulsory education (comprising 9–10 years of study) or had completed comprehensive or higher education.

The interviews were conducted during 2010–2012. Our deaf informants had all experienced one or more encounters with the administration of criminal law, and some had even experienced numerous episodes. The focal point of all the interviews was the

Table 1. Overview of deaf informants.

Informant alias and age ^a	Informant status	Criminal offence	Participation
Adam (teenager)	Victim	Physical assault and verbal abuse	Prompted by his mother to report the crime and gave an interview to the police. The case was dismissed.
Benjamin (teenager)	Victim	Sexually abused as a minor	Prompted by his mother to report the crime some years after the incidences of abuse, and gave an interview to the police. The case was initially dismissed, then reopened. Benjamin provided testimony as a witness in the following criminal court case.
Charles (in his fifties)	Victim	Harassment	Felt threatened in his own home. Tried unsuccessfully to call the police with the help of a neighbour. Did not report or pursue the case on any later occasion.
David (in his twenties)	Victim	Physical assault and possible police misconduct	Assaulted and wrongfully arrested when the police were called. Interrogated without an interpreter and told to 'stop acting deaf'. Released the following day without any apologies from the police. The police did not conduct any further investigations of the assault and David did not pursue the case of his wrongful arrest.
	Victim	Car theft	Caught a car thief in the act and reported the incident by sending a text message to the police. Gave an interview to the police and provided testimony as a witness in the following criminal court case.
Eric (in his forties)	Suspect	Counterfeiting	Subjected to police interrogation, case dismissed as being based on a misunderstanding.
	Victim	Forced entry and physical assault	Reported the case to the police, provided testimony as a witness in a criminal court case.
	Convicted	Drug-related crimes	Interrogated by the police and admitted to some of the charges. Was convicted in court and served a prison sentence.
Fiona (in her forties)	Convicted	Armed robbery and physical assault	Interrogated by the police and admitted to the charges. Was convicted in court and served a prison sentence.
	Suspect	Sexual abuse against her own children	Subjected to a house search. The police showed up unannounced on her doorstep without interpreters. The criminal case was dismissed, but by a civil court decision and the children were taken into care due to alleged gross neglect by their parents.
George (in his forties)	Convicted	Domestic violence	Interrogated by the police and admitted to most of the charges. Was convicted in court and served a prison sentence.

^aOur informants are all members of the Norwegian deaf community, which is small and transparent. In order to prevent identification, we have only provided the informants' approximate ages at the time the interviews took place.

informants' detailed descriptions of the actual incident(s), their experiences of the situation(s) concerned and their understanding and interpretation of what had happened. The deaf informants' ages ranged from the teens to the fifties when the interviews were conducted. One of the informants was a woman, the others were men.³ As one of the informants was involved in a trial at the time the interviews took place, the members of the research team observed his prosecution in court.

All the professionals had personal experiences from cases where deaf people were involved. The informants included judges, prosecutors, police officers and lawyers. All the sign language interpreters we interviewed had several years of experience of interpreting during police interviews and/or court hearings.⁴

Topics like personal encounters with the police or being the victim of a crime are usually rather sensitive issues, and a lot of time and effort was devoted to the recruitment of the deaf informants. The informants were recruited by using the snowball method (Becker 1963), whereby some informants or gate-keepers⁵ knew other informants and were thus able to put us in contact with them. This means that one informant 'knew someone who knew someone' and this enabled us to get in touch with the next informant, and so on (cf. Heckathorn 2011).

The interviews were conducted by one or two members of the research team. Where the deaf informants consented, the interviews were videotaped and transcribed. In the three interviews where the informant did not wish to speak in front of the camera, we took notes and more extensive notes were written out shortly after the interviews had been conducted. Two of the four members of the research team are fluent in NSL and all but one interview was conducted in sign language.⁶ The interviews with the professional actors and the interpreters were audiotaped and transcribed.

As part of the data gathering process, we also carried out a systematic document study of 46 Norwegian case court decisions handed down over the last 10 years, all involving deaf persons. The analysis of this material has been published elsewhere (Kermit, Mjøen, and Olsen 2011; Olsen et al. 2010) and will serve as a backdrop for this paper.

Earlier research

Previous studies on the situation of disabled people in legal matters in the Nordic countries have focused on different aspects of what it means to face the criminal justice system. The overall situation is characterized by relatively limited empirical research studies. However, the main picture drawn in these studies seems to be somewhat congruent. In sum, the overall tendencies are as follows:

- (1) Disabled people are considered to have a high risk for violence, sexual harassment or abuse. This applies to both minors (Kvam 2000, 2001, 2004) and adults (Olsvik 2004, 2006, 2010a, 2010b; Malmberg and Färm 2008; Lewin 2002; Damgaard, Steffensen, and Bengtsson 2013; Grøvdal 2013; Muff 2001; Sandvin 2003).
- (2) There are, however, methodological difficulties connected to these studies which create an uncertainty about the estimated number of cases (Grøvdal 2013; Muff 2001; Olsvik 2006).
- (3) In real life, if not in theory, legal protection from sexual harassment or sexual abuse is weaker for disabled citizens than for non-disabled citizen (Ballangrud 2007; Grøvdal 2013).

- (4) There are good reasons to believe that the number of unrecorded cases is high (Muff 2001; Olsvik, due to weaker legal protection 2010a).

The general picture drawn in international studies in this area shows the same pattern as in the Nordic studies mentioned here (see Brownridge 2006; Brunson 2007; Hollomotz 2011; Luckasson 2001; Williams 1995). However, a most recent and highly elaborated presentation has been published by Camilla S. Lundberg and Eva Simonsen in another article in this issue of SJDR, and in an earlier publication (Lundberg and Simonsen 2011).

Kristian Andenæs and colleagues have carried out an interesting study on minority language speakers in encounters with the Norwegian criminal justice system (Andenæs et al. 2000; Andenæs 2001). By focusing on the interaction between foreign language speakers and Norwegian police officers, lawyers, language translators and judges, their study demonstrates foreign language users' vulnerability – due to limited access to lingual practices in the criminal justice system. Andenæs et al. (2000) also find that foreign language speakers possess a significant lack of knowledge about the judicial terms used and the contextual-dependent interpretations of their testimonies, that they rely heavily on their interpreters, and that there is a potential risk of misunderstandings arising. Several of the traits discussed by Andenæs and colleagues are consistent with the findings in our study.

Deafness and disability studies

Deafness should not be labelled as 'disability' without proper clarification. Within the tradition of Deaf Studies, many people customarily make a distinction between being 'deaf' and 'Deaf', and this distinction does not correspond fully with, for example, the distinction often made between 'medically' and 'socially' constructed disabilities in disability studies:

[W]e use the lowercase *deaf* when referring to the audiological condition of not hearing, and the uppercase *Deaf* when referring to a particular group of deaf people who share a [sign] language [...] and a culture. (Padden and Humphries 1988)

Even though researchers like Paddy Ladd (2003) have tried to work out a more systematic description of the differences between deafness and Deafness, attempts like this cannot be said to represent a consistent theoretical framework as yet (Kusters and De Meulder 2013). The basic – and in many ways ground-breaking – insight that allows for this distinction is, however, widely recognized: the languages signed among deaf people around the world are natural languages, as fully fledged as any spoken natural language.

In line with previous works by the authors of this text, the relevance of describing and understanding Deaf people as a lingual minority is fully recognized. At the same time, it is reasonable to also consider how deaf signing people might be disabled due to processes wherein socially constructed barriers prevent deaf people from equal participation in society (For an extensive discussion on the relationship between different notions of d/Deafness, please see Kermit 2009).

Interpreting and barriers to participation

As implied above, the nature and structure of socially constructed barriers for deaf people are neither comprehensively described nor fully understood, but remain a topic of

discussion. A complicating factor in this discussion is that the alleviation of barriers is hardly as straightforward as it might sometimes seem. An illustrative example is the use of sign language interpreters.

In an earlier article (Kermit, Mjøen, and Olsen 2011), we presented the extensive development of a publicly funded national interpretation service in Norway over the last 15–20 years, and discussed the implications of this development for deaf people. In order to meet the demand for a functional and effective interpretation service, public interpretation services were established by the Norwegian Government in all of Norway's 19 counties during the early and mid-1990s. In general, Norway is considered to have relatively extensive sign translation services and NSL is currently recognized *de facto* as an official Norwegian language. Interpreters are employed as civil servants and share office space with other interpreters. The public interpretation service currently has a monopoly on interpretation services and has no competition from, for example, private interpretation services or freelance interpreters. Public interpreters make their own decisions about which interpreters should be assigned to various assignments.

Interpreters are widely regarded as being key professionals who can remove the communicative barriers between people with a signed language and people with a spoken language. The interpreter's code of ethics also contains a statement that emphasizes recognition of the equal status between signed and spoken languages: as both language types represent natural, fully fledged languages, suggesting that a deaf person is more in need of their services than a hearing person in theory makes no sense to the interpreters. The interpreters thus describe their professional role as being limited, within well-defined borders. The interpreter does the interpreting, but will otherwise be discrete, neutral and abstain from engaging in the conversation at his or her own discretion. The underlying idea is that the interpreter recognizes both the 'signers' and the 'speakers' as equals who will take care of their own business and agendas, as long as the lingual gap between them is bridged.

In the context of criminal justice, interpreters are considered to be indispensable when it comes to securing deaf people access to, and a chance of participation in, police interviews and proceedings in the criminal courts. The Criminal Procedure Act specifies that a deaf person is entitled to have an interpreter, and the usual way of dealing with the communicative challenge in Norway is to use a minimum of two cooperating sign language interpreters to mediate the communication between the two interactive parties.

Nevertheless, there are examples illustrating that the use of interpreters in itself may constitute challenges for deaf people facing the criminal justice system.⁷ One important topic here has to do with understanding. Both our interviews with deaf informants as well as our interviews with sign language interpreters and professionals working within the criminal justice system suggest that the question of understanding is multi-layered and complex.

When interviewed, the interpreters formulated the suspicion that professionals working within the criminal justice system had a low awareness of this complexity: 'They think we [the interpreters] speak Norwegian, only with signs', says one interpreter (Kermit, Mjøen, and Olsen 2011; Olsen et al. 2010). The results from the interviews with the professionals themselves suggest that even if the accusation is exaggerated, it is not completely unfounded. It seems that the question of understanding exists primarily as a topic in the professional relationship between the deaf person and the interpreter. When asked, the interpreters are quick to quote their code of ethics which – in accordance with similar codes for interpreters across the world – stresses that the interpreter is a neutral

professional whose task should be ‘only interpreting’, not a participative role where he or she could clear up misunderstandings, or contribute to solving communicative problems, for example, by providing contextual or cultural information.

The interpreters are, however, often aware that communications between their deaf and hearing clients are of poor quality. As the deaf client is normally also the client of the hearing professional, the interpreters – probably quite correctly – see the problem of poor communication and understanding as a potentially more perilous problem for the deaf, than for the hearing professional.

In our material, there are several results where both interpreters and the deaf informants articulate concerns about lack of understanding, not due to any inability to understand the signs and signed sentences the interpreter produces, but due to problems associated with grasping the full meaning, range and connotations of what is being translated. There might be many ways to try to explain this distinction and the professional dilemmas for the interpreter arising from it.

One way of framing the distinction is to compare it to the distinction suggested by Ferdinand de Saussure between ‘la langue’ and ‘la parole’ (de Saussure [1972] 2011). The discussion about the scope of the possible meanings of Saussure’s distinction is extensive, so when we apply the distinction here, we only wish to mobilize the rather uncontroversial claim that there is a difference between language as a formal system (‘la langue’) and the use of this system in order to make one’s way in everyday life. What we wish to point out is that it might be one thing for a deaf person (whose role is most often that of the client) to understand what the interpreter is signing in terms of ‘words’ or ‘sentences’ (‘la langue’), but it is quite another to always know what the interpreter’s signs *mean* in a broader sense. You ‘know’ ‘la parole’ when you mostly understand the meaning and the extent of the implications of what is being said or signed.

Many of the interviewed interpreters told us that they often asked themselves whether or not the deaf person facing the police or the courts understood the full meaning and possible extent of the interpreter’s translations. The interpreters did not question the deaf persons’ understanding of NSL (as ‘la langue’), but rather their understanding of ‘la parole’ in the context of the criminal justice system. When asked if interpreters would try to convey their doubts about a deaf person’s understanding to the ‘hearing side’ – the police officer, lawyer or judge – the interpreters gave rather vague and evasive answers, but saw this as a professional dilemma: on the one hand, the interpreters would violate the interpreters’ code of ethics and the principle of neutrality if they took responsibility for securing understanding, rather than just translating/interpreting. On the other hand, the interpreters admitted that the ‘hearing side’ had little opportunity to detect the deaf person’s lack of understanding on their own, as long as communication was taking place through the interpreter.

Some of the interpreters thus admitted that they would choose to do more ‘free’ and less ‘literal’ translations, particularly when translating between spoken Norwegian and NSL. This they did in order to promote the deaf client’s ability to take part in the proceedings. Furthermore, the interpreter also had the professional awareness that it would become hard to explain to the ‘hearing side’ why and how the lack of understanding was not simply the result of poor interpretation, if the representatives from the ‘hearing side’ did not distinguish between ‘la langue’ and ‘la parole’ themselves. (And the interpreters are probably correctly assuming that this is a distinction which is not always intuitively obvious.)

Several interpreters participating in the study explained in the interviews that they themselves from time to time struggled to grasp the full meaning of what was being said, especially in the court rooms. To fully know 'la parole' in the context of law normally presupposes that you are either educated in, or familiar with, both the law and the way the system works. On a general note, it may not be unreasonable to suggest that having limited insight into the ways of the law, and the law's special terminology, is quite normal. Where most people learn from experience about how to play different roles as clients facing different public services (in Norway where education and health are publicly provided, this would typically mean the roles of the student and the patient), the roles we might have to play when facing the criminal justice system are not normally roles that we get many chances to rehearse.

The question of understanding thus contains several complex issues and dilemmas involving both the questions relating to the interpreters' modus operandi and the interpreters' need to appear competent, as well as questions relating to how a deaf person's right to access should be fulfilled.

Deaf people's experiences as victims of crime

The deaf informants' experiences when facing the criminal justice system fall in one of two general categories: either because the informant had been the victim of a crime or because the informant had been accused of a crime. Some of our informants had experienced both situations. In the following, the two categories of 'victim' or 'accused' will structure the presentation.

What does rule of law *de facto* imply when deaf people encounter the legal justice system as the victim of a crime? Generally speaking, a deaf citizen's challenge consists of two types of barriers: (1) the loss of immediate access to the language in which the system works, and (2) the loss of immediate access to understanding the language and terms used (e.g. implicit meanings, connotations and implications of the terms in use). In our data, there are several examples of how such encounters unfolded. Among our informants there were six episodes in which the informants concerned had been in a position of being the victim of a crime, see [Table 1](#).⁸ These episodes ranged from one rather small episode to very serious crimes involving several years of penalties.

Between them, the informants referred to several episodes involving contact with the police, reporting a crime – or choosing not to report a crime. All those informants who reported a crime talked about the experience of making a statement to the police. In three of the cases the informants had one or several experiences of appearing as a witness in a criminal court case.

'Benjamin' talks about his experience as a victim of repeated sexual abuse from a closely related person. At the time, he was a minor. Years later, the case was reported to the police, taken to court and resulted in a conviction for the abuser. The reason for reporting the case in the first place was, however, that Benjamin came to understand the word 'abuse'. He explains:

When I was 15, I talked to a deaf friend who is some years older than me. We talked about abuse, and I realized that I had been sexually abused by NN. I learned about sexual abuse in school, but I thought it had to do with violence or use of force. In my case, there was no force involved, because NN was kind and loving. At that time, I didn't think I could report it to the police. But at the same time, I had a feeling of uneasiness and I experienced a bodily discomfort. I felt something had to be done. When I became 17, I talked to some other deaf people about it, but they discouraged me to report it: there would be no point in it, anyway he

said – at least not before I became 18. One weekend when I was home, I told my mother what had happened. She reacted with shock, and to soften her reaction I emphasized that I wasn't hurt.

'Eric', who has a history of substance abuse, is well known to the local police. In several ways, he is an 'experienced client'. One of the episodes which he referred to in the interview illuminates the problem of getting a qualified translator in an emergency situation when there is an urgent need for explaining the situation:

At the time the assault happened, I was dealing drugs. I had irritated some other people. I sold my stuff cheaper, you see. This generates conflict. One night between Christmas and New Year me and my friend [BB] were in my apartment. BB is also deaf. He had gone to sleep, but I was up going through some data things. That was when they came. Three men broke into my apartment. [...] They had crowbars, and one of them had a gun. If it was real or not, I don't know. But the one with the gun pressed me up against the wall and held the gun a few centimetres from my eye. I screamed, and he hushed me by putting his index finger in front of his mouth. One of them hit me hard on the head, which made me stumble backwards and fall behind the table. Blood poured down my face. They started to go through my apartment and took anything they could steal. They were looking for dope, but they didn't find any. I managed to stand up and sneak out the balcony door. I was only in my underwear, and I ran about 20 meters in the snow which came up to my thighs. They didn't follow me. I rang one of the neighbours' doorbells. They opened up and I explained that they had to call the police and an ambulance.

How did you explain this?

I pointed and showed them by using body language, and then I wrote on a piece of paper. The lady in the house gave me a compress. An ambulance came after 5–10 minutes. I explained by using body language that they had to drive me to my apartment where my friend was. The police were already there. The three men had left soon after I escaped. They hadn't threatened or hurt BB. I put some clothes on and the police took a short statement.

Was there any sign language translator present?

My friend [BB] translated for me and also provided his own statement. One of the men had taken off his mask so BB saw his face and recognized him. I also recognized him because of one of the tattoos he had on his neck. The police left to find them and I was taken to the hospital by ambulance. BB stayed behind. At the hospital they had to sew nine stitches in my head. I didn't have an interpreter. When they had finished, at about 4.30 in the morning, the police took me to the police station for a 'light questioning' [the informant's own expression] session. BB came down there as well, and functioned as a translator for me. We were told that the police had arrested two of the men who had assaulted us.

It is in itself surprising that the police conducted an interrogation using Eric's friend as an interpreter, given that the friend himself was deaf and also a victim in the same case. During this sequence, which took several hours, Eric's friend functioned as an interpreter in two different settings. When we asked the local sign language service, they confirmed that their emergency service was operating at the time this episode happened and that the police sometimes used this service. However, as far as Eric was concerned, the question about sign language interpretation seemed to be subordinated, both during the episode and in the later court case, as he was used to interacting with the police.

As we can see from the five first cases shown in [Table 1](#), all our informants were the aggrieved parties in the cases concerned – in none of the cases were the informants witnesses without being personally involved. The majority of the cases relate to physical

attacks or assault of some sort. Most of the cases in the table above represent rather serious crimes and were also reported to the police. Compared to the information contained in other parts of our material, this is rather atypical. Based on the total body of data gathered, it would seem that deaf people experience a high threshold in respect of going to the police to report a crime. This is partly due to the language barrier, but possessing knowledge and understanding of the concept of criminal justice as such is even more important. In our material, we can distinguish between crimes reported immediately to the police and crimes reported after a period of time.

The cases reported immediately involved dramatic crimes where the victim was absolutely certain that the police should be summoned; these crimes included car theft (David), burglary/forced entry and quite violent abuse (Eric). In the cases of less violent abuse and sexual abuse, the crimes were either not reported (Charles), or only reported after the victims had told another person about what had happened and they were then encouraged to go to the police and were accompanied when they went to the police (Adam and Benjamin). In our material, the other person taking action was the hearing mother in both Adam's and Benjamin's cases, one relating to violent assault of a lesser degree, the other to sexual abuse.

Most people are spared from having encounters with the criminal justice system. Anyone involved in such encounters may experience problems with understanding what is going on or misinterpret what is being said. In our material, we see some specific common features with respect to how deaf people describe their experiences. These features are closely related to difficulties in communication. In the following, we will point to three such aspects of victim encounters, all of which affect deaf people's legal protection from crimes. These are: (1) the significance of the first statement made to the police, (2) losing control of the story and (3) the quest for reliability.

The significance of the first statement

What the informants are not usually aware of is the crucial importance of their first statement, when seen from the point of view of the police. The first interview is considered to be the most immediate, detailed and precise expression of what has happened.

Those of our informants, who chose to report a crime committed against them (not all of them did), were at some point expected to provide answers to questions such as: 'What happened?' 'Who was involved?' 'What was your role?' In some of these cases, these explanations were provided directly at the crime scene, in others they were provided as an immediate response to the crime at the police station. The urgency to tell the police what had happened also meant that in several cases no interpreter was present and the two parties had to improvise to find ways to communicate. Our data contain two cases with examples of informants texting back and forth using a mobile phone and writing messages back and forth on paper.

The often poor quality of the content of a deaf victim's first statement to the police implies that the words chosen to describe the situation are not very precise, and in turn preliminary statements may differ – sometimes quite substantially – from what is communicated in later statements when using professional interpreters. In cases where there are big differences between the different statements made to the police, this is seen as a weakness in the material when seen from point of view of the police. This may also be used by the opposing party as an argument for weakening the prosecutor's

case: the information provided during the first police interviews has a loose inner consistency and the reliability of the witness is called into question.

Reliability

The next point that we would like to make concerns the victim's reliability and is closely related to the former one. When prosecutors consider whether or not to institute formal proceedings, they must always take the following into consideration: Is the victim and his/her story trustworthy or not? Is the story consistent? Is the person reliable? Moreover, the witness's testimony will need to be convincing in a court hearing. Therefore, they must also consider how the witness will appear in the courtroom and the likelihood that his/her testimony will convince a judge and the jury.

As pointed out by Inghilleri (2005), judicial processes have their specific logic. The subjects have their specific cultural, social and individual agendas in these processes. The professional actors from the government also have their agendas, their logic of action and their pre-understanding of the situation. In other words: participants have very different assumptions in respect of gender, socio-economic background, culture and educational background, which the interpreter cannot equalize or compensate for.

As we have seen during an earlier phase of our research, deaf people have been under-represented as parties (both as victims and the accused) in Norwegian criminal court cases during the last 10 years (Olsen et al. 2010). One reason for this may be the communication difficulties that are associated with explaining a story in such a way that it is consistent with earlier testimonies made to the police, shows an inner consistency, and uses expressions or words that have more or less been the same throughout the process. This can be the case for somewhat straightforward matters as well as those that are very complicated.

Deaf people as crime suspects or convicted offenders

Between them, our informants had experienced various types of legal prosecution. As [Table 1](#) shows, these involved suspected sexual abuse, different types of violence and armed robbery. In general, our interviews create the impression that the police in Norway to some extent care more about deaf people's understanding when they are accused of something, than when they report crimes or are interviewed as the victims of crime. The results suggest a distinction between situations where the professional actors clearly recognize the need for interpreters in order for them to carry out their responsibilities and situations where the need for interpreters is felt less strongly by the professional actors, but then often more strongly by the deaf informants. The details could be organized as follows:

- (1) Interpreters are provided in court in all six recorded instances (Benjamin, David, Eric, Fiona and Georg).
- (2) Interpreters are provided by the police when appointments for interviews or interrogations are made beforehand: four instances recorded (Adam, Benjamin, Eric and Georg).
- (3) Interpreters are provided by the deaf informant when an appointment for interrogation is made beforehand: one instance recorded (David).
- (4) Interpreters are provided by the police when receiving emergency calls or directly after a criminal incident has taken place. No instances recorded, but six described

situations where the deaf informant suggested afterwards that he would have been better off if interpreters had been provided. (Charles, David and Eric)

- (5) Finally, there is one recorded instance (Fiona's house search) where the police might have considered interpreters redundant and insignificant in respect of the police's ability to carry out their responsibilities. The police arrived without any interpreters, and when Fiona demanded that they should provide one, she was told that there was not enough time and that no interpreter could be obtained. This is an unlikely explanation as the interpretation service routinely prioritizes police matters.

The above account suggests that victims experience more instances where they have to make do without interpreters than those informants who had been suspected of crimes. Further, the majority of those who had been accused of crimes reported that the initial interview with a police officer had been a mainly positive experience, where the police officer was calm and thorough and they felt that they had enough time (David, Eric and George). This impression was also generally supported by the sign language interpreters.

A less positive aspect is the requirement to understand written or spoken Norwegian. Nevertheless, the majority of those who had been accused of crimes reported that the initial interview with a police officer had been a mainly positive experience, where the police officer was calm and thorough and they felt that they had enough time. (This impression is also supported by the sign language interpreters we interviewed in the study preceding the one reported here.)

Another aspect is the requirement to understand written or spoken Norwegian. Here, 'David' presented us with a really serious case of misconduct. Being arrested after a fight in a taxi queue on a Saturday night, where David felt he was the victim, he was taken to the police station for an overnight stay where police officers repeatedly demanded that he 'stopped playing deaf' because 'they knew he could hear'. The next morning he found himself faced with charges of displaying contempt towards police officers as well as charges of having assaulted a woman. The charges were dropped when things were sorted out, but David received no apologies from the police and he was not told that he could file a formal complaint. Eventually the whole case of the fight was dismissed, something David felt was unjust.

Apart from this clearly invalid demand made by the police, there are a number of more everyday institutionalized demands relating to the mastery of written and spoken Norwegian. 'George' was summoned to attend his interrogation by phone. After three calls, which he thought were directed to a wrong number, he picked up the phone and told the caller that he was deaf and that he wanted to be left alone. It was not until then that he received a text message from the police officer informing him that he was facing charges of domestic violence and summoning him to attend interrogation.

The standard procedure following any police interviews or interrogations is a requirement to sign a written transcript of the conversation. Several of the informants told us that their interpreters had assisted them while they read through these texts. However, several critical factors relating to this practice can be identified. First, for many Deaf people, the spoken languages of the majority of the population in the societies in which they live is – at best – their second language, and often not even that. A second factor is that the implications of signing a text that you are not sure is the correct rendering of your statement can be severe. Fiona was very concerned about this and suspected that her signing papers that she was not sure that she understood had negatively

influenced the outcome of her case. Finally, you are ordered to read and sign your statement by the police authorities. Only George had exercised his right to make corrections before signing his statement. He described himself as being fluent in both NSL and Norwegian.

Coping with the criminal justice system was difficult for a number of reasons, some of which have been commented on here. It should be mentioned that experiences with the system became a topic in two interviews. Fiona stated that even though her experiences were painful, she saw it as her duty to the Deaf community to tell other Deaf people about them. She told us that Deaf people sought her advice and that she would instruct them about how they should handle things. This kind of ‘duty to inform’ is a well-known phenomenon within Deaf communities.

As mentioned, Eric had a long history of substance abuse and could well be characterized as a habitual offender. When he described his dealings with the criminal justice system, he presented himself as being quite a competent participant: he knew the ‘do’s and don’ts’, the smart way of handling an interrogation and which actions could be disadvantageous. In other words, unlike most of us, he was quite a professional due to his extensive experience. However, his considerable experience did not benefit the deaf community as he was more or less an outcast in his local deaf society and not welcome at the deaf club.

Losing control of the story

Another point that we would like to make on the basis of our informants’ narratives concerns the experience of *losing control of the story*. Again, this is closely connected to Andenæs and colleague’s findings on foreign language speakers’ encounters with the police and the courts (Andenæs et al. 2000; Andenæs 2001).

One of the cases illustrates the problem of losing control. This particular case concerns police understanding and interpretation during the early part of the investigation. The informant in this case was a lawyer and acted as the attorney in a case where his client was in a deaf milieu and several deaf persons were involved in the case. According to the informant, his client was interrogated – and made a confession – during the first two interrogations, both without interpreters:

Let us go back to the interrogation. Do you have any idea why this was conducted without sign language interpreters?

It seems like they [the police] were a bit stressed about the time schedule and that the interrogations had to be done quickly.

In your opinion: did this have any influence on the rule of law in this particular case?

It obviously had! You don’t have to be a scientist to understand that the first interrogation is crucial for police understanding of a case. In the end a sign language interpreter attended the interrogations of all the deaf persons involved, but in most cases they did not attend until later on during the investigation process.

If the first interview is as important as you say – why do the police conduct interrogations without an interpreter, anyway?

One simply cannot avoid the notion that my client is deaf. No chance! In my opinion, this has to do with good and bad interrogation culture at the different police offices.

His client was sentenced to several years in prison. The informant emphasized that the man's conditions during confinement were particularly hard, being a deaf person in a hearing milieu. This point can be seen in relation to a more general problem of interpreting in court witnesses who are in a particular vulnerable situation, as discussed by Kristin Skjørten (2013). Skjørten has studied the jurisprudence on the weight given to children's voices in custody cases after their parents' divorce. The Norwegian Children's Act entitles children from the age of seven years to be heard in these matters. From the age of 12, their opinions are given significant weight. However, this gives the courts a certain amount of leeway for interpreting children's statements in such cases. The general conclusion is that a child's statement is assessed within a broader framework. However, Skjørten's study also shows that it is problematic to implement a new practice in such court cases – because the concrete rulings are also embedded in other central values in the jurisprudence, such as credibility and consistency.

The experience of losing control of the story should not be seen exclusively as something only experienced by deaf people in their encounters with the police or the criminal courts. It should rather be seen in the context of what Norwegian Professor of Criminology Nils Christie calls 'stealing the conflict' from the involved parties, which implies that the administration of criminal law intervenes and takes control of the process (Christie 1976). According to Christie, this is a common aspect of all criminal court cases. However, based on our data it would appear to be relevant to regard deaf victims as losing control in a fundamental way. From their narratives, we can see that the informants have little idea about what is going on when they are making reports to the police, how their testimony is interpreted or what to expect from a court hearing. In several cases we see that our informants express great disappointment with the results of the court case decisions.

From the data presented here, we will present two particular points about accessibility in criminal court cases where deaf people are involved. The first point deals with issues of competence between the different parties involved, and the last point deals with the complexity of the barriers they face.

Lack of competence between the professional parties

In our interviews with professional parties in the criminal justice system, we observed that attention has been devoted to making criminal law and court cases accessible for people with difficulties. However, we saw that there is generally a lack of knowledge about how to deal with such issues. Judges, prosecutors, police officers and police investigators state that 'No cases are equal. We make the necessary adjustments in each particular case'. It seems, however, that when we look at this more closely, the deaf informants had very unclear ideas about what these adjustments actually meant. In cases involving deaf people, the professional actors we interviewed referred to the fact that Norway has a fairly well-developed sign language interpretation service, and that in this context deaf people are in a much better position than foreign language speakers. The attitudes expressed in these interviews reflect the view that removing the barriers is a technical issue – something that is removed when the sign language interpreter is present.

This point proceeds directly to the question of how these systems can be made more accessible to disabled people, and how the ability to communicate with the professional parties in a criminal case can be improved. Consequently, this observation concerns not only deaf people, but also people with intellectual disabilities, people with serious mental illnesses and people with aphasia or dementia. A close parallel here is the way in which

Andenæs and colleagues discuss the case of foreign language speakers in criminal law cases in Norway (Andenæs et al. 2000; Andenæs 2001).

The professional actors believe that they take the necessary precautions and make the required adjustments in each individual case. However, making a criminal case accessible to a deaf person (in the professional actors' view) is primarily about making the law processes understandable and making a police interview or a court hearing more predictable and transparent to the client, e.g. making sure that clients understand what is going on and establishing better communication between the parties. In the cases we have considered, there is still a lack of knowledge and a lack of ideas about how to establish this basis for communication.

Lack of adequate knowledge and language

Our interviews with the deaf informants reveal several areas where competence is lacking in relation to the criminal justice system; how the system works and how it is able to deal with a deaf person as a victim, witness, suspect or prosecuted citizen. The most prominent area where a lack of competence emerges concerns poorly developed judicial terminology in NSL. As we have discussed elsewhere, terms such as 'witness', 'defendant' and 'judge' exist in NSL, but the formal meaning of such terms is not self-evident (Olsen et al. 2010; Kermit, Mjøen, and Olsen 2011). This means that these terms and also the much more specific 'parole' of criminal law must be established between the deaf person and the translator in each particular case, ad hoc during the statement or interrogation or in the court case. One expression of this can be found in how well those informants with bilingual skills in Norwegian as well as NSL performed in court cases when compared to monolingual sign language users. Those of our informants who performed well in these cases are those informants who have a general understanding of the system and who are able to activate bilingual resources in order to understand their cases and the situation.

We also observed another interesting pattern in those cases we considered. This has to do with what we regard as a lack of basic understanding of the judicial system and a basic knowledge about 'how the system works'; for example, what a court is and what a judge does, etc. From our point of view, this lack of knowledge might well be related to what we know historically about the often poor quality of the education received by people with sign language as their first language in Norway.

A common experience referred to among those deaf informants who do not have particularly well-developed bilingual skills is that they *lose control of their own story* when an incident is reported or explained using the judicial system's terminology and interpretations. In most of the stories we have collected during our fieldwork, we have seen that this pattern is repeated in several ways and this affects how the informants express themselves and what they expect from the outcome of the processes concerned.

Conclusion

The UNCRPD, Articles 12 and 13, formulates equal recognition before the law and access to justice for persons with disabilities. Norway is generally associated with high standards in the rule of law, as well as a highly professionalized and accessible sign language interpreter service. In the empirical results presented here, however, there are several examples of situations where the communication between hearing professionals working within the criminal justice system and deaf clients breaks down. Some of these breakdowns can be ascribed to communicative barriers that could be removed with only a

reasonable small effort. For example, it should not take more than a slight increase in awareness to avoid the situations where deaf people are interviewed without interpreters. Other breakdown situations are more complex and can probably not be prevented without significant efforts. It would take both raised awareness and increased competence and knowledge about different aspects of deafness among hearing professionals, to avoid the lack of mutual understanding that results from inability to take one another's perspectives and world views into consideration during communication. Belonging to a minority, deaf people are constantly facing demands that they should make an effort to understand the hearing world and hearing people. The removal of the complex barriers of communication will probably not start to take place before the hearing professionals within the criminal justice system start to see it as a natural part of their responsibilities to make similar efforts to understand their deaf clients and try to take their perspectives.

As long as the different barriers to communication continue to cause severe misunderstandings, the criminal justice system will systematically continue to offer a lower standard of communication to deaf clients. In the worst case scenarios, this may lead to wrong conclusions and even wrong convictions, as well as general distrust of the judicial systems among deaf people. These failings are potentially a risk, both for deaf persons, as well as the criminal justice system.

Deaf people are just one group experiencing barriers in communicating with representatives of the law. Other groups likely to have similar experiences can be persons with mental illnesses, dementia, aphasia and foreign language speakers. Building better competence and communicative systems for reflecting upon translation and interpretations of statements and interrogations may contribute to a better hermeneutically equipped criminal justice system in general.

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Notes

1. All five Nordic countries signed the Convention in 2007. Sweden ratified it in 2007 and Denmark in 2008. Finland and Iceland have not yet ratified the Convention.
2. <http://www.hrweb.org/legal/cpr.html>
3. Permission to conduct our study was provided by the Norwegian Data Protection Official for Research. The study was conducted in line with principles laid down by the National Research Ethical Committee for Humanities and Social Sciences.
4. To enhance readability, in what follows we refer to the representatives of the Norwegian criminal justice system as *the professional actors*. This term is not unproblematic, but we choose to apply it first and foremost to distinguish these informants from the interpreters. We do not wish to imply that the latter are not professional.
5. Social services and representatives from deaf clubs.
6. The final interview was conducted with the assistance of an external sign language interpreter.
7. This claim may not simply apply to the context of crimes, but may also apply to other areas of everyday life.
8. Crime is here defined as being contravention of Norwegian criminal legislation.

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