

Voices for Justice

Victims of crime with disabilities in Czechia



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The Voices for Justice project focuses on the rights and experiences of people with disabilities who are victims of crime and how they access justice. Voices for Justice is an EU co-funded project taking place across 7 countries, carrying out research at national level, identifying promising practices, creating practical tools for professionals and victims in the criminal justice system, and supporting international standards for the protection of the rights of people with disabilities who are victims of crime. The project references in particular the obligations set out in the European Union Victims' Rights Directive (Directive 2012/29/EU) and the United Nations Convention on the Rights of Persons with Disabilities (CRPD). The project has the following partners:

- Coordinator: Validity Foundation
- Bulgaria: Chance and Support
- Croatia: Victim and Witness Support Service, VWSS
- Czechia and Slovakia: FORUM for Human Rights
- Lithuania: Mental Health Perspectives, PSP
- Romania: Centre for Legal Resources
- Slovenia: PIC – Legal Center for the Protection of Human Rights and the Environment; Social Protection Institute of the Republic of Slovenia, IRRSV; and University of Ljubljana



The full and formal name of the project is: Information and Communication: Cornerstones of justice for victims of crime with disability (878604 — InfoComPWDs)

Forum for Human Rights

FORUM is an international human rights organisation active in the Central European region. It provides support to domestic and international human rights organisations in advocacy and litigation and also leads domestic and international litigation activities. FORUM has been supporting a number of cases pending before domestic judicial authorities and before the European Court of Human Rights. FORUM has authored and co-authored a number of reports and has provided information to UN and Council of Europe bodies on the situation in the Central European region, especially in Slovakia and the Czech Republic. For more information, please visit www.forumhr.eu.

Voices for Justice: Victims of crime with disabilities in Czechia

Acknowledgements

We are grateful to all the professionals and persons with disabilities who shared their stories and experiences with us. It is their contributions which make this report so valuable.

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Publication

Prague, 2022

Grant Information

JUST-AG-2019 / JUST-JACC-AG-2019-878604

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This report is co-funded by the European Union's Justice Programme (2014-2020)

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Executive Summary

The Czech criminal justice system is not fully accessible or effective for victims with mental disabilities¹. There are several reasons for that. In general, although Czechia has made considerable efforts to improve the position of victims in criminal proceedings, also thanks to the EU legislation², the criminal justice system remains oriented predominantly on the relationship between the State and the perpetrator, proof of facts and punishment. Due to that general paradigm the needs of victims, albeit important, remain secondary and the primary role of the victim in the criminal proceedings is that of a witness. That role can easily lead to the objectification of the victim, especially when the proceedings concern offences that are related to interpersonal violence where virtually the only evidence against the perpetrator is the victim's testimony. In these cases, victims usually must undergo an examination of their credibility by an expert that places them in the position of the examined object of the proceedings whose subjective experiences, views, and voices are not as important. Furthermore, the results of the criminal proceedings are, of course, uncertain. The whole process can lead to further victimisation, regardless of all the protection measures adopted in favour of the victim. It is thus not surprising that especially victims of interpersonal violence do not trust the criminal justice system and often prefer not to report the offences committed against them.

The situation is even worse for victims with mental disabilities, due especially to the prevailing medical approach to disability³ not only within the criminal justice system but among justice and law enforcement professionals, as well as the lay public. Criminal justice authorities seem to approach these victims differently depending on the role they assume in the proceedings. Criminal justice professionals often consider victims with mental disabilities important for the proceedings only as sources of evidence, i.e. witnesses, and not as parties to the criminal proceedings, i.e. as injured parties. When people with mental disabilities are in the position of a witness, the medical approach to disability takes the form of regular examinations of the victim's personality and capacities by an expert which plays a crucial role in determining to what extent the victim will be taken seriously. When people with mental disabilities are in the position of the party to the criminal proceedings, the prevailing medical approach makes the criminal justice system rely massively on substitute decision-making measures, typically the victim's representation by a guardian (either a guardian appointed by a civil court or guardian ad litem appointed by a criminal court). The obligation to provide information to the victim is, in such cases, fulfilled only with respect to the guardian⁴ and the accommodation in communication⁵ is provided to the victim only when he/she is to be heard as a witness, but not to support his/her active involvement in the criminal proceedings

¹ By "mental disabilities" we mean intellectual or psychosocial disabilities.

² Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57.).

³ The UN Committee on the Rights of Persons with Disabilities (hereinafter: "UN CRPD Committee") has formulated the definition of the medical or individual model of disability in its General Comment no. 6 (2018) on equality and non-discrimination. The UN CRPD Committee has emphasised that "[i]ndividual or medical models of disability prevent the application of the equality principle to persons with disabilities. Under the medical model of disability, persons with disabilities are not recognized as rights holders but are instead 'reduced' to their impairments. Under these models, discriminatory or differential treatment against and the exclusion of persons with disabilities is seen as the norm and is legitimized by a medically driven incapacity approach to disability. (...)." - UN CRPD Committee, General Comment no. 6 (2018) on equality and non-discrimination, CRPD/C/GC/6, para. 8.

⁴ Guardianship, as a measure of substitute decision-making, is not in compliance with the right of persons with disabilities to equal recognition before the law under Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and their right to access to justice under Article 13 of the CRPD.

⁵ Such as the use of alternative communication methods, the presence of support persons or specialised professionals, such as police psychologists or experts in crisis intervention.

as a whole. Furthermore, the system is still not able to accommodate all the victims with mental disabilities even when giving testimonies. There are high expectations that the victim will be able to describe fully and consistently what happened and any discrepancies, due to the way the questions are asked, are easily taken as a sign of implausibility of the testimony, which, therefore, cannot serve to prove the offence.

Nevertheless, the research showed that, thanks to the current legislative framework, it is already possible to mention several examples of good practices. These depend to a large extent on concrete professionals i.e., the representatives of the criminal justice authorities. It seems that inclusive approach, the absence of prejudices, empathy, as well as respect for the limits of one's knowledge and abilities is more important than formal specialisation, although, of course, adequate knowledge about victims' rights is also important. Effective cooperation between the relevant professionals depends very much on the previous positive experience of law enforcement authorities either with specific attorneys representing the victims, police psychologists, experts in crisis intervention, or the Probation and Mediation Service (hereinafter: PMS). The situation thus differs significantly not only between regions but also between different police stations and even different individuals.

The police or the public prosecutor (if the victim reports the crime at the public prosecutor's office) play the major role in providing information about victims' rights. On the contrary, the informational and communications role of criminal courts is marginal and confined to the necessary procedural information. All the decisions are formulated in legal language and are never converted to an easy-to-read format. As mentioned above, the criminal justice system relies on victims with mental disabilities being represented by a guardian, which is a direct violation of their rights.

Finally, the situation of persons with mental disabilities shows very clearly the limits of the definition of a victim as someone who was harmed by the specific acts listed in the national criminal code. Persons with mental disabilities are likely to become victims of structural violations consisting of the State's failure to implement the relevant human rights obligations deriving not only from the UN Convention on the Rights of Persons with Disabilities (CRPD) but also from other human rights treaties, for instance, the UN Convention against Torture. Examples of such structural human rights violations appearing in the Czech Republic include the use of restraints in psychiatric hospitals or forced detention based on the presumption of the "dangerousness" of the person. Victims of these interventions do not have access to adequate support to recover from the harm suffered although that may be at least as serious as the harm caused by violence, which is determined by the Criminal Code as a criminal offence. Furthermore, the fact that the system and all public institutions legitimise the violence against them even worsens the suffered harm.

Similarly, the definition of a victim may limit the access to adequate support for persons with mental disabilities in situations where these persons become victims of minor interpersonal abuses which do not reach the gravity of a criminal offence defined by the Criminal Code but may, nevertheless, constitute significant harm for the person. Persons with mental disabilities should, even in such situations, be provided with appropriate and understandable information about possible means of support in their situation and with a sufficient and available network of such support.

1. Introduction

Persons with disabilities face systemic, multifaceted, and discriminatory barriers to accessing justice. What does justice look like for a victim of sexual violence, whose credibility is questioned based on his/her psychosocial disability? How can a victim with an intellectual disability report a crime to the police, if the officers cannot communicate properly with him/her? How do courts know what accommodations are required for victims with disabilities so that they can attend court hearings safely and participate effectively in court proceedings?

The European Union Victims' Rights Directive (Directive 2012/29/EU, hereinafter: VRD) established new rights for victims of crime across EU Member States, ensuring that victims are "treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground". Many of those rights concern the provision of information, effective communication and support, and are intended to make sure that victims are informed about their case, understand the criminal procedure, and are able to participate fully and effectively in investigations and court proceedings. The VRD, moreover, emphasises equal rights of victims with disabilities and acknowledges that people with disabilities may experience physical, communication, or other barriers to accessing and participating in the justice system:

"(15) In applying this Directive, Member States should ensure that victims with disabilities are able to benefit fully from the rights set out in this Directive, on an equal basis with others..."

The VRD is part of European Union law, and each Member State was required to transpose it into their national legal systems by 2015.

In addition, the CRPD establishes the rights of persons with disabilities to equal recognition before the law⁶ and to access to justice,⁷ at the same time as asserting the rights to equality and non-discrimination,⁸ and the obligation of states "to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention."⁹ Together with the Victims' Rights Directive, this means that, under the law, persons with disabilities who are victims of crime shall have full and equal access to justice through all stages of the justice process, so any barriers which might limit their access or participation should be removed and accommodations should be made so that they can exercise these rights. The CRPD has been ratified by all EU Member States and has been binding on the EU since January 2011.

The exact impacts of the implementation of the Directive and the CRPD on the experiences of victims of crime with disabilities have not been studied in any detail. In fact, what we do know indicates that victims with disabilities experience multiple barriers to accessing justice, their rights

⁶ CRPD Article 12.

⁷ CRPD Article 13.

⁸ CRPD Article 5.

⁹ CRPD Article 4.

are not respected, and discrimination is common. This research, together with the six other national reports making up the Voices for Justice project, seeks to highlight the main experiences of people within the criminal justice system, identify promising practices, and inform the development and implementation of the legal and policy framework in Czechia.

This research report is structured around four stages of the criminal justice process: reporting; investigation and pre-trial; trial; and the post-judicial stage. The research explores how persons with disabilities access information and can communicate effectively during these four stages, and how and to what extent victims' rights are upheld for people with disabilities in legislation, policy and practice. The report concludes with recommendations for the improvement of laws, policies and the relevant practice.

2. Research methods

Given how little is known about the topic, the research is exploratory in nature. A common methodology was used across the project, involving desk research, field work and observations where possible. Desk research reviewed national legislation, policy and guidance documents, statistics, and reports by the courts, government bodies, NGOs, and others. This was followed by semi-structured interviews with professionals in the criminal justice system, people in contact with persons with disabilities, and with victims of crime with disabilities. The aim was to interview judges, lawyers, prosecutors, court officials, social workers, health care workers, victim support services, disability rights and self-advocacy organisations, and persons with disabilities who are victims of crime. In addition, the research originally intended to carry out observations in court rooms and with support services, however this was not possible because of COVID-19 pandemic restrictions during the period when the research took place.

A total of 18 individual interviews and two group interviews (with three interviewees in each case) were carried out between 5 March and 15 June 2021. Due to the pandemic and the restrictions on travel and in-person meetings, most interviews were carried out via online means or via phone. Three interviews took place in person while two of them were interviews with victims with mental disabilities.

The research team prepared official requests for collaboration in the research to the Ministry of Justice, the Prosecutor General's Office, the Ministry of Interior, and the Czech Bar Association. The Ministry of Interior declared a willingness to cooperate but finally could not support the research team by facilitating individual interviews with policemen. The Ministry of Justice recommended the research team one judge specialised in victims' rights who agreed to give the research team an interview. Also, the Czech Bar Association recommended one attorney who, unfortunately, did not react to the request of the research team for an interview. The Prosecutor General's Office informed the research team that "the prosecution system is very occupied due to the pandemic situation" and thus refused any further collaboration on the research.

In addition to the official letters, the research team tried to spread the information about the research with the information about the possibility to take part in it among the relevant organisations and professionals. In total the team contacted 39 organisations or individuals, including self-advocacy groups of persons with psychosocial disabilities, associations of persons with intellectual disabilities and their families, providers of social services for persons with mental disabilities, victim support organisations, including organisations specialised in domestic violence and gender-based violence, attorneys specialised in victims' rights, policemen, the PMS, a forensic psychologist, and a public prosecutor.

In general, it was very challenging to find persons with mental disabilities who had had any experience as victims of crime and were willing to share it for the purposes of the research. The research team was dependent on the relevant organisations as intermediaries, which often confirmed that they had spread the information among their members or clients, but only received little feedback. Four interviews with persons with mental disabilities – two with intellectual disabilities and two with psychosocial disabilities, were finally carried out and one person with psychosocial disability shared her story in writing. Not all these persons were victims of crime in

the legislative sense of the word. In two cases, they felt they were caused harm, but the act committed against them could not be qualified as a criminal offence under the Criminal Code. One person with intellectual disability was a victim of a crime which was, however, committed about 20 years ago and her experience with the criminal justice system thus could not be considered relevant regarding the significant developments that have taken place since in the area of victims' rights. The pandemic made contacting persons with mental disabilities more difficult. It was not always possible to organise in-person meetings and not all persons with mental disabilities can communicate via online means or phone.

Another challenge was to find criminal justice professionals who have direct experience with victims with mental disabilities where the mental disability (usually a psychosocial one) was not a result of the crime suffered but existed before the person became a victim of crime. These experiences are, in general, very rare. Criminal justice professionals are more experienced in meeting persons with mental disabilities as defendants. The research team thus often had to concentrate in the interviews not only on the specific situation of victims with mental disabilities but also on the provision of information to and communication with victims with disabilities in general and other victims who are particularly vulnerable.

Most of the interviews were recorded and transcribed. However, in several cases, interviewees mentioned that they would feel more comfortable if not being recorded, although they were assured that the record was confidential and was not going to be published anywhere. In such cases, the research team took notes by hand and tried to write as detailed a summary as possible right after the interview.

Some interviewees preferred to remain anonymous. The research team finally preferred to anonymise all the statements by the interviewees to avoid that they are directly linked with the named persons. Names are mentioned only when the statement is taken from an officially published source like an online article or published interview.

Analysis of the data took place after the research and field work, focusing on themes identified from the relevant international legal framework to evaluate the implementation of national legislation, policy, and practice in the country.

3. Issues addressed by the report

This report is divided into 8 thematic chapters. First, the report gives a general overview of the Czech Republic concerning the main political, characteristics of the country, the situation of persons with mental disabilities living in the country, the national criminal justice system, and the impact of the COVID-19 pandemic on both – the situation of persons with disabilities as victims of crime and the criminal justice system. The second chapter introduces in more detail the national legislative and policy framework regulating the rights of victims of crime with the specific emphasis on victims with mental disabilities and gives a brief description of how the Czech criminal justice system operates. The third chapter brings a complex case study of a person with a psychosocial disability who became a victim of sexual coercion and who went through all the stages of the criminal proceedings. The next four chapters are dedicated to a detailed analysis of the provision of information to and communication with victims with mental disabilities both as to the existing framework and its implementation in practice at the four stages of criminal proceedings – the reporting, investigation, trial, and post-judicial stages. The final chapter summarises the key findings and draws the basic conclusions. Based on those and on the relevant international documents both in the field of rights of persons with disabilities and victims' rights it also formulates some key recommendations for the Czech Republic to improve access to justice for victims with mental disabilities and to ensure that they are treated respectfully and as active participants in criminal proceedings.

4. Context and disability rights in Czechia

The Czech Republic is an independent parliamentary republic. Executive power is exercised by the Government and by the President (elected for 5 years) who has several important powers but otherwise holds a rather representative role. Being a multi-party system, the government of Czechia is usually not dominated by any single political party, rather it consists of numerous parties that must work with each other to form coalition governments. Legislative power is vested in the Parliament composed of two chambers – the Chamber of Deputies (200 members, elected for 4 years) and the Senate (81 members, elected for 6 years). The Economist Intelligence Unit rated Czechia as a “flawed democracy” in 2020 (overall score 7,67; rank 31).¹⁰

The justice system consists of two main branches: on the one hand, general courts dealing with civil, criminal, labour, and other matters except for administrative issues, with the Supreme Court at the top of the hierarchical structure and, on the other hand, administrative courts dealing with issues of administrative law with the Supreme Administrative Court at the top of the hierarchical structure. The Constitutional Court constitutes a separate part of the justice system to which recourse can be made if human rights and freedoms have not been protected in procedures before the general or administrative courts.

The Czech Republic does not have an accredited national human rights institution. The Office of the Public Defender of Rights is gradually assuming a growing number of human rights functions, including the role of the independent mechanism to promote, protect and monitor implementation of the CRPD since 2018. Nevertheless, the Office was originally and primarily established as a body assisting the ombudsperson to oversee public administration and, therefore, should not be considered as a universal national human rights body. It simply has some important human rights related roles (such as, in addition to the monitoring of the CRPD, the roles of the national preventive mechanism and that of the body responsible for equality).

Czechia and disability

There is no common definition of disability in Czechia. Different branches of legislation use different definitions which are usually based on the medical approach to disability and focused on the person’s impairments rather than the social barriers related thereto.¹¹ The legal definitions are often based on stigmatising language, referring to, for instance, “disorders”, etc.¹² The CRPD definition of disability¹³ is part of the National Plan for the Creation of Equal Opportunities for Persons with Disabilities for 2021-2025¹⁴ which, however, does not have any legal authority.

¹⁰ The Economist Intelligence Unit. *Democracy Index 2020: In sickness and in health?* Available for download at: https://www.eiu.com/n/campaigns/democracy-index-2020/#mktoForm_anchor [accessed 13/9/2021].

¹¹ UN CRPD Committee, Concluding observations on the initial report of the Czech Republic (2015), CRPD/C/CZE/CO/1, paras. 7 and 8.

¹² For instance the Civil Code sets “mental disorder” as the basic category for receiving any formal support in decision-making – see Act no. 89/2012 Coll., the Civil Code, § 45 [assistance in decision-making].

¹³ See Article 1 of the CRPD: “(...) Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

¹⁴ Available in Czech at: <https://www.vlada.cz/assets/ppov/vvozp/dokumenty/Narodni-plan-2021-2025.pdf>.

Also, the Criminal Code uses the medical definition of “mental disorder”¹⁵ which is, however, relevant only for the application of the so-called insanity defence. The Criminal Code further establishes that committing an offence against, inter alia, a person with a disability is an aggravating circumstance,¹⁶ without defining disability for these purposes. The academic literature mentions that the term, like the other terms used by the cited provision (ill people, people of older age)¹⁷ “expresses a certain objective characteristic which makes the person more vulnerable to be attacked and incapable of effectively defending himself/herself against usually physical assault, or potentially makes him or her (as far as ill persons and persons of older age are concerned) more suggestible and more easily influenced.”¹⁸ The definition thus seems to be quite broad but, unfortunately, not fully in line with the human rights model of disability¹⁹ since it still focuses on the “incapacity of the person” rather than the social barriers the person has to face due to his/her impairment.

In 2018 the Czech Statistical Office carried out statistical research focused specifically on persons with disabilities. The Statistical Office concentrated primarily on persons over 15 living in the community but completed its research also by data on persons living in social, health care and educational institutions and children under the age of 14. The research was based on subjectively experienced constraints, not on an objective (medical) definition of disability. According to the research’s findings and estimates approximately 1 152 000 persons with disabilities over 15 years of age were living in the community in Czechia in 2018 equalling to 13% of the total population over 15.²⁰ Out of that number, 172 300 persons (nearly 15%) were persons with mental disabilities. Approximately 9% of persons with disabilities²¹ living in the community cannot prepare a meal or get out for a walk without the support of another person. More than half of the persons with disabilities have some-one who helps them, usually one or more relatives or professional support in the form of domiciliary services or home care. However, this support is not sufficient, and approximately one tenth – 117 000 persons - lack the necessary support.²² Approximately 30% of persons with disabilities living in the community face barriers in creating and maintaining relationships with other people, close friends, and family, 27% feel that they have a limited opportunity to participate in social, cultural, or religious activities. 39% report that they do not significantly lack anything, but 31 % report that due to their impairment they face financial difficulties and 23% find that appropriate health care is not available. Every eighth person (12,5%) mentions the insufficient support by the state and public institutions.²³

¹⁵ Act no. 40/2009 Coll., the Criminal Code, § 123: “A mental disorder is understood to include mental disorders resulting from mental illness as well as profound impairment of consciousness, mental retardation, severe antisocial personality disorder or other severe mental or sexual deviation.”

¹⁶ However, it is never a ground for punishing the offence more severely, i.e. to impose a longer imprisonment directly under the relevant provision of the Criminal Code, as it is sometimes the case of offences committed against children or children under 15.

¹⁷ Act no. 40/2009 Coll., the Criminal Code, § 42 (h).

¹⁸ KRÁL, V. Commentary on § 42. In DRAŠTÍK, A., DURDÍK, T., FREMR, R., RŮŽIČKA, M., SOTOLÁŘ, A. *Criminal Code: Commentary* [Trestní zákoník. Komentář.] [ASPI system]. Wolters Kluwer [cit. 2021-9-13]. ASPI_ID KO40_2009CZ. Available at: www.aspi.cz. ISSN 2336-517X.

¹⁹ UN CRPD Committee, General Comment no. 6 (2018) on equality and non-discrimination, CRPD/C/GC/6, para. 9: “The human rights model of disability recognizes that disability is a social construct and impairments must not be taken as a legitimate ground for the denial or restriction of human rights. It acknowledges that disability is one of several layers of identity. Hence, disability laws and policies must take the diversity of persons with disabilities into account. It also recognizes that human rights are interdependent, interrelated and indivisible.”

²⁰ 56% of these persons are women because they live longer than men; their disability is related to health constraints. Among the younger population with disabilities (up to 34 years of age) men make up the majority (55%). The report is available in Czech at: https://www.czso.cz/documents/10180/90600407/26000619_t.pdf/44ab9dc5-584e-4a69-8712-deb0e0a04b39?version=1.1 [accessed 13/9/2021].

²¹ This data relates to persons with disabilities in general, not only to persons with mental disabilities.

²² Cited from the press release of the Czech Statistical Office of 19/6/2019. The press release is available in Czech at: <https://www.czso.cz/csu/czso/lidem-se-zdravotnim-postizenim-nejvic-chybi-penize-a-dostupna-zdravotni-pece> [accessed 13/9/2021].

²³ Ibid.

In the same period, 82 252 persons with disabilities were living in a facility (social – 75 612, health care – 44 285, or educational – 6 345).²⁴ At the end of 2020²⁵, social care facilities, which usually take the form of institutions (facilities for persons with disabilities; facilities for seniors, and special regime facilities), accommodated altogether 61 951 persons.²⁶ That number is continuously on the rise, especially concerning elderly persons with disabilities.

Victims with disabilities and the criminal justice system

The Czech criminal justice system does not collect comprehensive data about victims in general nor victims with disabilities in particular. The police do not statistically record the number of and information about victims, they monitor only the so-called “objects of the attack”. These objects are usually not persons but “protected interests”²⁷ and thus should not be confused with victims of crime.²⁸ Not even the Ministry of Justice collects or systematically publishes statistical data on victims of crime or the network of support for victims of crime although it is responsible for the implementation of Act no. 45/2013 Coll., on Victims of Crime (hereinafter: “the Victims Act”). The Ministry of Justice only administers the public register of “subjects assisting victims of crime” which include victim support organisations, attorneys who have declared their willingness to assist victims of crime, providers of social services, and centres of the PMS.²⁹ Unfortunately, there are no official summarised data on the effectiveness of the support system, on the number of victims who sought its help, on the particular vulnerability of these victims, or the extent of assistance provided to them.

This blank space is, to a limited extent, filled by the research carried out by the Institute of Criminology and Social Prevention which is a research organisation within the justice department.³⁰ The most recent studies dealing with the situation of victims of crime are a general victimisation study³¹ and a study focused on elderly persons as victims of crime³², both published in 2019. None of the studies specifically addressed victims with disabilities. The general victimisation study showed that the professional assistance by persons or entities assisting victims under the Victims Act was rarely used by victims and that the general awareness of the existence of the Victims Act was very low.

²⁴ Data by the Czech Statistical Office. Available in Czech at: <https://www.czso.cz/documents/10180/130887156/260023190301.pdf/5210f020-b1df-4d32-bd07-f5e6db20dc28?version=1.1> [accessed 13/9/2021].

²⁵ Latest available data, as of 31 December 2020.

²⁶ See Ministry of Labour and Social Affairs. *The Statistical Yearbook on Labour and Social Affairs 2020*. Available at: https://www.mpsv.cz/documents/20142/975025/Statisticka_rocenka_z_oblasti_prace_a_socialnich_veci_2020.pdf/761f7a82-6269-1f80-4dae-ac9fb9c29270.

²⁷ They correspond to the objects against which the criminal offence is immediately directed – such as “object of general criminality”, “object of economic criminality”, “private objects”, “public interest”. Persons are considered as objects of the offence only for the purposes of certain selected statistical classifications.

²⁸ See Ministry of Interior. *Report on the situation of internal security and public order in the Czech Republic in 2019*, p. 16. The report is available for download in Czech at: <https://www.mvcr.cz/clanek/zprava-o-situaci-v-oblasti-vnitri-bezpecnosti-a-verejneho-poradku-na-uzemi-cr-v-roce-2019.aspx> [accessed 14/9/2021].

²⁹ The register is available in Czech at: <https://otc.justice.cz/verejne/strediskoProbacniAMediacniSluzby/seznam.jsf> [accessed 14/9/2021].

³⁰ More information about the Institute is available in English at: http://www.ok.cz/iksp/en/e_aboutus.html [accessed 14/9/2021].

³¹ Institute of Criminology and Social Prevention. *Victims of Crime. Victimisation study findings* [Oběti kriminality. Poznatky z viktimizační studie], 2019. Available in Czech at: <http://www.ok.cz/iksp/docs/449.pdf>. English summary available at: <http://www.ok.cz/iksp/en/docs/s449.pdf> [accessed 14/9/2021].

³² Institute of Criminology and Social Prevention. *Seniors in the Czech Republic as victims of crimes and offenders* [Senioři v České republice jako oběti i pachatelé kriminálních deliktů], 2019. Available in Czech at: <http://www.ok.cz/iksp/docs/457.pdf>. The English summary is available at: <http://www.ok.cz/iksp/en/docs/s457.pdf> [accessed 14/9/2021].

“Only one-fifth of all respondents were aware that a special law to protect victims had been adopted in the Czech Republic. Although it is the duty of the police to inform the victims of crime of this law, victims of more serious offences have almost the same awareness of the Act as respondents who were not the victims of crime in the reference period. What’s more, only one victim of domestic violence and one of stalking learned about the Crime Victims Act through the police. Most of the rest of the respondents who have been victims of personal crime learned about the law from the media, from friends or on the internet. Respondents were also asked to rate the level of care for victims in the Czech Republic. Experience of victimisation in the reference period proved to be statistically insignificant for assessing the level of care for victims. Rating in all areas was around the mean value but tends to be more negative. One-quarter of all respondents believe there is a lack of accessible non-profit organisations to assist victims of crime in the Czech Republic.”

The Institute of Criminology and Social Prevention,
*Victims of crime. Victimisation study findings, 2019*³³

Other important studies concerning victims of crime were prepared by the PMS as part of its project Why me? II, implemented between 1 July 2016 and 30 June 2020. These studies include Study on the Needs of Victims of Crime³⁴, Collection of Interdisciplinary Cooperation³⁵, and evaluation reports of the project, especially the final one containing a considerable amount of statistical data.³⁶ Neither of these studies specifically address disability. If they explicitly refer to the particular vulnerability of the victim, it is usually on the basis of old age.³⁷ The national campaign organised as part of the project focused on three target groups: 1) seniors; 2) children and youth; and 3) women on maternity or parental leave as persons at higher risk of domestic violence.³⁸ Nevertheless, the project also focused on the education of social workers of social services on victims’ rights that could improve the access to justice also for victims with disabilities.³⁹

The annual activity reports of public prosecution are not completely silent about victims of crime but address them only in the context of specific crimes (like human trafficking, domestic violence, etc.) and the public prosecution’s experience with the application of the Victims Act. These reports do not specifically focus on victims with mental disabilities. When the Victims Act entered into force⁴⁰, the public prosecution was quite sceptical about it. The public prosecution supported the idea of the victims’ empowerment but criticised the way it was introduced into Czech legislation⁴¹

³³ Cited from the English summary available at: <http://www.ok.cz/iksp/en/docs/s449.pdf> [accessed 14/9/2021], p.7.

³⁴ KELLNER, T., HÝL, P., ŠVADLENOVÁ, M., FAMĚROVÁ, R. *Study on the Needs of Victims of Crime* [Studie potřeb obětí trestných činů]. Probation and Mediation Service, 2020. Available in Czech at: https://www.pmscr.cz/wp-content/uploads/2021/08/projekty_PZIII_STUDIE_POTREB_OBETI_200820.pdf [accessed 14/9/2021].

³⁵ FAMĚROVÁ, R., HÝL, P., KELLNER, T., ŠVADLENOVÁ, M. *Collection of Interdisciplinary Cooperation* [Sborník mezioborové spolupráce]. Probation and Mediation Service, 2018. Available in Czech at: https://www.pmscr.cz/wp-content/uploads/2021/08/projekty_PZIII_SBORNIK_MEZIOBOROVE_SPOLUPRACE_201106.pdf [accessed 14/9/2021].

³⁶ SocioFactor. *The Final Evaluation Report of the Project Why me? II*, 2020. Available in Czech at: https://www.pmscr.cz/wp-content/uploads/2021/08/projekty_PZIII_evaluacni_zprava_zaver_200820.pdf [accessed 14/9/2021].

³⁷ See, for instance, SocioFactor. *The Final Evaluation Report of the Project Why me? II*, 2020, pp. 7, 16, and 23. Available in Czech at: https://www.pmscr.cz/wp-content/uploads/2021/08/projekty_PZIII_evaluacni_zprava_zaver_200820.pdf [accessed 14/9/2021].

³⁸ Ibid., p. 62.

³⁹ Ibid., p. 4.

⁴⁰ Most provisions entered into force on 1/8/2013.

⁴¹ „A typical example is Act no. 45/2013 Coll., on Victims of Crime, which set out very demanding requirements for approaching injured parties and victims, which is desirable but which has apparently happened in a way that the application practice has responded to it with considerable criticism.“ – The Prosecutor General’s Office. *2013 Activity Report of the Public Prosecution*, 2014, p. 3. The report is available in Czech at: https://verejnazaloba.cz/wp-content/uploads/2020/03/Zpr%C3%A1va-o-%C4%8Dinnosti_2013.pdf [accessed 14/9/2021].

pointing out that several victims' rights, especially the right to be informed about the right to consult the police file at the end of the investigation, complicate and delay the criminal proceedings⁴². But the position of the public prosecution seems to have changed over time. For instance, the 2020 Activity Report of the Public Prosecution, includes no criticism of the Victims Act.⁴³

Implications of the COVID-19 pandemic

In Spring 2020, the whole country was taken aback by the pandemic, and life, as well as the operation of many public authorities,⁴⁴ virtually stopped. Social contacts were restricted, not only by the formal regulations but also due to fear among people of being infected or infecting someone else. Persons in vulnerable situations, including persons with mental disabilities, had even fewer opportunities to search for assistance if having become victims of crime. People living in institutions were in the most vulnerable situation since they ended up locked in the institution without any opportunity to go for a walk or be visited by their relatives or other close persons.⁴⁵

"Many people were prevented not only from leaving the facility or to receive a visit in their 'home' but were restricted in moving within the facility as well, their activities normally carried out in the residential service were cancelled. Even the activities of people living in ordinary apartments were curtailed in some ways by the government, and their customs and rights were interfered with, but the lives of people in residential facilities were curtailed even beyond normal measures, plus they were patrolled above the ordinary by the very institution in which they live to comply with these stricter measures."

Honza Kostečka, *COVID and residential facilities – double exclusion*⁴⁶

Critical voices against these measures, however, focused mainly on older persons living in institutions due to their dependency on the support of other persons and not on younger persons with disabilities who are also massively institutionalised in the Czech Republic.⁴⁷

⁴² Ibid., pp. 26-27. See also the Prosecutor General's Office. 2014 Activity Report of the Public Prosecution, 2015, p. 29. The report is available in Czech at: https://verejnazaloba.cz/wp-content/uploads/2020/03/Zpr%C3%A1va-o-%C4%8Dinnosti_2014.pdf [accessed 14/9/2021].

⁴³ The Prosecutor General's Office. 2020 Activity Report of the Public Prosecution, 2021, p. 60. The report is available in Czech at: https://verejnazaloba.cz/wp-content/uploads/2021/06/Zpr%C3%A1va_o_%C4%8Dinnosti_SZ_za_rok_2020_textov%C3%A1st.pdf [accessed 14/9/2021].

⁴⁴ See, for instance, the Government's crisis action of 15/3/2020 to limit the operation of public authorities and administrations. Available in Czech at: <https://apps.odok.cz/attachment/-/down/IHOABMQVWAVB> [accessed 14/9/2021].

⁴⁵ See the Government's crisis action of 16/3/2020 on social services. Available in Czech at: <https://apps.odok.cz/attachment/-/down/IHOABMSJP4V9> [accessed 14/9/2021].

⁴⁶ KOSTEČKA, H. *COVID and residential facilities – double exclusion* [COVID a rezidenční zařízení – vyčlenění na druhou]. <https://tudytam-vzdelavani.cz/> [online]. Available in Czech at: <https://tudytam-vzdelavani.cz/covid-a-rezidenčni-zarizeni-vyčleneni-na-druhou/?fbclid=IwAR2j0pOSTAqCxpuyKsvGmelN-Yf-PSFp2CAVAuKIN3bbJgaSE7rXCHoyl8> [accessed 14/9/2021].

⁴⁷ The media paid attention practically only to the situation of seniors. See, for instance, reportages in a public television programme with a high audience rate called *168 hours* [168 hodin], "Greetings from quarantine" [Pozdravy z karantény] <https://www.ceskatelevize.cz/porady/10117034229-168-hodin/220452801100503/video/765572> [broadcasted 3/5/2020; accessed 14/9/2020]; "In isolation again" [Znovu v izolaci] <https://www.ceskatelevize.cz/porady/10117034229-168-hodin/220452801100927/video/791706> [broadcasted 27/9/2020; accessed 14/9/2020].

Ambulatory social services and some outreach social services assisting persons with disabilities and their families had to suspend their activities.⁴⁸ These persons and families thus found themselves without adequate support which increased the exhaustion of the whole family.

“Some important services have been suspended: day and week services centres, day-care centres, social activation services for the elderly and people with disabilities. Those services are important not only to the clients themselves but also to their families. They allow a caring family to rest. Their suspension can be a big problem for a number of families.”

Zbyněk Vočka for Children of the Full Moon [Děti úplňku],
an organisation targeting children with autism and their families⁴⁹

Victim support organisations started to point out the increased risk of domestic violence virtually immediately after the general stay-at-home order was issued.⁵⁰ Unfortunately, they also had to limit services based on personal contacts. Nevertheless, they sought to expand other forms of counselling, including helplines, videocalls via Skype⁵¹ or other platforms, chat⁵², or e-mail. Unfortunately, these means of communication may not be always accessible for persons with disabilities who may not have easy access to the internet or to phone, especially (but not only) if living in a residential facility.⁵³

Non-governmental organisations assisting victims of domestic violence gave very strong warnings about the risk of increased domestic violence, also, they offered phone and online assistance and organised online debates and events. Nevertheless, all these activities focused predominantly on women and children, eventually on older persons, but not persons with disabilities. For instance, the Government’s advisory bodies on human rights and gender equality – the Government’s Committee on the Rights of the Child and the Government’s Committee for Prevention of Domestic Violence and Violence against Women prepared a series of recommendations for the relevant ministries during the state of emergency.⁵⁴ In June 2020, the working group of the Government’s Council for Human Rights established for the purposes of dealing with ageism and the protection

⁴⁸ See the Government’s crisis action of 16/3/2020 on social services. Available in Czech at: <https://apps.odok.cz/attachment/-/down/IHOABMSJP4V9> [accessed 14/9/2021].

⁴⁹ The interview is available in Czech at: <https://www.detiuplnku.cz/cs/jak-se-zije-v-casech-koronaviru-na-oddeleni-socialni-pomoci-olomouckeho-kraje/> [published 12/4/2020; accessed 14/9/2021].

⁵⁰ See, for instance, the website news of White Circle of Security [Bílý kruh bezpečí] – maybe the biggest and most versatile victim support organisation in Czechia – of 19/3/2020. The news are available at: <https://www.bkb.cz/aktuality/n698-obetem-domaciho-nasili-v-dobe-koronaviru/> [accessed 14/9/2021].

⁵¹ See the example of White Circle of Security [Bílý kruh bezpečí]: <https://www.bkb.cz/aktuality/n764-skype-konzultace-rozsiruji-pomoc-obetem/> [accessed 14/9/2021].

⁵² See the example of Acorus, an organisation providing support to persons who are victims of domestic violence. Information from Facebook (Acorus’ post of 16/3/2020). Available at: <https://www.facebook.com/ACORUS.CZ> [accessed 15/9/2021]. Also Život 90 [Life 90], an organisation focusing on older persons, started providing chat counselling. See the information on the organisation’s website of 16/3/2020: <https://www.zivot90.cz/cs/aktuality/155-senior-telefon-zivota-90-spousti-chatove> [accessed 15/9/2021].

⁵³ Unfortunately, we do not have appropriate statistical data on the accessibility of the internet and phone services for people with disabilities. The research carried out by the Czech Statistical Office in 2018 only mapped the persons’ ability to phone. Researchers found that 5% of more than 1,5 million persons with disabilities living in the community are not able to make phone calls at all and another 5% face serious difficulties in phoning. See Czech Statistical Office. *Final research report on persons with disabilities 2018*, 2019, p. 29. The report is available in Czech at: <https://www.czso.cz/documents/10180/90600407/26000619.pdf/b1d5a2b3-a309-4412-a962-03d847d3d1a0?version=1.5> [accessed 15/9/2021].

⁵⁴ See the news of the Government’s Committee for Prevention of Domestic Violence and Violence against Women of 8/4/2020 available in Czech at: <https://www.vlada.cz/cz/ppov/rovne-prilezitosti-zen-a-muzu/aktuality/vybor-pro-prevenci-domaciho-a-nasili-a-nasili-na-zenach-schvalil-podnet-k-ochrane-obeti-domaciho-a-sexualniho-nasili-s-ohledem-na-pandemii-covid-19-180928/> [accessed 15/9/2021]; See also the news of the Commissioner for Human Rights, Helena Válková, of 16/4/2020 available in Czech at: <https://www.vlada.cz/cz/ppov/zmocnenkyne-vlady-pro-lidska-prava/aktuality/helena-valkova-stejne-jako-chytrou-karantenu-je-potreba-prosazovat-i-chytrou-prevenci-v-pripade-obeti-domaciho-nasili-i-ohrozenych-rodin-s-detmi-181018/> [accessed 15/9/2021].

of older persons adopted a document formulating 10 principles and recommendations to avoid discrimination of older persons in times of pandemic as well as other times.⁵⁵ The Government's Board for Persons with Disabilities remained passive in this regard and did not adopt any specific document commenting on the situation of persons with disabilities during the state of emergency.

Practically the same situation occurred during the second state of emergency which began in Autumn 2020 and continued till Spring 2021.⁵⁶ On Human Rights Day, 10/12/2020, the Commissioner for Human Rights, Helena Válková, published a statement entitled "Human rights not only in times of pandemic".⁵⁷ Again, the Commissioner explicitly stressed only the situation of older persons and families with children and the higher risk of domestic and gender-based violence. The rights of persons with disabilities were mentioned only generally, in the context of the preparation of the National Plan to Support Equal Opportunities for Persons with Disabilities 2021-2025, not in the context of the pandemic.

Concerning the criminal justice system, the pandemic slowed down, at least in certain cases, the pre-trial stage of criminal proceedings⁵⁸ and made the cooperation between the police and public prosecution more difficult.⁵⁹ The number of indictments decreased significantly during the first state of emergency in Spring 2020 and the second one which began in Autumn 2020.⁶⁰ Nevertheless, the length of trials before the district courts (not dealing with the most serious offences) increased only slightly and according to the Ministry of Justice, this shows that it was virtually not influenced by the pandemic.⁶¹ It seems that the pandemic practically did not have any impact on the length of trials of cases being dealt with in the first instance by regional courts (more serious offences) either.⁶²

On 17 April 2020 the Parliament adopted a new law entitled "Act no. 191/2020 Coll. on certain measures to mitigate the effects of the SARS CoV-2 coronavirus outbreak on litigants, victims, victims of crime and legal persons and amending the Insolvency Act and the Code of Civil Procedure".⁶³ In criminal proceedings, the Act authorizes participants to the criminal proceedings (but not the criminal justice authorities) to apply for a relief of the deadline missed during the state of emergency due to the extraordinary measures ordered by the Government. That right applied also to the deadline for appeal.⁶⁴ Similarly, the victims of crime may apply for a relief of missing the deadline for applying for financial assistance by the State under the Victims Act under the same conditions.⁶⁵

⁵⁵ See the news of the Commissioner for Human Rights, Helena Válková, of 23/6/2020 available in Czech at: <https://www.vlada.cz/cz/ppov/zmocnenkyne-vlady-pro-lidska-prava/aktuality/seniorske-desatero-nejen-pro-casy-koronaviru-aneb-na-vsech-zivotech-zalezi-182207/> [accessed 15/9/2021].

⁵⁶ Czechia was in the state of emergency virtually continuously from 5/10/2020 to 11/4/2021.

⁵⁷ The Statement is available in Czech at: <https://www.vlada.cz/cz/ppov/zmocnenkyne-vlady-pro-lidska-prava/aktuality/helena-valkova-lidska-prava-nejen-v-dobe-koronavirove-185573/> [accessed 15/9/2021].

⁵⁸ The Prosecutor General's Office. *2020 Activity Report of the Public Prosecution*, 2021, pp. 60 and 63. The report is available in Czech at: https://verejnazaloba.cz/wp-content/uploads/2021/06/Zpr%C3%A1va_o_%C4%8Dinnosti_SZ_za_rok_2020_textov%C3%A1_%C4%8D%C3%A1st.pdf [accessed 16/9/2021].

⁵⁹ Ibid., p. 61.

⁶⁰ Ministry of Justice. *Czech Justice System 2020: Annual Statistical Report*, 2021, p. 50. The Report is available in Czech at: https://www.justice.cz/documents/12681/719244/Ceske_soudnictvi_2020.pdf/43b3020e-fc02-44a4-bb2c-a124ce85f57b [accessed 16/9/2021].

⁶¹ Ibid., p. 46.

⁶² Ibid., p. 109.

⁶³ Act no. 191/2020 Coll.

⁶⁴ Act no. 191/2020 Coll., § 7.

⁶⁵ Act no. 191/2020 Coll., § 9.

The pandemic did not lead to the massive digitalisation of court proceedings. No legislative changes were prepared in this regard, but some courts started relying on the existing possibilities. Since 2012 the Code of Criminal Procedure authorizes the use of technical equipment for sound and video transmission if it is necessary for the protection of the persons concerned, with regard, especially, to their age, health condition, or for security or other serious reasons.⁶⁶ Based on the cited provision, courts could hold a hearing with the participants and the attorneys being absent from the courtroom. As already mentioned, such cases were not very common, but they occurred.⁶⁷ The inevitable consequences of this approach, such as the separation of the participant from his/her attorney or the difficulties of access to online communication for some persons, were not systematically dealt with.

⁶⁶ Act no. 141/1961 Coll., Code of Criminal Procedure, § 52a, eventually in conjunction with § 111a and § 202 (1).

⁶⁷ See, *inter alia*, "The Union of Defence Lawyers proposes modifications to video conferencing in court during the Covid-19 pandemic, and rejects additional hearings of the accused" [Unie obhájců navrhla úpravu videokonference u soudu kvůli Covid-19, odmítá dodatečná jednání o obviněném]. Available at: <https://www.ceska-justice.cz/2020/07/unie-obhajcu-navrhla-upravu-videokonference-u-soudu-kvuli-covid-19-odmita-dodatecna-jednani-obvinenem/> [accessed 29/11/2021].

5. Legal and policy framework

Overview of the intersection of the international framework and national legislation

Czechia ratified the CRPD on 28 September 2009.⁶⁸ Unfortunately, Czechia still has serious problems with its implementation. The level of understanding of the human rights model of disability⁶⁹ is low and the legislative framework is still dominated by the medical model.⁷⁰ The medical model of disability still prevails also in the attitudes of public authorities, including the Constitutional Court, and the public. For instance, in its decision of 23/1/2018⁷¹ on the right of children with autism and intellectual disability to independent living, the Constitutional Court upheld the Supreme Administrative Court's judgment in which the Supreme Administrative Court argued that *"disability is an objective circumstance which is generally not the fault of the persons thus affected, nor of society or the public authorities. It is certainly fair for the holder of public power to provide, through its authorities, such disabled people with adequate assistance to manage their handicaps as easily as possible. On the other hand, it is objectively impossible for a state to remove or fully compensate for disability. There are groups of severely disabled people whose choice of place of living will undoubtedly be substantially limited by their physical or mental capacity. (...) It cannot be ruled out that, for some of them, 'institutional' care may be an appropriate form of assistance [subject to the conditions set out above] if, for reasons of objective limits, no other, more appropriate form of care is available, or if these persons do not have a more natural environment, family, etc. Some persons with disabilities may also choose such 'institutional' form of care voluntarily."*⁷² Nevertheless, on the same day, the Constitutional Court adopted another decision on the right of persons with disabilities to independent living which was rather different from the cited one and builds much more on the human rights model of disability, albeit not fully.⁷³

A similar situation happened in the field of restriction of legal capacity of persons with disabilities. In its decision of 5/12/2016, the Constitutional Court criticised a district court that had decided not to restrict the legal capacity of a person with a mental disability. *"The District Court in (...) did not restrict the person's legal capacity in any way; [the court] adopted this decision, although she had been deprived of her legal capacity for 35 years and had mental retardation [words used by the Constitutional Court] on the border of the light and mid-range, virtually all her life. The court did not restrict her legal capacity despite the expert findings that the person was absolutely unable to take care of basic life matters, but, on the contrary, acting alone might cause serious harm to herself, that she was not able to manage her finances, did not understand the notion of assets, their management or commitments, and was also unable to understand the meaning of the institution of marriage. (...) A decision not to restrict (or restore) [a person's] legal capacity cannot be based on the premise that in the given circumstances in which the person is living at the time of adopting the decision she is not in any real danger of serious harm, or that she does not have real*

⁶⁸ The CRPD was published in the national collection of international treaties under no. 10/2010 Coll.

⁶⁹ CRPD/C/GC/6, para. 9.

⁷⁰ Ibid., para. 8. See also the Concluding Observations of the UN CRPD Committee on the initial report of the Czech Republic of May 2015 where the UN CRPD Committee has pointed out that „several definitions of disability and persons with disabilities in the State party's legislation (the Employment Act and the School Act among others) are based on the medical approach to disability and are not in line with the provisions of the Convention.” – CRPD/C/CZE/CO/1, para. 7.

⁷¹ Decision of the Constitutional Court of 23/1/2018, no. II. ÚS 3169/16.

⁷² Judgment of the Supreme Administrative Court of 27/1/2016, no. 4 Ads 85/2015-57, para. 40.

⁷³ Decision of the Constitutional Court of 23/1/2018, no. I. ÚS 2637/17.

*opportunities to make legal commitments, although her legal capacity is not restricted. Those circumstances cannot serve as basis for a decision on the restitution of legal capacity. For instance, we cannot rely upon the fact that the person is placed in institutional care at a given time. Not only can she be released from it under certain conditions that do not allow a sufficiently rapid response from the court, but she can also leave it – even without the approval or even the knowledge of the institution’s staff – in the short or long term and legally commit herself during that time.”*⁷⁴ This decision was slightly moderated by another decision of 11/6/2019 in which the Constitutional Court did not fully overcome the medical approach to disability but accentuated elements of the human rights approach in a significant way.⁷⁵

Concerning persons with mental disabilities as victims of crime, the Constitutional Court has recently adopted an important decision on their right to compensation from the perpetrator for the suffered immaterial harm. Even in this decision of 3/8/2021, the Constitutional Court did not fully abandon the medical model of disability since it did not clearly challenge the idea of incapacity connected with a person’s impairment, in this context, the incapacity to understand the consequences of the criminal offence for the victim’s life and integrity. However, the Constitutional Court clearly stated that this should not be a relevant aspect when assessing the amount of compensation that should be granted to the victim. The Constitutional Court argued by the equality of all persons in human dignity and rights (Article 1 of the Czech Charter of Fundamental Rights and Freedoms): *“These decisions reflect the more general principle that an individual’s vulnerability to the incapacity of fully understanding the interference with his or her rights, with respect to people’s equality in dignity as well as in rights (Art. 1 Charter), cannot be a reason for granting the rights of the individual less protection. Indeed, a reduction in compensation for persons who are unable to fully understand the interference with their rights would ultimately indicate that the rights of those persons are of lesser value and that their protection is of lesser importance - and therefore that those persons are not equal in their rights (contrary to Art. 1 Charter) with other individuals.”*⁷⁶

This latest case law of the Constitutional Court shows that the human rights model of disability is slowly emerging in the Czech jurisprudence, but that, unfortunately, does not mean that it is widely applied, even by the Constitutional Court itself. The elements of the medical approach to disability still appear in the ruling of the Constitutional Courts and are even more common, even prevailing, in the ruling of general and administrative courts and the practice of law enforcement and administrative authorities. Furthermore, not even the Constitutional Court has ever relied on the conceptualisation of the medical and human rights approaches to a disability as formulated by the UN Committee on the Rights of Persons with Disabilities in its General Comment no. 6 on equality and non-discrimination.

In short, the Czech legislative framework still allows the restriction of the person’s legal capacity⁷⁷, including the right to vote, to marry, or to give informed consent to the provision of health care, including reproductive health; and allows to educate children with mental disabilities in a segregated educational system⁷⁸. Persons with mental disabilities are massively institutionalised, across different age groups, in social care, health care, psychiatric, or educational institutions (see

⁷⁴ Decision of the Constitutional Court of 5/12/2016, no. IV. ÚS 1580/16.

⁷⁵ Decision of the Constitutional Court of 11/6/2019, no. II. ÚS 2966/18

⁷⁶ Decision of the Constitutional Court of 3/8/2021, no. II. ÚS 3003/20.

⁷⁷ Act no. 89/2012 Coll., the Civil Code.

⁷⁸ Act no. 561/2004 Coll., the School Act.

above), which are not always subject to independent monitoring⁷⁹. In certain contexts, the legislation openly allows to subject persons with mental disabilities to measures of ill-treatment, including solitary confinement⁸⁰, chemical restraints⁸¹, or strapping to the bed⁸².

The national legal framework lacks effective mechanisms to promote access to justice for persons with mental disabilities.⁸³ The respective codes of procedure rely practically on only one mechanism in case a person, on account of his/her mental disability, needs assistance to participate in the proceedings. This mechanism is the person's representation by a guardian, including a guardian ad litem. This has a serious impact also on the provision of information and communication with persons with mental disabilities.

The national antidiscrimination legislation is based mainly on European Union legislation. The Antidiscrimination Act⁸⁴ was adopted primarily to properly implement the relevant European Union Directives.⁸⁵ The impact of the Antidiscrimination Act is limited not only because it applies only in certain contexts, not covering, for instance, access to justice⁸⁶, but also because its major role is to provide the victims of discrimination with a specific civil action to seek remedy. Its impact is thus more reactionary than proactive and fully dependent on the victim's actively seeking remedy. Nevertheless, that does not mean that the prohibition of discrimination does not apply in the Czech national legal system. The right to non-discrimination is enshrined as one of the basic principles of the national Charter of Fundamental Human Rights and Freedoms⁸⁷ and should constitute a general principle of the exercise of public authority over an individual, including in the criminal justice system although none of the relevant laws on criminal justice mention it explicitly. However, the principle lacks a more concrete elaboration in terms of concepts established by the CRPD, especially the right to accessibility, the provision of reasonable accommodation and procedural accommodations, and the adoption of specific measures. The Victims' Rights Directive (VRD) was implemented in national legislation by the adoption of the Victims Act, which also amended the relevant provisions of Act no. 141/1961 Coll., the Code of Criminal Procedure. Czechia was one of 9 EU Member States to which the European Commission sent letters of formal notice for failing to completely transpose the VRD, but by its decision of

⁷⁹ Psychiatric hospitals and psychiatric wards, even those where persons are placed in civil or forensic detention, are not subject to any independent monitoring mechanism. Monitoring in these settings may be carried out only by the National Preventive Mechanism (Office of the Public Defender of Rights) which monitoring is, however, not regular.

⁸⁰ Used in different contexts, including health care settings, social care settings, regime educational institutions, security detention and prisons. – Act no. 372/2011 Coll., Health Services Act, § 39 (1) (c); Act no. 108/2006 Coll., Social Services Act, § 89 (3); Act no. 109/2002 Coll., on Institutional and Protective Upbringing in Educational Institutions, § 22; Act no. 129/2008 Coll., on Security Detention, § 35; Act no. 293/1993 Coll., on Pretrial Detention, § 22 and Act no. 169/1999 Coll., on Imprisonment, § 49.

⁸¹ Used in health care settings, social care settings and security detention. – Act no. 372/2011 Coll., Health Services Act, § 39 (1) (e); Act no. 108/2006 Coll., Social Services Act, § 89 (3); Act no. 129/2008 Coll., on Security Detention, § 36 (2) (e).

⁸² Used in health care settings and security detention. – Act no. 372/2011 Coll., § 39 (1) (b); Act no. 129/2008 Coll., on Security Detention, § 36 (2) (c).

⁸³ In its Concluding Observations on the initial report of the Czech Republic the UN Committee on the Rights of the Child has noted "with concern the lack of access for blind persons and persons with intellectual and psychosocial disabilities to judicial and administrative proceedings" and has urged Czechia "to ensure the availability of documents in formats accessible to all persons with disabilities who need them. It also recommends that judges and other personnel in the justice system be trained on the rights enshrined in the Convention." - CRPD/C/CZE/CO/1, paras. 24 and 25.

⁸⁴ Act no. 198/2009 Coll., the Antidiscrimination Act.

⁸⁵ Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes; Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. – See the Explanatory report to the Antidiscrimination Act.

⁸⁶ Act no. 198/2009 Coll., the Antidiscrimination Act, § 1 (1).

⁸⁷ Resolution of the Czech National Council no. 2/1993 Coll., Article 3 (1).

18/2/2021 closed the infringement procedure against Czechia concluding that Czechia has fully transposed the Directive. However, there are still several problematic issues relating to the transposition of the VRD that may become particularly apparent when considering the whole framework from the perspective of victims with mental disabilities (for more details see below). The Victims Act and victims' rights in general fall within the responsibility of the Ministry of Justice.

National legislation, policy, and guidance in details

Legislation: Victims of crime with disabilities should fall in the group of “particularly vulnerable victims” but only under the condition that their impairment may impede the victim’s full and effective participation in the society compared to its other members regarding the victim’s situation as well as the circumstances of the case.⁸⁸ At first glance, it may seem that this definition corresponds to the definition of disability enshrined in Article 1 of the CRPD⁸⁹ since it relies on the social impacts of the impairment rather than the impairment itself. But the condition of the victim’s impeded full and effective participation in society may be, nevertheless, problematic since it should be assessed according to the circumstances of the victim and of the case. These two additional conditions impose the risk of creating a too broad space for the discretion of the criminal justice authorities, which may tend to assess the specific circumstances of the victim or his/her case that are not relevant for the question of whether the victim with impairment should be granted enhanced procedural protection and support in the criminal justice system, such as the person’s material situation.⁹⁰ The only relevant consideration should be if the person, on account of his/her impairment, needs enhanced procedural protection and support to have an effective and practical opportunity to exercise all his/her procedural rights in all his/her procedural roles (party to the proceedings, witness of crime) on an equal basis with others. Thus, at least a part of the additional conditions referring to the circumstances of the victim and the case seems to go beyond the definition of disability according to Article 1 of the CRPD, and imposes the risk of being used in practice for narrowing the scope of rights of victims with disabilities.

It is worth noting that the Victims Act in its original version fully respected the definition of persons with disabilities of Article 1 of the CRPD. It enacted that a victim should be assessed as “particularly vulnerable”, inter alia, if “a person has a physical, mental or psychosocial handicap or sensory impairment which in interaction with various barriers may hinder full and effective participation of this person in society compared to its other members”. The additional conditions referring to the circumstances of the victim and of the case were added in the legislation with the extension of this category of particularly vulnerable victims to older persons.⁹¹ The explanatory report argues that “old age in itself does not carry with it any need for special treatment. This need arises only as a result of some concomitant phenomena of old age (whether biological or social nature), which occur individually, at different ages for each person. It is therefore always necessary to examine whether, in the circumstances of the case and in the circumstances of the person concerned, old age is likely to prevent him/her from being able to

⁸⁸ Victims Act, § 2 (4) (b).

⁸⁹ "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

⁹⁰ Finding from the national consultation of the preliminary results of the research held on 1 December 2021.

⁹¹ Amendment to the Victims Act no. 56/2017 Coll., in force since 1 April 2017.

participate fully and effectively in society in comparison with other members of society.” The explanatory report further reveals that the authors of the amendment conceived the objective of the importance of the category of particularly vulnerable victims narrowly – only in terms of their protection from secondary victimisation and not in terms of their effective participation in the criminal proceedings.⁹²

The police must have internal guidelines on assessing particular vulnerability, but these are not public. It is thus not possible to check what is the prescribed procedure. The research showed that the practice varies from officer to officer (see below).

Particularly vulnerable victims are guaranteed especially: 1) free access to support services⁹³; 2) free legal representation in the criminal proceedings by an attorney acting as their legal agent⁹⁴; and 3) special safeguards and measures protecting the victim from secondary victimisation⁹⁵.

The national legal framework divides the providers of assistance to victims of crime into 4 categories: 1) social services⁹⁶; 2) victim support services accredited by the Ministry of Justice; 3) attorneys willing to provide free legal consultations to victims of crime; and 4) the PMS. All these providers are in the register of providers of assistance to victims of crime administered by the Ministry of Justice.⁹⁷

The right to free legal representation in the criminal proceedings by an attorney acting as the victim’s legal agent seems to be one of the most important safeguards for the victim’s practical and effective participation in criminal proceedings. This right is guaranteed to all particularly vulnerable victims, but its practical implementation seems to be very problematic.⁹⁸ Practical experience has shown that courts only very rarely appoint attorneys to represent particularly vulnerable victims, and effective access to an attorney for a particularly vulnerable victim depends heavily on specific police officers and their previous good experience with specific attorneys. Unfortunately, even in these cases, the access to free legal representation may be hindered due to a rather vague definition of particular vulnerability (see above) and the court’s

⁹² Explanatory report to Amendment no. 56/2017 Coll., p. 15. The explanatory report is available in Czech at: <https://www.psp.cz/sqw/text/tiskt.sqw?o=7&ct=658&ct1=0> [accessed 8 December 2021].

⁹³ Victims Act, § 5.

⁹⁴ Act no. 141/1961 Coll., Code of Criminal Procedure, § 51a (2).

⁹⁵ Victims Act, particularly §§ 17 - 22.,

⁹⁶ The provision of social services is regulated by Act no. 108/2006 Coll.

⁹⁷ The register is available at: <https://otc.justice.cz/verejne/rychleVyhledavani.jsf> [accessed 8/7/2021]

⁹⁸ This is because of the vague definition of some groups of particularly vulnerable victims. The biggest problems relate to victims of offences against human dignity in the sexual field, offences involving coercion, violence or threats of violence, offences committed due to the victim’s nationality, race, ethnicity, religion, social class, or belonging to another group of people, or offences committed for the benefit of an organised crime group. These victims are considered particularly vulnerable only if they face a higher risk of secondary victimisation, especially regarding their age, sex, race, nationality, sexual orientation, religion, health condition, intellectual maturity, capacity to express themselves, living situation, or their relationship to the suspect or dependence on him/her [Act no. 45/2013 Coll., on Victims of Crime, § 2 (4) (d)]. This definition gives wide discretionary powers to criminal justice authorities, as victim support organisations and attorneys have pointed out. See for instance “Non-profit organisations require better protection of victims of crime” [Neziskové organizace žádají větší ochranu obětí trestných činů]. Advokátní deník [online], 20/8/2020 [accessed 20/9/2021]. Available in Czech at: <https://advokatnidenik.cz/2020/08/20/neziskove-organizace-zadaji-vetsi-ochranu-obeti-trestnych-cinu/>. See also the case dealt with by the Constitutional Court in which the police first confirmed the attorney that the victim of a violent offence of foreign nationality and language was particularly vulnerable but the criminal court then ruled, after the proceedings ended and the attorney claimed costs from the State, that the victim was not particularly vulnerable and had never been. The Constitutional Court dismissed the constitutional complaint as manifestly ill-founded (decision of 11/6/2021, no. I. ÚS 1118/21).

Nevertheless, the legal definition relating to persons with disabilities as particularly vulnerable victims is no less vague. Persons with disabilities, as well as persons of older age, are considered particularly vulnerable for the purposes of the Victims Act and the Code of Criminal Procedure if their disability or older age can, regarding the circumstances of the case and the person, prevent the person’s full and effective inclusion in society compared to its other members [Act no. 45/2013 Coll., on Victims of Crime, § 2 (4) (b)]. It thus creates the same danger of discretion by criminal justice authorities.

reluctance to recognise a person as a particularly vulnerable victim and decide on the State's duty to reimburse the costs of his/her legal representation.⁹⁹ For victims with mental disabilities, access to free legal representation may be even more difficult due to their dependence on the guardian (see below).

When victims are in their role of parties to the criminal proceedings – so-called injured parties – and, on account of their mental disability, need support in exercising their procedural rights, the national legislation relies massively on a single mechanism: guardianship¹⁰⁰. A victim with a mental disability may already have a guardian appointed by the civil court, usually if he/she has his/her legal capacity restricted or if he/she has been appointed a guardian without the restriction of legal capacity to assist him/her in carrying out legal acts.¹⁰¹ In such a case, criminal justice authorities start communicating with the guardian as soon as they know that the person have one and who this guardian is.¹⁰² If the person does not have a guardian yet but is deemed to be in need of support in exercising his/her procedural rights in the criminal proceedings, the public prosecutor or the judge (depending on the state of the proceedings) appoints a guardian ad litem for him/her. The same procedure applies if the person's guardian appointed by the civil court cannot represent the person.¹⁰³ The Code of Criminal Procedure does not specify who the guardian ad litem may be, it just provides that a person other than an attorney may be appointed only if he/she consents to his/her appointment.¹⁰⁴ This legislation could be interpreted to favour the appointment of attorneys as primary guardians ad litem of the victims. Nevertheless, it does not exclude that the guardian ad litem will be another person without appropriate knowledge of criminal law and criminal proceedings. Furthermore, the guardianship ad litem, even if exercised by an attorney is still a substitute decision-making mechanism and thus does not comply with Article 12 and 13 of the CRPD.

There are no legal provisions requiring the adaptation of the information on victims' rights and procedural rights in the criminal proceedings to easy-to-read or alternative formats. There is only the general principle that the information should be provided to the victim in writing and also orally explained to him/her in a comprehensible way.¹⁰⁵ Unfortunately, as the findings of our research show, this principle may not be always properly applied in practice when it comes to victims in general and even less so when it comes to victims with disabilities. If the victim is represented by a guardian, the information duty may be, at least in certain cases, fulfilled only in relation to the guardian.¹⁰⁶

The Victims Act provides the victim with other entitlements that could theoretically serve as procedural accommodations promoting his/her access to justice – the victim's right to be accompanied by a supportive person (in Czech "důvěrník")¹⁰⁷ and the victim's right to apply for

⁹⁹ Confirmed by interviews with three attorneys, all specialised in victims' rights and registered in the register of providers of assistance to victims of crime.

¹⁰⁰ Act no. 141/1961 Coll., § 45 (1).

¹⁰¹ Act no. 89/2012 Coll., the Civil Code, § 469.

¹⁰² The role of the guardian may also be assumed by a public authority: a municipality, in which case it is referred to as a "public guardian". However, the person may be represented also by his/her relatives, close persons or other suitable persons. These are referred to as "private guardians". The appointment of a public guardian should be a measure of last resort.

¹⁰³ Act no. 141/1961 Coll., Code of Criminal Procedure, § 45 (1).

¹⁰⁴ Ibid., § 45 (2).

¹⁰⁵ Act no. 45/2013 Coll., on Victims of Crime, § 8 (2).

¹⁰⁶ Findings from the research.

¹⁰⁷ Act no. 45/2013 Coll., on Victims of Crime, § 21.

measures avoiding his/her contact with the suspect/accused.¹⁰⁸ However, the practical experience confirmed by our research show that these rights apply rather in the victim's role as a witness of crime with the aim to protect the victim from secondary and repeat victimisation and not to promote his/her opportunity to exercise his/her procedural rights as party to the criminal proceedings. This practice also corresponds to the systemic legal classification of these entitlements as integral parts of the victim's right to protection from secondary harm.

Other procedural accommodations directly relate to situations when the victim is to give evidence¹⁰⁹, i.e. when the direct contact of the criminal justice authorities with the victim is inevitable, and correspond to the special measures provided by Article 23 of the VRD. Their primary aim is to protect the victim from secondary victimisation, but not to ensure the effective provision of the information to and communication with the victim.

Policy: Czechia does not have a complex strategy on victims' rights and further promotion of the implementation of the VRD. Victims' rights are addressed only as they relate to other contexts and issues covered by national strategies. Among these strategies, the most important ones are:

- **Crime Prevention Strategy 2016-2021**¹¹⁰, requiring, *inter alia*, the development of the system of support for victims of crime, but failing to address victims with disabilities, including victims with mental disabilities¹¹¹;
- **Action Plan to Prevent Domestic and Gender-Based Violence 2019-2022**¹¹², concentrating rather on the availability and accessibility of services for victims of domestic and gender-based violence. The Action Plan addresses disability when it requires that the needs of persons facing multiple or intersectional discrimination, among whom it also lists persons with disabilities, should be taken into account.¹¹³;
- **National Strategy for Combating Trafficking in Human Beings in the Czech Republic for the Period 2020-2023**¹¹⁴, envisaging the preparation of a handbook containing information to victims of human trafficking about their rights as particularly vulnerable victims but failing to address disability or refer to the CRPD and the specific situation of persons with disabilities, including mental disabilities as victims of crime¹¹⁵;
- **Probation and Mediation Development Concept by 2025**¹¹⁶. The Concept is the most complex document relating to victims' rights but even its scope is limited in this field since it addresses victims' rights only to the extent that those relate to the role of the PMS¹¹⁷. The Concept thus focuses predominantly on the development of services for victims, including

¹⁰⁸ If the victim is particularly vulnerable, the criminal law authorities have to comply with his/her request unless the nature of the procedural act precludes it. In such a case, criminal law authorities still have the duty to adopt measures to avoid the victim's contact with the suspect or accused before and after the procedural act. – See *ibid.*, § 17.

¹⁰⁹ *Ibid.*, §§ 18-20.

¹¹⁰ Available in Czech at: <https://www.mvcr.cz/clanek/strategie-prevence-kriminality-v-ceske-republice-na-leta-2016-az-2020.aspx> [accessed 8/7/2021].

¹¹¹ *Ibid.*, especially specific objectives 2.1-2.4. The new Strategy should be adopted by the end of 2021.

¹¹² Available in Czech at: <https://www.vlada.cz/assets/ppov/rovne-prilezitosti-zen-a-muzu/dokumenty/AP-DN---grafikaFINAL.pdf> [accessed 8/7/2021].

¹¹³ *Ibid.*, Priorities in Area no. 2, p. 31.

¹¹⁴ The National Strategy is available in English at: <https://www.mvcr.cz/clanek/obchod-s-lidmi-dokumenty-924305.aspx> [accessed 9/7/2021].

¹¹⁵ *Ibid.*, pp. 11-12.

¹¹⁶ Available in Czech at: https://justice.cz/documents/12681/762397/2017_Koncepce_PM_do_roku_2025.pdf/bd17324b-f3b7-4689-9418-760a03f92116 [Accessed 8/7/2021].

¹¹⁷ The PMS is a public body responsible for organizing social work within the criminal justice system. Its predominant role is to work with the offenders, but the Victims Act lists the PMS also among providers of assistance to victims of crime. The PMS systematically develops its victim outreach activities, including in the two victim-focused projects supported by the European Structural Funds the PMS implemented from 2012 to 2016 and from 2016 to 2020. The PMS disposes of experts specialised in providing assistance to victims of crimes. For more information see the PMS's website: <https://www.pmscr.cz/> [accessed 9/7/2021].

the contact points administered by the PMS and multidisciplinary counselling programmes for victims. The Concept requires the preparation of a national development strategy on the provision of care for victims of crime in close cooperation between the relevant ministries and the non-governmental sector. The strategy should aim to “create a coherent and effective procedure for dealing with victims of crime”, including the standards of care for victims of crime. Unfortunately, the Concept fails to directly address victims with disabilities, including victims with mental disabilities.

On the other hand, national strategies addressing disability, among which the **National Plan for the Creation of Equal Opportunities for Persons with Disabilities for 2021-2025**¹¹⁸ is the most important one, fail to address the situation of persons with disabilities as victims of crime. Therefore, even though the National Plan incorporates equality before the law and access to justice in its strategic objectives and explicitly refers to Articles 12 and 13 to the CRPD, it still concentrates more on the civil and not the criminal context.¹¹⁹

The National Plan also addresses the right of persons with disabilities to accessibility (Article 9) and access to information (Article 21). In 2019 the Ministry of Interior issued guidelines on the creation of simplified texts (“Easy-to-read guidelines”)¹²⁰. All the ministries agreed that all new public administration employees should be trained in writing in simple language and all the current as well as future documents of public administration for public should be converted to easy-to-read formats.¹²¹ Unfortunately, all these activities are currently directed at public administration. The criminal justice system stays apart.

Therefore, regarding victims with disabilities, including victims with mental disabilities, there is a “blank space” in the national policy framework. This blank space may reflect to the actual “blank space” in the criminal justice system itself since victims with disabilities, particularly victims with mental disabilities, still only rarely seek justice through the criminal justice system.

Guidance: Among criminal law authorities, only the police make use of guidelines on how to treat victims. Unfortunately, these guidelines (instructions by the Police Presidium) are not public, even upon request. The police argue that those guidelines regulate their conduct in investigations, which, by nature, must not be public, but the reverse side of that argument is that the victim has no means to verify whether in his/her case the police follow the guidelines and proceed correctly. For instance, the police have a system of police psychologists and police experts in crisis intervention who may be involved when police investigators contact the victim and help the victim feel more comfortable and safe. However, practical experience shows that the previous good experience of specific police investigators with specific police psychologists or experts in crisis intervention may be more decisive than the internal guidelines on whether these experts should be involved or not, while the victim has no means to argue that the internal guidelines were not respected.¹²² In general, it is not possible to verify if the guidelines comply with the VRD and with the CRPD which is generally not much known among the Czech public authorities, including the central bodies.

¹¹⁸ The National Plan is available in Czech at: <https://www.vlada.cz/assets/ppov/vvozp/aktuality/Narodni-plan-2021-2025.pdf> [9/7/2021].

¹¹⁹ Ibid., Area no. 6, pp. 49-51.

¹²⁰ Ibid., p. 38.

¹²¹ Facebook post by the organization Inclusion Czech Republic (Společnost pro podporu lidí s mentálním postižením v ČR, z. s.) of 16/9/2021. Available at: <https://www.facebook.com/spmpcr/photos/a.684982498272927/3978114885626322> [accessed 21/9/2021].

¹²² Findings from the research.

Public prosecution and criminal courts do not release any guidelines on how to treat victims with disabilities, in particular victims with mental disabilities, nor do they provide them with information or communicate with them.

Key developments, plans, national/regional/local projects regarding people with disabilities, criminal justice, victims' rights

The adoption of the Victims Act contributed significantly to the development of victim support services and attorneys who specialise in victims' rights and voluntarily registered themselves in the register of providers of assistance to victims of crime. However, the availability of victim support services still significantly varies among regions, is insufficient in certain regions, and their funding is still inadequate.¹²³ Furthermore, not all victim support services can be adapted to victims with mental disabilities, for some of them, it may be difficult to accommodate the person's specific needs in communication.¹²⁴

Projects focusing on victims' rights are implemented by non-governmental organisations as well as public bodies, especially the PMS. Thanks to the EU-funded projects implemented from 2012 to 2016 and from 2016 to 2020, the PMS succeeded in developing significantly the network of contact points for victims of crime in the form of "victim counselling centres" with victim counsellors.¹²⁵

Projects addressing the intersectionality of disability and victimisation are rare in Czechia and if such projects exist, they usually focus on a specific aspect of victimisation, not on the situation of persons with disabilities as victims of crime in general. Among the most important is the international project BE.S@FE focusing on cyber-crime and cyber-violence against adults with intellectual disabilities.¹²⁶ The outputs of the project include an easy-to-read guide for self-advocates informing them about the role of the police¹²⁷ and a guide for the police on how to interact with people with intellectual disabilities¹²⁸. The latter guide was provided in its Czech translation to the Czech police but the police most probably do not actively use it. Czechia participated in the project thanks to Inclusion Czech Republic [Společnost pro podporu lidí s mentálním postižením v České republice] which was one of the project partners.

Czech public institutions, namely the Ministry of Interior and the Police Presidium, and the General Directorate of Fire Rescue Service, together with Czech academic institutions, namely Charles

¹²³ Probation and Mediation Development Concept by 2025, p. 23. Available in Czech at: https://justice.cz/documents/12681/762397/2017_Koncepce_PM_do_roku_2025.pdf/bd17324b-f3b7-4689-9418-760a03f92116 [accessed 9/7/2021].

¹²⁴ Interview with a professional from a victim support service providing support to victims of domestic and sexual violence.

¹²⁵ At the end of the Project *Why me? II*, implemented between 2016 and 2020, victim counselling centres existed in 55 localities. After the project, the number of victim counselling centres had to be reduced to 24, thanks to the special fund of the PMS for victims of crime. – See the *Evaluation of the Action Plan to the Probation and Mediation Development Concept by 2025 for 2020*, p. 6. The Evaluation may be downloaded in Czech from: <https://www.databaze-strategie.cz/cz/ms/strategie/akcni-plan-pro-rok-2020-ke-koncepci-rozvoje-probace-a-mediace-do-roku-2025?typ=download> [accessed 9/7/2021]. It should be noted that "victim counselling centres" represent an added value to the services of the PMS provided to victims. The fact that they are not present in all localities, does not mean that victims in these localities cannot ask the PMS for information and support. However, the existence of "victim counselling centres" guarantees to victims the possibility to book consultations in advance at a specified time so they may be sure that counsellors will have time to talk to them. All centres of the PMS are, however, prepared to provide victims with the necessary support.

¹²⁶ More information about the project are available in English on the project's website: <http://besafe-project.eu/en/> [accessed 9/7/2021].

¹²⁷ The guide „How the police can help me – Guide for Self-Advocates“, 2019. Available in English at: <http://besafe-project.eu/en/library/> [accessed 9/7/2021].

¹²⁸ „Guide for the police on how to interact with people with intellectual disabilities“, 2019. Available in English at: <http://besafe-project.eu/en/library/> [accessed 9/7/2021].

University, Faculty of Arts, participated in 2016 and 2017 in the international EUNAUD project – European Network for Psychosocial Crisis Management – Assisting Disabled in Case of Disaster.¹²⁹ Although the project did not directly focus on persons with disabilities as victims of crime but rather as victims of disasters, its outputs inform generally the police about how to communicate with persons with different types of disabilities¹³⁰. However, there is no information about their systematic use in police practice.

Description of criminal justice procedures

Reporting the crime: Legislation does not regulate crime-reporting in any rigid way. The police must investigate any report that reasonably suggests that a crime may have been committed, including anonymous reports. Neither does the legislation require any particular form of the report.¹³¹ The police must also investigate any suspicion as a result of their own activities.¹³²

In principle, the law does not limit the possibility to report the crime committed against any other person. Nevertheless, professionals may be sometimes limited in this possibility, due to their duty of confidentiality. The Criminal Code determines crimes to which the duty of confidentiality does not apply (except for attorneys and priests) but these crimes include especially the most serious ones.¹³³ Apart from situations clearly defined by the law, the professional may be exempted from his/her duty of confidentiality only by the informed consent of the person. This may limit certain professionals to report crimes committed against their clients. The National Preventive Mechanism (Office of the Public Defender of Rights) emphasised in its report of 2019 that the legislation regulating the duty of confidentiality of health care providers impeded doctors in reporting signs of ill-treatment to the relevant authorities without the informed consent of the patients.¹³⁴

Investigation and pre-trial stage: The initiation of the criminal proceedings does not depend on the victim's consent, except for certain situations when the crime is committed between relatives or close persons.¹³⁵ Consent is not necessary if the victim has a mental disability "due to which he/she is not able to give his/her consent" and has his/her legal capacity has been restricted.¹³⁶

The victim has a procedural role in the criminal proceedings, including its investigation and pre-trial stages, if he/she corresponds to the legal definition of the "injured party", i.e. if the crime caused him/her injury, material loss, or any immaterial harm.¹³⁷ The Code of Criminal Procedure guarantees victims who are "injured parties" in the criminal proceedings a set of procedural rights, including the right to consult the criminal file, make suggestions to supplement evidence, take part

¹²⁹ More information about the project is available in English at: <http://eunad-info.eu/home.html> [accessed 9/7/2021].

¹³⁰ Educational video for police officers and Manual for the Specifics of Communication and Interaction with People with Intellectual Disabilities in Emergency/Disaster which were both created by Czech professionals in cooperation with the Police Presidium of the Czech Republic. The video and the manual are available in English at: <http://eunad-info.eu/toolkits/mental-disability.html> [accessed 9/7/2021].

¹³¹ Act no. 141/1961 Coll., Code of Criminal Procedure, § 59 (1) and (3).

¹³² Ibid., § 158 (1).

¹³³ Act no. 40/2009 Coll., the Criminal Code, §§ 367 and 368.

¹³⁴ Protection from ill-treatment 2019 – Report of the Public Defender of Rights as the National Preventive Mechanism, p. 19. The report is available in Czech at: https://www.ochrance.cz/uploads-import/ochrana_osob/Zpravy-vyrocní/VZ_DET_2019_CZ.pdf.

¹³⁵ Act no. 141/1961 Coll., Code of Criminal Procedure, § 163 (1).

¹³⁶ Ibid., § 163a (1) (b).

¹³⁷ Ibid., § 43 (1).

in a plea bargain¹³⁸, make a statement about the impact of the crime on their life¹³⁹, or about waiving their rights according to the Code of Criminal Procedure¹⁴⁰.¹⁴¹ The victim as injured party also has the right to be delivered the decision about dismissing¹⁴², discontinuing¹⁴³ the investigation, closing the investigation to refer the case to the criminal court (if the victim claims damages in the criminal proceedings)¹⁴⁴, and referring the case to the criminal court¹⁴⁵. The victim also has the right to request that the decision on bringing charges against the accused is sent to him/her.¹⁴⁶ The victim may challenge such decisions by either a specific procedural remedy (“complaint”)¹⁴⁷ or, if not available, by a request for the review of the procedure by the police or the prosecution.¹⁴⁸

The Code of Criminal Procedure, the Victims Act, and the Police Act¹⁴⁹ provide a framework of special measures to protect the victim from victimisation, intimidation, or retaliation (the relevant information is provided below).

Those victims who have a mental disability and who need support in exercising their procedural rights as injured parties or whose legal capacity is restricted are represented by a guardian.¹⁵⁰ As particularly vulnerable victims they have the right to free legal representation in the whole proceedings¹⁵¹ but the practical implementation of this right may be problematic (see above).

Trial and court procedure: If the victim corresponds to the legal definition of the injured party (see above), he/she has the right to participate in the court proceedings as one of the parties to it. His/her procedural rights are, however, limited compared to those of the accused and the public prosecutor. He/she has the right to be informed about the court hearing¹⁵², to be present in the courtroom or to be represented by a legal agent¹⁵³ and with the court’s consent, he/she has the right to ask questions from those who are interrogated by the court.¹⁵⁴ Nevertheless, as opposed to the public prosecutor or the accused, victims as injured parties do not have the right to request the hearing of their witnesses or experts in the courtroom or to present other evidence.¹⁵⁵ The procedural role of the victim in the courtroom is predominantly concentrated on his/her claim for damages. He/she has the right to claim damages at the beginning of the court hearing at the latest and has to be informed about this right by the court in the summons.¹⁵⁶ If the victim’s claim is not supported by sufficient evidence, the court has to inform him/her about how to supplement the

¹³⁸ Ibid., § 43 (1).

¹³⁹ Ibid., § 43 (4).

¹⁴⁰ Ibid., § 43 (5).

¹⁴¹ This is an unexhaustive list containing only the most important procedural rights of victims as parties to criminal proceedings in the pre-trial stage.

¹⁴² Act no. 141/1961 Coll., Code of Criminal Procedure, § 159a (6).

¹⁴³ Ibid., § 172 (3) in conjunction with § 64 (1) (b).

¹⁴⁴ Ibid., § 166 (1).

¹⁴⁵ Ibid., § 176 (1).

¹⁴⁶ Ibid., § 160 (2).

¹⁴⁷ Ibid., §§ 141-150.

¹⁴⁸ Ibid., § 157a.

¹⁴⁹ Act no. 273/2008 Coll., on the Police of the Czech Republic.

¹⁵⁰ Act no. 141/1961 Coll., Code of Criminal Procedure, § 45. It should be noted that as an institute of substitute decision-making, guardianship is not in compliance with Articles 12 and 13 of the CRPD.

¹⁵¹ Ibid., § 51a (2).

¹⁵² Ibid., § 198 (2).

¹⁵³ Ibid., § 202 (6).

¹⁵⁴ Ibid., § 215 (1).

¹⁵⁵ Ibid., § 215 (2).

¹⁵⁶ Ibid., § 198 (2).

evidence and sets a reasonable deadline to do so.¹⁵⁷ He/she has the right to appeal only against that part of the court decision in which the court ruled on his/her claim for damages or compensation of immaterial harm.¹⁵⁸ Even though the legislation seeks to make courts decide on the claim directly in the criminal proceedings, referrals of the victim's claim to civil proceedings are still common.¹⁵⁹

The victim is entitled to make a statement about the impact of the crime on his/her life, not only orally but also in writing.¹⁶⁰ He/she also has the right to be accompanied to the courtroom by support persons or persons of trust even if the court hearings are held in private. In such cases, the number of supporting persons is limited to two both for the victim as well as the accused.¹⁶¹ The judgement is delivered to the victim only if he/she claimed damages or compensation for the immaterial harm, even unsuccessfully.¹⁶²

Victims with mental disabilities who have difficulties exercising their procedural rights without the support of another person or whose legal capacity is restricted are represented, as in the investigation and pre-trial stages, by a guardian.¹⁶³ The special measures provided in the legislation relate not to the victim's practical and effective participation in the proceedings, but his/her protection from secondary or repeat victimisation.

Post judicial stage: Victims are not parties to the post judicial stage of criminal proceedings, even if they qualify as injured parties. For them, the post judicial stage takes typically the form of civil proceedings for damages or compensation of immaterial harm or administrative proceedings for financial support by the State.¹⁶⁴ The status of a victim of crime has only limited relevance at this stage of the proceedings. It does not guarantee any procedural safeguards except for the exemption from court fees, both for civil action for damages or injury compensation or action against the

¹⁵⁷ Ibid., § 43 (3).

¹⁵⁸ Ibid., § 246 (1) (d).

¹⁵⁹ There are no official statistics, but for instance, in the database of the Constitutional Court (nalus.usoud.cz), we can find several decisions, including recent ones, in which the Constitutional Court dealt with constitutional complaints submitted by victims whose claim for damages or compensation for immaterial harm had been dismissed by the criminal courts and they were referred to civil proceedings. For instance, in its decision of 28/4/2020, the Constitutional Court ruled on a constitutional complaint submitted by two minor victims of child abuse to produce pornography, sexual abuse, and rape. The victims argued that the immaterial harm they had suffered could be quantified only with difficulty but that that should not mean that the criminal court could easily delegate its responsibility for ruling on the compensation of victims to the civil courts. In their view, the criminal court should always grant at least some minimum part of the compensation claimed and refer the victims to civil proceedings only with respect to the amount that exceeds that minimum part. The Constitutional Court disagreed and argued as follows:

"It should be stressed that criminal proceedings are not primarily about the matter and right of the injured party or any other natural or legal person (as follows from Art. 36, para. 1, and Article 38, para. 2 of the Charter), but on the law and the matter of the State (Art. 80, para. 1 of the Constitution) to prosecute and condemn, in the public interest, acts that the law designates as criminal acts. The focus of the basic purpose of criminal proceedings is that offences are properly identified and their perpetrators are fairly punished under the law. Also, there is an intention to consolidate legality and prevent crime. The incorporation of the injured party's rights into the Code of Criminal Procedure can therefore be considered as a benefit [beneficium legis] of the legislature."

In the decision cited above the Constitutional Court did not find any violation of the victims' human rights because the criminal courts based their decision on referral to civil proceedings on sufficient and relevant grounds. The criminal courts argued that granting compensation to the victims for the immaterial harm suffered by them would require further evidence that exceeds the framework of the criminal proceedings (decision no. IV. ÚS 721/20). These arguments are commonly used by criminal courts in cases concerning compensation for immaterial harm directly in the criminal proceedings.

¹⁶⁰ Act no. 45/2013 Coll., on Victims of Crime, § 22. For victims who are injured parties see also Act no. 141/1961 Coll., Code of Criminal Procedure, § 212a.

¹⁶¹ Act no. 141/1961 Coll., Code of Criminal Procedure, § 201 (2).

¹⁶² Ibid., § 130 (1).

¹⁶³ Ibid., § 45. It should be noted that as an institute of substitute decision-making, guardianship is not in compliance with Articles 12 and 13 of the CRPD.

¹⁶⁴ Administrative proceedings are not necessarily subject to the conviction of the perpetrator, but may be initiated, under certain conditions, even if criminal proceedings are closed for another reason, unless there are doubts that the crime happened. Victims may apply for financial support even when the proceedings are still pending, i.e. before the defendant is convicted, but according to practice the Ministry decides on the application only after the conviction. – Victims Act, § 26.

administrative decision on the financial support.¹⁶⁵ Any other procedural accommodations reflecting the person's status of a victim of crime in civil, administrative, or administrative court proceedings do not apply, not even the right of particularly vulnerable victims to free legal representation in the proceedings.¹⁶⁶ Neither are any special measures for protection the person from secondary or repeat victimisation available.

As for the criminal proceedings, in practice, the law relies only on one main mechanism for persons with mental disabilities who need support in exercising their procedural rights in formal proceedings: guardianship.

Even at the post judicial stage, victims still have the right to seek expert support from providers of assistance to victims of crime registered in the national register. However, victims are not systematically informed about this right at this stage of the proceedings.

¹⁶⁵ Act no. 549/1991 Coll., on Court Fees, § 11 (2) (l) and (q).

¹⁶⁶ Free legal representation may be provided to a person whose financial and material situation does not enable him/her to hire a lawyer and is subject to the person's request.

6. Case study(ies)

A complex case study – a victim with a psychosocial disability

The victim (hereinafter “the Victim”) in the described case, was a woman with a psychosocial disability experiencing anxiety and manifesting distinct submissiveness to authority. She became a victim of sexual coercion. Her case is significant because she reported the crime shortly after the Victims Act entered into force in December 2013.¹⁶⁷ The case was dealt with by criminal courts – the district court and the regional appellate court – between 2014 and 2016.¹⁶⁸ At that time, particularly vulnerable victims did not automatically have the right to free legal representation by an attorney in the criminal proceedings¹⁶⁹, which was enshrined in the Czech legislation only in 2017.¹⁷⁰

Reporting: The Victim reported the crime personally at a police station. She arrived accompanied by a neighbour who waited with her until the police investigator came. Then she continued with the procedure alone. The first contact with the police took 7 hours including her interrogation. She had to describe very precisely all the details of the sexual violence committed against her. She also had to explain the specific context in which the sexual violence took place (church environment) which was unknown to the investigator.

“This was difficult because of the subject that had to be talked about. And because it had to be described in detail. And it took so long because it's not sexual violence that happens every hour. The interrogation was also challenging for me because the investigator wanted me to explain everything about the church environment – every term, every concept I used. Although he could have found their meaning on the Internet...”

The Victim was not offered any support by a police psychologist or expert in crisis intervention, but she emphasised that the investigator treated her well (compared to what she had to experience in the court stage of the criminal proceedings). The interrogation took place only between the Victim and the investigator.

“The investigator was decent. He could have done more, but... Well, I thought it would be worse. I went there with great fear.”

The Victim was provided with the information required by the Victims Act and the Code of Criminal Procedure, but only in the form of being given an information document for victims. She was not given any specific information about available victim support services, even though in a nearby town there was an office of one of the most known victim support organisations in Czechia. She was not even informed about the existence of the national register of providers of assistance to

¹⁶⁷ Most parts of the Victims Act entered into force in August 2013.

¹⁶⁸ Between 2017 and 2018 the case was dealt with by the Supreme Court and the Constitutional Court, but these proceedings did not concern victims as injured parties.

¹⁶⁹ Except for children. Other particularly vulnerable victims had to prove that their material and financial condition does not enable them to afford a lawyer.

¹⁷⁰ Amendment to the Victims Act and the Code of Criminal Procedure no. 56/2017 Coll., in force since 1/4/2017.

victims of crime which already existed at that time¹⁷¹ and she was not given the information later in the proceedings either. Until the interview with the researchers in 2021, she did not know that such a register exists.

“The police always give the victim a document informing her about her rights, but... You understand... When you go to report a crime for ... to put it accurately ... for sexual coercion, you just can’t think about what your rights are. You’re glad that you are able to describe what happened.”

After about a month, the Victim had to complete her report and was subjected to another interrogation that lasted about 5 hours. Again, she was not offered any procedural accommodation, neither in the form of the involvement of a police psychologist or expert in crisis intervention. She was not given any additional information.

Investigation and pre-trial stage: As she was only provided with the information document, the Victim had to search for all the relevant information about the proceedings herself. With the financial support of her family, she found an attorney to represent her in the criminal proceedings. However, she was only able to do that some time after she reported the crime to the police, during the pre-trial stage of the proceedings. Since she was not informed about the national register of providers of assistance to victims of crime which includes attorneys who specialise in victims’ rights, she chose an attorney who was much more experienced in defending offenders. The attorney did not provide the Victim with information nor did she communicate with her actively. The Victim had to search for information about criminal proceedings largely on her own via the Internet.

“I don’t think the attorney was specialised in victims’ rights. According to information on her website she was specialised in criminal law, but she told me that she was more used to defending “little thieves”. I had to ask for everything - if she’d go to the file, ask about everything...” I hardly knew anything. I really had to search for information on the Internet about what was going to happen. I had no idea. The criminal proceedings were very stressful for me.”

During the pre-trial stage the Victim was interrogated by the police once again and that time the interrogation was video-recorded. She was informed by the police that she might not be interrogated again before the court since the video-recorded interrogation took place in the presence of the defendant’s defence counsel. But unfortunately, all the victims in the case had to be heard again by the court, except for one who was a minor at that time.

Trial and court procedure: The Victim was informed about the court hearing and her duty to give testimony directly in the courtroom by her attorney. The repeated interrogation in the courtroom was her worst experience during the whole proceedings. Since the evidence against the defendant was based predominantly on the victims’ testimonies, the defence counsel tried to discredit them. He was very rude, asked questions in a way that anticipated the Victim’s unreliability, and forced the Victim to respond to questions about her intimate, sexual life that had no relation to the case. When the Victim tried to explain the context, she was alerted by the defence counsel that she was not answering the question and strictly asked her to do so and to “just answer the questions”.

¹⁷¹ Although the register has been and still is criticised for its inaccessibility (for more information see below).

The court failed to control the defence counsel's defaming approach to the Victim and a lay judge¹⁷² himself asked the Victim very inappropriate questions concerning the defendant's body.

"I'll tell you how it went. I was the victim of a crime, he forced me to have sexual intercourse in different forms on four occasions. And the defence counsel asked why I let the defendant into the apartment repeatedly. Or why I didn't fight back harder and longer, why I was fighting only for two minutes. Why I didn't fight back physically, like I should have beaten him up or something. I understood why he asked these questions. But then he started asking questions about my intimate and sexual life. They played on my implausibility. They wanted to present me as a whore who had been through this with someone else. And the defendant defended himself afterward by saying: 'Well, those are her sexual fantasies, she's been with someone else, but it wasn't me'."

The only procedural accommodation in the courtroom was that the hearing was held in private and the defendant was not personally present but was represented only by his defence counsel. However, even though the Code of Criminal Procedure empowers the court to adopt the accommodation in the form of ordering the defendant's absence from the courtroom, in this case, the court did not need to consider it particularly, as the defendant himself decided to waive his right to be in the courtroom.

The Victim was heard by the criminal court of first instance once again later when the appellate court revoked the decision of first instance.

The Victim was not specifically informed about her right to make a statement about the impact of the crime on her life, she had to find the information on the internet.

The Victim was also subjected to expert examination of her credibility – both the credibility of her person (so-called "general credibility") and the credibility of her testimony (so-called "specific credibility") by two experts. The defendant tried to refer to the Victim's psychosocial disability due to which she was on a third-degree disability pension.¹⁷³ When the case was returned from the appellate court to the court of first instance, the Victim had to undergo another expert examination – this time by one expert. The new expert examination was required by the defence and was ordered also due to the Victim's impaired condition (post-traumatic stress disorder). All the experts assessed the Victim and her testimony as credible, and the court relied on these findings.

In the criminal proceedings, the Victim claimed compensation for her immaterial harm. Even though she specified the claimed amount, submitted medical reports to the court, and was examined by experts who diagnosed her with post-traumatic stress disorder, the court decided that she failed to properly substantiate and quantify the claim and referred her claim to civil proceedings. The court ruled as follows:

¹⁷² Lay judges in the Czech justices systems are citizens who are elected by either municipal or regional councils, depending on whether they are to be assigned to district or regional court. They must be Czech citizens with full legal capacity and clear criminal record who are over 30 and whose experiences and moral character guarantee that they will perform their duties properly. They do not need to have a degree in law. See Act no. 6/2002 Coll., on judges, courts, judges on the bench and the state administration of courts, § 60 (1) and § 64.

¹⁷³ The highest degree of disability in the pension framework associated with more than 70 % decrease in work capacity. – See Act no. 155/1995 Coll., on Pension Insurance, § 39 (2) (c).

“Although the court takes into account that she [the Victim] is a particularly vulnerable victim and is covered by the relevant law on the protection of injured parties (sic), it is not possible to just decide and award her compensation for immaterial harm in the sum of CZK XX, as she has claimed, when, to reach that conclusion, the court would have to take further evidence, but which would already be beyond the scope of the ordinary procedure. That left the court with no choice but to refer the claim of the injured party to civil proceedings.”¹⁷⁴

In the final judgment, the court provided the Victim only with the information about her right to appeal, but only against the part concerning her claim for compensation for immaterial harm. The information was part of the reasoning of the judgment and was formulated in legal language. The Victim finally did not appeal against the judgment, her attorney did not even offer her to do so.

The court also informed the victim about the right to request information about a parole hearing that she would be granted only if the court awarded her compensation for her immaterial loss, at least partially.

The judgment which had to be announced publicly contained the summary of the victims’ testimonies, including their intimate parts. According to the Czech legislation, final judgments in their anonymised version may be requested on basis of the Act on Free Access to Information.¹⁷⁵ The Victim felt uncomfortable about it.

Post-judicial stage: The Victim filed a civil action for compensation for immaterial harm but then she learned that she would have to repeat the whole story again in the courtroom in the perpetrator’s presence. The special measures of protection that should be ensured to victims in criminal proceedings do not apply in civil proceedings. She found that she could not do it mentally and decided to withdraw her action. She was not compensated and finally she had to reimburse the perpetrator for his costs of legal representation.

“I don’t know if I’ll ever get compensation. Because now it’s only going through civil proceedings, there’s really no other choice. Even the Code of Criminal Procedure provides that compensation should be awarded directly in the criminal proceedings, but the practice is different, the courts mostly refer the issue to civil proceedings. (...) If he [the offender] did not waive again his right to be present, I’d have to repeat it all in front of him.”

The victim was not specifically informed about her right to apply for financial support by the State before the Ministry of Justice even though she was likely to qualify for it.¹⁷⁶

Until the interview with the researchers, the Victim did not know that she could require to be provided with information about the offender’s release or escape from detention. The offender was first placed in pre-trial detention, then imprisoned, but in both cases, the Victim learned from the Internet media that he was released.

¹⁷⁴ Cited according to the judgment.

¹⁷⁵ Act no. 106/1999 Coll., on Free Access to Information, § 11 (4) (b).

¹⁷⁶ The financial support should be granted, *inter alia*, to victims of sexual criminal offences if the victim suffered immaterial harm. – Victims Act, § 24 (1) (d).

7. Stage 1: Reporting the crime

General Introduction to the reporting stage

Reporting the crime seems to be the crucial stage for victims with intellectual and psychosocial disabilities. The criminal justice system meets those victims only rarely and it is thus very probable that the crimes committed against persons with intellectual or psychosocial disabilities remain significantly underreported due to various reasons. Among them, the four listed below seem to be the most important:

A) Traditional concepts of the criminal justice system

The Czech criminal justice system is traditionally still very much oriented towards the state-perpetrator relationship, which attitude is becoming only gradually penetrated by perceiving the victim not as a mere source of evidence, but as an active subject of the whole proceedings. The primary aim of the system is thus to convict the perpetrator and not to rehabilitate the victim's well-being. This may make the criminal proceedings extremely challenging for victims, especially for particularly vulnerable ones, including victims with intellectual and psychosocial disabilities.

Research showed that victims who first contact a victim support service, or another expert are provided with information about what criminal proceedings will mean for them and require of them, and that the result is uncertain. Victims with disabilities receive particular attention in this regard, since for them it may be even more difficult to undergo criminal proceedings (because of the medical approach to disability which still prevails in the Czech criminal justice system – see below).

“There are two different issues: 1) to stop the unlawful or abusive behaviour, and 2) to investigate. We always focus on what needs to be done to protect the victim. Otherwise, we help clients figure out what to expect from criminal proceedings. The criminal proceedings are difficult and require considerable effort from the victim, the progress of the proceedings will certainly be difficult. We're looking at whether having a criminal trial is of value for the victims because it only produces a specific outcome. We make sure it's always the victim's own decision.”

counsellor from a victim support service

“There are a lot of victims who feel that criminal proceedings are not the way to go. It's always a matter of development over a certain time, also of people moving around the victim. Some people want revenge at all costs. And given the consequences for the victim, it's also understandable. These are always difficult situations because then, the question is, how much energy the victim wants to put into it, if it's worth it. So I'm always asking the victims in this context what their goal is, what they want to achieve. Because if it means for them that the perpetrator is going to go to trial and get some conviction, and it helps the victim in some way and it doesn't matter what, then fine. But if it's more the pressure of the environment at the moment, or the victim is saying, ‘I think it should be done’, then

it's really important to consider very carefully how much energy the victim wants to put into it and whether the energy is worth it, whether the victim does not plan to use it in a completely different area. He/she may go to therapy or simply pack up and go away for a year or get a tattoo. In any event, the outcome of the criminal proceedings is always partly uncertain. You never know...

lawyer volunteering for a victim support service

B) Vulnerability to relationship abuse

Persons with intellectual or psychosocial disabilities may be vulnerable to becoming victims of relationship abuses, often motivated by financial gain. Those abuses may not always reach the intensity of a crime as defined by the national law¹⁷⁷ and the persons thus remain outside the definition of a victim of crime holding all the rights guaranteed by the Victims Act. But even in cases when the abusive conduct can constitute a criminal offence, it is often so intimate, that the victims are reluctant to talk about it. They are ashamed, unwilling to harm a “close person”, or afraid of retaliation. They may be also afraid of a restrictive reaction of the system towards them, typically in the form of a restriction of their legal capacity.

“A typical scenario is, ‘I found a girlfriend over the Internet, she ended up taking my money.’ Or, for example, the perpetrators cheat out photos from the victim. People don’t want to talk about it though – they are ashamed, it’s very intimate for them. They can’t imagine telling anyone about it. Often, they tell a family member and then the family turns to us. We try to provide them with intervention so that this does not happen again (therapeutic intervention). Our approach is like what happened, happened, we move on. Maybe if we worked with the families sooner or longer, at least some of them would have decided to report it to the police in the end. But it is hard to say if it would have made sense.”

social worker working with persons with intellectual disabilities

“My ex-girlfriend and I agreed that she would take care of me, and I would give her money. We went on a trip together and she emptied my bank account there. We did not even have any money to come home. I knew what I was giving her the money for, I was wearing rose-tinted glasses. I didn't report it because I was worried about what would happen to her. Furthermore, I know that with the police it might not be pleasant. Not because they would not believe me, but because of the questions they could ask me. I am afraid that these questions would be too intimate.”

person with a combined disability, a victim of abusive treatment¹⁷⁸

C) Vulnerability to structural abuse

Persons with intellectual and psychosocial disabilities are also particularly vulnerable to structural violence, i.e. violence that has its roots in the attitudes of the majority population and that is often legitimised by legal norms like civil detention on the grounds of the person's

¹⁷⁷ Act no. 40/2009 Coll., the Criminal Code.

¹⁷⁸ Not necessarily reaching the intensity of a criminal offence.

dangerousness or the use of restraints in psychiatric hospitals.¹⁷⁹ The widespread discriminatory attitudes often don't enable persons with intellectual and psychosocial disabilities to learn to claim their rights and modify their perspective of acceptable behaviour in interpersonal relationships. Therefore, even if they become victims of crime, they may not realise that and don't tend to report it.

"I have a personal experience of how it goes in a small village. There were several boys with intellectual disabilities, and they had been victims of bullying and ridicule by their surroundings since they were little. In the case of one of them, it also had a tragic end - he was not allowed to drink alcohol for medical reasons, but his 'mates' gave him a large drink until his liver failed and he died. But he was glad he had friends. These people don't claim rights, they don't think about it. There will be a huge latency for people with mental disabilities as victims of crime, those cases are not making their way into the criminal justice system. As long as there's an old mum or someone else in the family, it goes just fine, but then, those people often become homeless and can be abused."

expert working with victims of crime

"To tell you the truth, I do not remember any client who was a victim of abuse or ill-treatment in an institution. I can remember only one case of a man who was describing some inappropriate behaviour of his caring person. But he was a client who had a physical disability, not a mental disability. I've repeatedly seen older persons talking about being mistreated. Well, not so much them as their family members. We heard there was something wrong with their grandmother or grandfather."

lawyer volunteering for a victim support organisation

Victims of structural abuse, especially of those forms which are legitimised by national legislation, who decide to report a crime are usually quickly rejected by the criminal justice system which relies on civil court assessments and decisions.

"... I find that (...) you were actually placed in the psychiatric hospital in (...) and this hospitalization of yours was made without your consent and during part of its course you were subjected to restraints. It is clear from the medical reports and the court proceedings conducted in this case that this restriction of yours was subject to and justified by your state of health at the time. The legal assessment of this case has been dealt with in great detail, in thirty-six paragraphs, by the District Court (...) in the context of the civil procedure on the admissibility of the takeover to the facility,

¹⁷⁹ All these practices constitute structural violations of the CRPD and qualify as structural violence. The UN CRPD Committee has emphasised in its Guidelines on the right to liberty and security of persons with disabilities that „the use of forced treatment, seclusion and various methods of restraint in medical facilities, including physical, chemical and mechanical restraints. The Committee has found that those practices are not consistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment of persons with disabilities, pursuant to article 15 of the Convention.“ – UN CRPD Committee, Guidelines on the right to liberty and security of persons with disabilities (2016), A/72/55, Annex, para. 12. Available at: <https://undocs.org/en/A/72/55>. The UN Special Rapporteur on the right to health, Dainius Pūras, has pointed out in his report on deprivation of liberty and the right to health that „while the places of confinement differ, the shared experience of exclusion exposes a common narrative of deep disadvantage, discrimination, violence and hopelessness“. He has also emphasised that „centres of detention or confinement are not therapeutic environments. (...) Even with noble efforts to establish a strong culture of respect and care, violence and humiliation usually prevails, adversely affecting the development of healthy relationships.“ – A/HRC/38/36, 2018, paras. 7 and 33.

the use of the restrictions, and the continued detention in the psychiatric facility, conducted under number (...) and the court decided that all these facts occurred for legal reasons."

reaction of a public prosecution office on a complaint filed by a person with a psychosocial disability who was forcibly hospitalised and subjected to chemical restraints and strapped to the bed for more than 24 hours

The prevailing discriminatory attitudes legitimising the structural abuse and violence against persons with disabilities also means that the criminal justice authorities trust professionals far more than they trust the people with mental disabilities themselves. This impedes the effective investigation of institutional violence and abuse. For persons with disabilities, it may be very difficult to effectively report a suspicion of crime committed by such professionals.

D) Insufficient information about the support for victims available in the criminal justice system among persons with intellectual or psychosocial disabilities

Although victim support organisations try to spread the information about their existence and the type of support they may offer to victims, none of these activities is specifically targeting persons with intellectual or psychosocial disabilities. The general awareness of the existence of victim support organisations and other providers of assistance to victims of crime, like attorneys or the PMS, is generally low among persons with intellectual or psychosocial disabilities, even though some of them contact these providers to seek assistance. These victims are often dependent on the contact being mediated by another provider of support, for instance, social services. Furthermore, not all the providers of assistance to victims of crime may be able to accommodate a victim with an intellectual or psychosocial disability, although some of them manage to do it well.

"Women with intellectual or psychosocial disabilities don't really turn to us. You could say very little. And we may wonder why. Why they can't even get to this counselling service. Or it's definitely an incentive to us as well. For us, the question is then how much we would be able to provide the service in a way that makes it well accessible. Now, I think of a client with a visual impairment, there's a pretty good way to handle it. But with intellectual or psychosocial disability, I wouldn't know how to proceed. I must admit that the service is not that accessible..."

worker of a victim support service for victims of domestic and sexual violence

"Victims with intellectual or psychosocial disabilities find a way. I think, or at least my experience suggests, that it's always being advised. This means that social services play an immense role. Social workers from social services call us and say, 'I have a client here...' Sometimes the social worker comes in first to consult us, to see how our organisation works, or even calls to verify the information. And then the person will come herself because the point is to talk directly to the person, if possible at all. Because a lot of times, a person with a disability is in contact with these helpers, but they don't have all the information."

lawyer volunteering for a victim support organisation

Provision of information to victims of crime

A) Framework

The Victims Act does not incorporate properly Article 4 of the VRD. It fails to implement the “without necessary delay” principle and requires law enforcement authorities to provide information to the victim when coming into contact with the victim for the first time.¹⁸⁰ As result, the provision of information becomes rather formal and takes the form of a document that is handed over to the victim.¹⁸¹

Legislatively, there is no place for the individualisation of the information, and the legislation also severely impedes the perspective of continuously informing the victim during the whole proceedings. The provision of information takes the form of a “one-time” act.¹⁸² National legislation differentiates between information that must be provided to the victim both orally (in a comprehensible manner) and in writing and information that may be provided to the victim only in writing.¹⁸³ The latter must be explained to the victim also orally if the victim so requests.¹⁸⁴ No easy-to-read version of the information document is available: the law enforcement authorities’ view is that such a document would not comply with the legal requirements.¹⁸⁵ Furthermore, the legislation massively relies on guardianship for those persons who need the support of another person when exercising their procedural rights. In these cases, law enforcement authorities tend to communicate rather with the guardian than with the person directly.¹⁸⁶

Finally, national legislation¹⁸⁷ does not fully correspond to the extent of information as provided by Article 4 of the VRD¹⁸⁸.

B) Implementation

Experience on the provision of information to victims is varied. It seems that it very much depends on the person who is to provide the information – on his/her personal approach. The personal experience of the investigator with concrete victim support services, attorneys, the PMS, or even police psychologists or police experts on crisis intervention is also important. If there is good previous experience with these support professionals, the police are more likely to refer the victim to their services and to forward contact details.

“It works when there is really that good experience. And then it’s got a lot to do with the attitude of the management – how the management feels about that contact, and that includes education as well as working with victims of crime. If the management considers it an important part of the police work, that’s where it

¹⁸⁰ Victims Act, § 8 (1). See also JÍROVEC, M., KOZÁK, V. “Nad plánovanou novelou zákona o obětech trestných činů” [On the planned amendment to the Victims Act]. *Časopis pro právní vědu a praxi* [Journal of Jurisprudence and Legal Practice], 2016, vol. XXIV, no. 1, p. 74-78.

¹⁸¹ The document is available in Czech at: <https://www.policie.cz/clanek/dokumenty-a-odkazy-pro-obeti-trestnych-cinu.aspx>.

¹⁸² JÍROVEC, M., KOZÁK, V. “Nad plánovanou novelou zákona o obětech trestných činů” [On the planned amendment to the Victims Act]. *Časopis pro právní vědu a praxi* [Journal of Jurisprudence and Legal Practice], 2016, vol. XXIV, no. 1, p. 76.

¹⁸³ Victims Act, § 8 (2).

¹⁸⁴ Ibid., § 8 (4).

¹⁸⁵ Findings from the research.

¹⁸⁶ It should be noted that as an institute of substitute decision-making, guardianship is not in compliance with Articles 12 and 13 of the CRPD.

¹⁸⁷ Victims Act.

¹⁸⁸ Especially the regulation of the provision of information under points (d), (e), (f), (g), (h), and (k) are at least problematic.

works, but where there's the management's attitude of, 'For us, the offender is important, the victims will somehow manage.' well, that's where it does not work."
representative of the law enforcement authorities

"In law, free representation by an attorney for particularly vulnerable victims seems very simple but its implementation is very difficult. I criticize the way victims get to the attorney. It absolutely does not work by appointing an attorney by the court. If investigators have experience with an attorney, they'll call him/her and say, 'We've got a person here who meets all the requirements, we'd give him/her your number, and make some kind of arrangement, because we don't feel this person is going to make it.' So, the access to an attorney is dependent on the investigators, and they contact concrete attorneys they have confidence in. There are no applications for free representation by a lawyer in my home court. So, it's all handled by the police, and when they make their own assessment, then they'll recommend an attorney, or these people won't get to have an attorney."

attorney specialised in victims' rights

The Police Directorate has a memorandum of cooperation¹⁸⁹ with Bílý kruh bezpečí¹⁹⁰ which is probably the most renowned and the largest wide-ranging victim support organisation with non-stop helpline and offices in 9 regional cities. PMS with its 74 centres (organisational units) represent another important supportive network for victims of crime, practically the only one which is actually available throughout the territory of the Czech Republic and for all victims. The police have the legal obligation to inform victims about the services of PMS and should pay particular attention in practice to those victims who need more support since the officers of PMS have more opportunities to provide information to victims in a calmer and more accommodating environment. The effectiveness of the cooperation may, however, vary between police departments and depends significantly on their management as well as the specific policemen.

The information documents the police use are criticised for their difficult legal language. Even though the police tried to simplify the information document which is composed of only legal provisions and is more than 6 pages long, the simplified version still contains some expressions that are difficult to understand.¹⁹¹

"People with psychosocial disabilities can't read longer texts. It's not about intellect there, it's about attention. And they're not concentrating, and even in a situation where there's a lot of respect for authority, for seeing someone in uniform. Formally, I'm sure the information document was handed over. It wasn't like they were adjusting to the situation. Or they did some research first, and then they did some explaining. No, it was done formally."

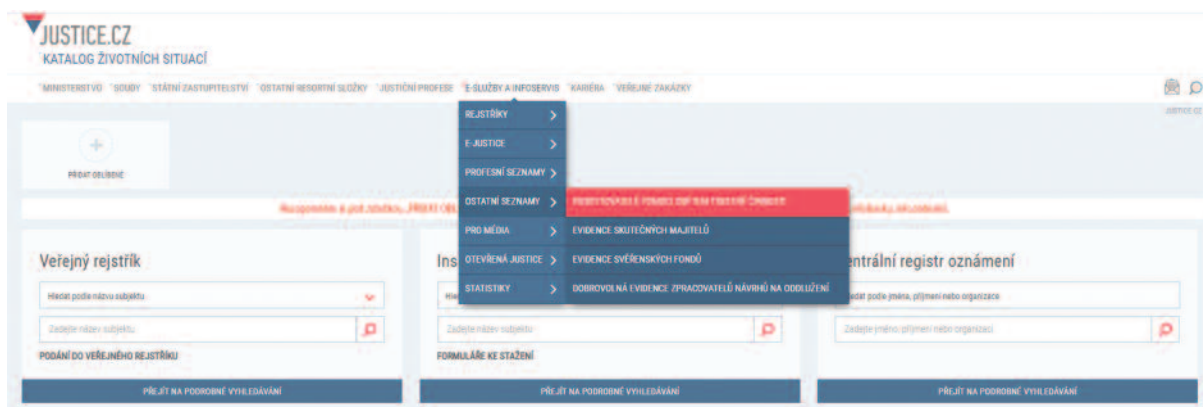
social worker of an organisation providing social services to persons with psychosocial disabilities

¹⁸⁹ <https://www.domacinasili.cz/rychlou-pomoc-bileho-kruhu-bezpeci-zprostredkovala-policie-v-84-pripadech/>

¹⁹⁰ The organisation's website in English is available at: <https://www.bkb.cz/en/> [accessed 14/7/2021].

¹⁹¹ The simplified document may be downloaded in Czech from: <https://www.policie.cz/clanek/dokumenty-a-odkazy-pro-obeti-trestnych-cinu.aspx> [accessed 14/7/2021].

Furthermore, concerning the information of support services, the document refers to the register of providers of assistance to victims of crime via the link to the homepage of the Ministry of Justice (www.justice.cz) where the link to the register is not directly mentioned and must be found in the section “E-SERVICE AND INFO SERVICE” [E-SLUŽBY A INFORSERVIS] – “OTHER REGISTERS” [OSTATNÍ SEZNAMY].



The information about the right to free legal assistance for particularly vulnerable victims is not explicitly mentioned in the simplified document and is covered under “free expert support” with the general reference to the register of providers of services to victims of crime via the above-mentioned link (www.justice.cz).

No easy-to-read version of the document exists. The general approach of the criminal justice authorities is that it would be “very bulky” and that in the case of those victims it is up to their guardian or legal agent to inform them while the police inform the guardian or legal agent. Nevertheless, professionals providing support to victims find that some simplification of the legal information for victims, including pictures or videos, would be very useful. There are also examples of good practices when these professionals try to create materials for the police that could support them in their work with particularly vulnerable victims and if specific policemen trust the professional since they were, for instance, trained by him/her, they are willing to use these materials in practice.

“I don’t think the easy-to-read version would work, it would have to be a book! But that’s what the guardian or the legal agent is for. The guardian or the legal agent are informed instead of the victims. It’s up to them to enforce victims’ rights.”
representatives of the law enforcement authorities

“We also thought about converting this information document into easy-to-read format. But then it may not be accurate in terms of the law. But legal language is complex – even a person without a disability has trouble understanding it. Persons with intellectual disabilities are even more vulnerable. Here we are talking about the fact that for easy reading, our focus should be the level of an 8-year-old and it’s hard to get legal formulas into that form.”

representative of the enforcement authorities

“The police should have simplified versions for persons with mental disabilities. The several-page information document is completely incomprehensible to them. Instead of helping the victim, it rather devastates him/her – “Sign here, then read it.” But persons with mental disabilities are far less trusting. They are afraid of signing something that can be turned against them.”

counsellor of a victim support service

“The police should make comprehensible information documents that would not include the text of the law, but simple information in the form of, for example, comics. This would be targeted at people who have difficulties understanding legal texts. This could help everyone, not just persons with disabilities. The trauma of the victims also causes them to be unable to read and perceive the text properly at the police station.”

attorney specialised in victims’ rights

“I created this two-page information document for the police with the basic steps. ‘Do you think the victim is particularly vulnerable? – Do this and this.’ It was formulated in bullet points with pictures. And one of the victims who contacted me on the police’s recommendation brought it back to me. I was very pleased to see the document in use. But then again, it’s used by police officers attending victim rights training sessions.”

attorney specialised in victims’ rights

Communication with victims of crime

A) Framework

The national legislative framework¹⁹² addresses communication in the narrow sense of interpretation for those who do not understand Czech or who have a hearing or the combination of a hearing and visual impairment¹⁹³, i.e. in terms of Article 7 of the VRD. Other forms of support in communication, including support for persons with intellectual or psychosocial disabilities, are not understood as an interpretation issue. For these persons, national legislation limits itself to providing that all actors of the criminal justice system must respect the personality and dignity of the victim, treat the victim with courtesy and care, and accommodate him/her as far as possible. They shall be directed towards the victim, taking into account the victim’s age, state of health, including mental health, intellectual maturity, and cultural identity, to avoid deepening the harm caused to the victim by the offence or secondary harm.¹⁹⁴

Concerning communication accommodations for persons with intellectual or psychosocial disabilities, criminal law authorities seem to differentiate significantly between the situation when the victim should act as an active participant in the proceedings and exercise his/her procedural rights and the situation when the victim is to provide evidence. The accommodating efforts of the

¹⁹² Victims Act; Code of Criminal Procedure.

¹⁹³ Victims Act, § 12; Code of Criminal Procedure, § 28.

¹⁹⁴ Victims Act, § 3 (2).

criminal law authorities concentrate predominantly on the latter, even in the legislation¹⁹⁵, while for the former the legislative framework knows practically only one mechanism for persons who need support in exercising their procedural rights on account of their mental disability: guardianship.¹⁹⁶

B) Implementation

The practice of the provision of communication support to persons with intellectual or psychosocial disabilities may be better than the legislative framework, especially concerning the police, but as for the provision of information, the availability and effectiveness of the support are very dependent on specific professionals. There are examples of good practices, but there is also evidence that in some cases law enforcement authorities are not able to communicate effectively with the victim, particularly in cases when the victim needs specific support in communication, including due to his/her disability. The competence of a specific police officer to accommodate the victim's particular needs are crucial in this regard while that competence may have more to do with the officer's personality than his training.

"I have also encountered efforts by police officers to adapt communication with particularly vulnerable victims. However, I think that this is not something that follows from the methodological guidelines of the police but is based purely on the personal characteristics of the police officer. Outside big cities, there are police officers who may not have as much experience with particularly vulnerable victims, but who are humanly competent to learn."

attorney specialised in victims' rights

Particularly challenging are those cases when the crime is not reported by the victim but by someone else. The victim may be in a very vulnerable situation due to his/her shame, fear of retaliation, or close relationship with the perpetrator and needs more time and support to be able to talk about what happened. Police officers may involve a police psychologist or expert in crisis intervention that would work with the victim. Unfortunately, in practice, this does not always happen because the system tracks the number of cases solved and sometimes doesn't allow the victim the time and support he/she needs. The suspicion is then easily dismissed as insufficiently substantiated.

"Of course, we don't see these cases as often. Of the cases we've dealt with, there's been no direct client contact with the police. It was always done by us as a social service. We explained to the client that what was happening was not okay and agreed that we will report it to the police. Unfortunately, the police can't communicate with victims with psychosocial disabilities. Clients can change their statements. If the police ask them differently, they say it differently. When a person is unable to make a statement that the police would accept, he/she is told that nothing can be done about it. The statement is described as inconclusive,

¹⁹⁵ Many of the procedural accommodations available for victims in national legislation directly relate to the situation when the victim is to give evidence – see Victims Act, §§ 18-20. The general aim of the vast majority of procedural accommodations, including the right to be accompanied by a supportive person, is to ensure under national legislation the victim's protection from secondary or repeat victimisation which, however, may not be necessarily identical to supporting the victim in his/her active role in the criminal proceedings as a participant and in exercising the victim's procedural rights – see Victims Act, Title II, Part 5.

¹⁹⁶ It should be noted that as an institute of substitute decision-making, guardianship is not in compliance with Articles 12 and 13 of the CRPD.

e.g. because the response did not identify the perpetrator, etc. Even in cases when we witnessed the crime, or when another client witnessed it.”

social worker of an organisation providing social services to persons with psychosocial disabilities

Internal police procedures may constitute an additional barrier to effective communication, especially, but not only, in cases where the victim appears in person to report the crime orally at a police station. It happens that already at this point the victim has to tell his/her story twice, as he/she first tells it to the police officer in uniform and then repeats it to the investigator for whom he/she has to wait.

“I provided support to a client with an intellectual disability who was the victim of long-term financial abuse and later even kidnapping and deprivation of liberty. I knew she would need a sensitive approach, so I informed the police beforehand. I was told we had to report the case to the district. I asked beforehand for an empathetic policeman to be assigned to us. The police officer was really good - he didn't show any disbelief for the victim, he questioned her in a way that calmed her down, took breaks. We were there for about an hour. Then he said he had to consult his supervisor and left. He came in thirty minutes later and told us that he had to report it to the operations officer and that the police criminal service would take over the case and that we should wait for the investigator. After an hour, the operations officer came in and told us that an investigator was about to arrive. He came, but after a long time, he didn't know anything about the case, but he was empathetic. I then described the story as the victim, trying to stick to her facts so she wouldn't have to recount it herself. Then the drawing up of the written record of the testimony started, but the investigator questioned the victim again about what she had told the first police officer already once before. This second interrogation lasted about 1.5 hours.”

counsellor of a victim support service

8. Stage 2: Investigation, pre-trial and indictment

General introduction to the investigation stage

The particularly challenging nature of criminal proceedings for victims with intellectual or psychosocial disabilities may be exacerbated by the medical approach to disability that still prevails in the criminal justice system. If the traditional concepts of the criminal justice system tend to objectify the victim during the criminal proceedings, this is even more true for victims with intellectual or psychosocial disabilities. As parties to the criminal proceedings (so-called injured parties), these victims are commonly subjected to guardianship (see above – 5. Legal and policy framework) and as witnesses, they are commonly subjected to the examination of their credibility by psychologists and psychiatrists. In both contexts, they remain passive objects of the criminal proceedings.

“But we can’t build a criminal trial solely on the questioning of this person. We also have expert reports and other comments.”

representatives of the law enforcement authorities

Provision of information to victims of crime

A) Framework

Concerning the provision of information during the investigation stage of the proceedings, Czech national legislation¹⁹⁷ implements the VDR properly. However, this framework does not seem to be sufficient for victims with intellectual or psychosocial disabilities. Practically all the information, except for the information under Article 6 (6) of the VRD, is provided only upon request.¹⁹⁸ The active and individualised approach of the criminal justice authorities is thus necessary to make this information accessible for the victim, which is even more true for victims with intellectual or psychosocial disabilities. However, national legislation contains in this regard only a general obligation to adapt the extent of the provided information to the concrete needs of the victim, with respect to the individual characteristics of the victim as well as the nature and gravity of the crime.¹⁹⁹ However, this provision may not be sufficient to break the practice of providing the information as a one-time act on the occasion of the first contact with the victim. The provision does not guarantee that the information about the right to request further information is provided to the victim at an appropriate moment and that it is repeated in later stages of the proceedings.

Victims who qualify as “injured parties” according to the Code of Criminal Procedure have the status of a party to the criminal proceedings. They have several procedural rights, including the right to be notified of all the important decisions about the criminal proceedings (see above). However, there is no framework requiring the adaptation of the decision in a language comprehensible for the victim. There are not even any specific provisions requiring criminal justice authorities to explain

¹⁹⁷ Especially the Victims Act. For victims with procedural rights in the criminal proceedings (so-called injured parties), the Code of Criminal Procedure is also relevant.

¹⁹⁸ Victims Act, § 11.

¹⁹⁹ Ibid., § 13.

decisions to victims in an understandable manner.²⁰⁰ If the victim is not represented, he/she is usually notified of the decision by mail.

Furthermore, the legislative framework knows practically only one mechanism for victims who are at the same time “injured parties” and who need the support of another person in exercising their procedural rights in the criminal proceedings: guardianship. If the person is represented by a guardian, criminal justice authorities tend to provide all the information concerning victim’s rights to the person’s representative. This may be a consequence of the fact that guardianship is an institute of substitute decision-making and shows clearly why guardianship does not comply with the requirements deriving from Articles 12 and 13 of the CRPD.

“If the person is unable to act independently in the criminal proceedings, a guardian is appointed. Often, however, those persons already have guardians. Then we deal with the guardian, verify if the person is registered with administrative offices if he/she is being treated somewhere, we try to contact his/her psychiatrist or psychologist. If we are unable to instruct a person, we work with a psychologist or psychiatrist. However, if the person is incapable of understanding us, he/she has the guardian or the legal agent to defend his/her rights, otherwise, it is not effective.”
representatives of law enforcement authorities

An important safeguard promoting the victim’s active participation in criminal proceedings and his/her access to information about the proceedings is the right to free legal representation by an attorney. However, the implementation of this right shows several shortcomings (see below).

B) Implementation

The information about the right to request further information about the proceedings, including the decision not to proceed with them, and be informed about the offender being released or escaping from the detention does not seem to be provided effectively in practice. If the victim (not necessarily a victim with a disability) is not represented by an attorney (as his/her legal agent), criminal law authorities contact him/her practically only if they need his/her interview (additional interviews) or if they are requested to do so under the Code of Criminal Procedure by sending him/her the relevant decisions and summons.

The information about the right to request information according to Article 6 of the VRD is part of the information document the victim receives in the first contact with the police, but not in its simplified and shorter version (see above). In the long information document, the information is mentioned in general terms so that the victim, particularly a victim with a mental disability, may hardly understand what information he/she could request (see the case study in chapter 6).

Also, the implementation of the right to free legal representation by an attorney as the person’s legal agent for particularly vulnerable victims is very problematic. The problems concern both the access to an attorney and the free nature of the representation. The legislation empowers the criminal court to choose an attorney for the victim if the victim himself/herself does not do so.²⁰¹ However, according to the commentary to the Code of Criminal Procedure, the court decides only

²⁰⁰ Only the general principles of the Victims Act would apply.

²⁰¹ DURDÍK, T. In AUEROVÁ, J., AUGUSTINOVÁ, P., BOHUSLAV, L., DRAŠTÍK, A., DURDÍK, T., FENYK, J., HÁJEK, R., HERCZEG, J., KADLEC, J., KAISER, T. KANDALCOVÁ, A., KMEC, J., KOCINA, J., KOUŘIL, I. et al. *Trestní řád: Komentář*. [System ASPI]. Wolters Kluwer [accessed 15/7/2021]. ASPI_ID KO141_1961CZ. Available at: www.aspi.cz.

upon the victim's request. Victims who need specific support in claiming their rights are thus dependent with respect to their access to an attorney on the activity of criminal justice authorities and on the ability of those authorities not just to formally inform the victim but to effectively enable him/her to claim his/her rights. Victims who are represented by a guardian are then dependent on the guardian. As mentioned above, guardianship as an institute of substitute decision-making constitutes a direct violation of Articles 12 and 13 of the CRPD and, for that reason alone, it is not legitimate. The procedural status of victims with mental disabilities represented by a guardian is even worse regarding that not all guardians are truly oriented in criminal proceedings, especially in cases when the guardian is the person's relative or friend and not a public authority. According to common experience, courts only very rarely appoint attorneys to represent particularly vulnerable victims in criminal proceedings and if they do, they often do not proceed properly and do not take into account the register of attorneys specialising in victims' rights.²⁰²

*"Unfortunately, however, I very often encounter cases where absolutely vulnerable victims do not have an attorney, even though their situation is very obvious at first glance. Recently, for example, it's been a 13-year-old victim of multiple rapes by fellow patients in a hospital where she found herself unwillingly because of a court ruling. Her socially and materially weaker family did not understand the police authority's information about choosing a lawyer for the child. Their mental capacity was simply not sufficient to understand the long-written text they received in the course of their interrogation. Relatives were afraid they wouldn't have the money for a lawyer, and they didn't know one anyway. As result, the teenage rape victim was compulsorily confined to the institution, without an attorney, and a criminal trial was going on behind her back."*²⁰³

attorney specialised in victims' rights

"I was never appointed as a legal agent. Officers explain to me that they are not asking for the appointment of a legal agent because it takes a long time. That is because the legal agent must be appointed by a court, and that takes them a month or two, and they need to pursue the investigation. So, they're not going down that road to avoid delays in the proceedings. In that regard, the question for me is how the process is set up in the courts and whether it should have the same regime as appointing defence lawyers for the accused, i.e. immediately. That might help."

attorney specialised in victims' rights

"It's a little better with guardians because the prosecutor's office appoints guardians. There were a few times when I was appointed in this way, after consultation. In the case of guardianship, however, until the recent case law of the Constitutional Court, the problem was that the guardians' fees were completely miserable, so we saw it as a bit of a law enforcement effort to save the state the expense of appointing guardians instead of agents. And by doing so, they were saving. And the policemen tell me that even this option of guardians isn't easy for them. That it's easiest for them to tell the victims to pick someone from the register."

attorney specialised in victims' rights

²⁰² HRDÁ, L. "V procesu ustanovování zmocněnců panuje naprostá libovůle" [The appointment process is completely arbitrary]. *Česká justice* [Czech Justice] [online]. 9/3/2020 [accessed 15/7/2021]. Available in Czech at: <https://www.ceska-justice.cz/blog/v%e2%80%afprocesu-ustanovovani-zmocnencu-panuje-soudech-naprosta-libovule/>.

²⁰³ Ibid.

“Two weeks ago, I got a call from the mother of a boy with an intellectual disability. She told me that a police officer who was currently on parental leave had given her the phone number when she heard that the police informed the mother that the boy didn't need an attorney. This police officer was one of those that regularly attend the training on victims' rights and said to the mother, 'No, take the phone and call the lawyer.' Not only did the police make a bad video recording of the interrogation in this case, but they also said the boy had no right to an attorney. I don't think the police are there to say whether or not a person is entitled to an attorney. Let the lawyer judge for himself/herself.”

attorney specialised in victims' rights

Nonetheless, there still may be examples of good practices, although they may be rare. The Prosecutor General's Office informed in its 2019 Activity Report that in 2019 the District Public Prosecution Office for Prague 8 applied for an attorney for a particularly vulnerable victim in two cases. One of them concerned a victim with a physical disability (using a wheelchair) and with psychosocial disability, in a street situation, disoriented in time and space who had become the victim of serious bodily harm. The district public prosecution office relied on the legal definition covering victims of violent crimes [Victims Act, § 2 (4) (d)] and not victims with disabilities [Victims Act, § 2 (4) (b)].²⁰⁴

However, the significance of such examples of good practice should not be overestimated. There are 86 district public prosecutor offices in Czechia and the cited report does not contain any further information on the practice of appointing attorneys to represent particularly vulnerable victims. Neither do the Prosecutor General's Office activity reports for other years, including those when particularly vulnerable victims had already been granted the right to free legal representation by an attorney in legislation (since 1/4/2017).²⁰⁵

Furthermore, the decision on the reimbursement of the costs of the attorney acting as the person's legal agent is taken only at the end of the whole proceedings. A particularly vulnerable victim may choose an attorney in good faith, on the basis that the costs for the attorney will be paid by the State, and would learn only at the end of the whole proceedings that he/she is expected to pay for the costs himself/herself. The uncertainty means that attorneys either refuse to represent the victim or require a financial deposit in advance. This significantly impedes vulnerable victims from access to an attorney, including victims with intellectual or psychosocial disabilities. It seems that a legislative amendment is necessary to narrow the margin of appreciation of criminal justice authorities when assessing the particular vulnerability of the victim.

“For particularly vulnerable victims, criminal law authorities tend to argue, when assessing whether we're entitled to a reward for representation from the State, that not all that much has happened to the victim here, and that the particular vulnerability isn't there. And they tend to interpret it quite madly in some cases. And I know colleagues encounter this problem, too. There, it would be good to focus in some way on giving criminal law authorities less discretion. Different victims of violent crimes should automatically be classified as particularly vulnerable and the question of how much secondary traumatising and victimisation can occur should

²⁰⁴ The Prosecutor General's Office. 2019 Activity Report of the Public Prosecution, 2020, p. 62. The report is available in Czech at: <https://verejnazaloba.cz/wp-content/uploads/2020/06/Zprava-o-cinnosti-SZ-za-rok-2019-textova-cast.pdf> [accessed 20/9/2021].

²⁰⁵ Amendment to the Victims Act and the Code of Criminal Procedure, no. 56/2017 Coll.

not be addressed.²⁰⁶ That's what these criminal law authorities tend to use in their argumentation for rejection - that if the victim had tried a little harder, he/she could have done it himself/herself. And that includes sexual offences where there is evidence of post-traumatic stress disorder."

attorney specialised in victims' rights

"But there is, of course, a huge problem there - the moment the state guarantees that there are particularly vulnerable victims who are entitled to legal aid, when that particular vulnerability arises from mental disability, physical disability, from the offender's relationship with the victim, from the victim's current situation (maternal leave, dependent on the offender), and then refuses to pay for that help. The state promises something by law, but the wording is so vague that instead of using it extensively, as European law talks about it, as The Constitutional Court talks about it, it is used to restrict the victim's right to access to an attorney free of charge. And it's getting worse. I've talked to a couple of attorneys specialising in victims' rights and they have the same experience. We don't specialize in victims' rights much - it takes a heart and you enjoy it, not that you want to make a profit. But you can't lose out because we all pay rents and employees. And at that moment we just have to bear our own costs, we just let it go, and even though the legal aid was originally meant to protect victims in a criminal trial, we start saying to them, 'Okay, we'll take it over, but put down a CZK 70,000²⁰⁷ deposit.' That, of course, nobody wants to do, resulting in either no criminal activity being reported at all, an increase in latency, which is already so huge for, say, domestic violence, sexual violence, child abuse, or the victims will go there without a lawyer, which is not what the legislature had in mind when it passed the bill."

attorney specialised in victims' rights

Communication with victims with disabilities

A) Framework

As mentioned above, the national legislation²⁰⁸ interprets communication support in the narrow sense of support for persons who do not understand Czech or have a hearing or a combination of a hearing and a visual impairment. Apart from that, there is only the regulation of special measures as provided for by Article 23 of the VRD which relate, however, only to investigative acts and not to the whole of the criminal proceedings in their complexity.

²⁰⁶ This condition of being considered as a particularly vulnerable victim does not apply to victims with disabilities. However, even for them, the legal definition of their particular vulnerability may cause problems in its application because it is not based "only" on the disability but also on the fact that - due to the circumstances of the case and the person - , the person is prevented from the full and effective inclusion in the society compared to its other members. This second condition, thus, also creates a disproportionate margin of appreciation for criminal justice authorities that can deprive the victims of legal certainty.

²⁰⁷ Approximately 2 729,5 EUR according to the exchange rate of the European Central Bank of 14/7/2021: https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-czk.en.html [accessed 15/7/2021].

²⁰⁸ Victims Act; Code of Criminal Procedure.

B) Implementation

The support in communication with the victim relates practically only to the investigative context, i.e., to situations when the victim is to be heard and give evidence. Communication concerning procedural rights, if any, is accomplished with the person's representative – the guardian or, in certain cases, the legal agent (see below).

Experience with the police's ability to accommodate communication to the particular needs of the victim when interrogating him/her varies significantly and includes examples of both good and bad practices. As in the reporting stage, the personality and personal approach of specific police officers and investigators seem to be crucial.

"I have had an experience of a case where a mother, who was also the guardian of one of our clients, reported a rape that was committed by another client of ours (with an intellectual disability and autism). We were approached by the investigator to participate in this interrogation. It was probably an initiative of the investigator, he was really glad that we were there. He told us that he would not have known how to communicate with the man without us. During the interrogation, we could explain the things to the man and then we prepared a report for the police. The investigator rightly said that without such support a misunderstanding could easily occur. I think we would have assisted the victim in this case if she had wanted to, but there was support from her mother who reported the crime."

social worker of supportive organisation for persons
with intellectual disabilities

"The Police did not take into account the psychosocial disability during the interrogation. I still couldn't understand that they weren't prepared for it. We were there as support persons. We weren't taken seriously. Of course, they wrote down what we had seen and told them, but what was important for them was that the person told it herself. I asked them if we could agree on the way they were going to ask questions, or if at least a female investigator could be present because, in social services, persons are more accustomed to women, and more able to communicate with them. The case was being dealt with for years, and this was the only thing I finally got. But the victim changed that statement, so we didn't get anywhere, even when a female investigator led the interrogation. But I don't believe that the woman had any specific skills in communication with persons with psychosocial disabilities."

social worker of an organisation providing social services to persons
with psychosocial disabilities

The medical approach applies significantly also when determining the form of support for the victim during his/her interrogation. Experts assess primarily the victim's credibility but may also advise on how to treat the victim. The police also work with the information they can ascertain from the victim's environment. The dialogue directly with the victim may not play such a role.

"Experts comment primarily on credibility, but also on how to communicate. They comment on the extent to which the victim is able to express what happened and if she is able to understand the criminal proceedings. Their comments can help. They may comment that they do not recommend the person's participation in further

proceedings. Even before experts are brought in and a person is already using some kind of service, we require reports on the victim's personality, so that we know how to communicate with him/her. If a special interrogation room is used, a psychologist or psychiatrist may be present behind the mirror and deduce if the victim does not understand. They may also advise: 'don't ask that question, try formulating it another way'."

representatives of the law enforcement authorities

9. Stage 3: Trial and Court procedures

General Introduction to the trial stage of the proceedings

Criminal courts have only poor experience with victims with intellectual or psychosocial disabilities since these cases are generally rare in the whole criminal justice system and even those that begin before the police do not necessarily get later to criminal court but may be dismissed or closed by an alternative solution to the indictment. Therefore, criminal courts are more used to meeting persons with intellectual or psychosocial disabilities as defendants rather than victims. Concerning victims, they rather meet those of them who have some kind of mental impairment as the result of the offence, typically posttraumatic stress disorder.

The trial stage of the proceedings is also dominated by the medical approach to disability and the conservative approach to the role of the criminal justice system. The intersection of these two phenomena attribute to victims with intellectual or psychosocial disabilities the mere role of evidence and highlights the role of experts and their opinion. Experience shows that although the case-law of the Supreme Court and the Constitutional Court emphasises that the expert examination is only one type of evidence²⁰⁹, and not the only or the dominant one, criminal courts still rely massively on expert examination, including expert examination of the victim's personality, credibility, and the suffered mental harm. Nevertheless, some judges apply a critical approach and take into account all evidence.

"Judges do not want to check the experts. They have the position like, 'That's what the expert is for, and I want an opinion from him.' Although the Constitutional Court says the expert's opinion is not superior and needs to be considered in the light of other evidence."

attorney specialised in victims' rights

"The question of credibility, it's always such a difficult moment. Assessing the credibility of a particular witness is always a question for the court. That is to say, the expert, if he can comment on something, he's commenting on it, if there can be such a disability, so if there's a limitation in terms of remembering, remembering the events, possibly making them up in some way, that sort of thing. That's what the defence itself sometimes gets confused about, so we hear there's a need to order a new expert examination. I'd say it's very common for the defence to try to question an expert witness in his testimony, grab him by the word, and things like that. But that is not how it should work, in my view. Expert opinion is really only one piece of evidence, and it's mainly something that the court evaluates in the trial, but it doesn't mean that if the expert said that the witness might not remember specific things accurately, because he doesn't remember them, he'll automatically throw away the witness's entire testimony."

criminal law judge

²⁰⁹ See, *inter alia*, decision of the Constitutional Court of 30 April 2007, no. III. ÚS 299/06, or the decision of the Supreme Court of 15 May 2019, no. 3 Tdo 243/2019.

Also, it may be problematic that criminal courts have a too narrow understanding of procedural accommodations for victims with mental disabilities only as special measures of protection from secondary or repeat victimisation and retaliation and apply them only when the victim is to be interrogated directly by the court. Unfortunately, criminal courts may be less experienced in providing these special measures of protection than the police.

“I’m more likely to meet with examples of good practice at the police. There are significant developments at the police – they’re being compulsorily educated.²¹⁰ There used to be virtually nothing judged by the courts because cases didn’t get to them past the pre-trial stage and that can happen nowadays. And we are where we were 15 years ago with the police – uneducated, they can’t, don’t understand... Of course, I’m not talking about everyone.”

attorney specialised in victims’ rights

For the exercise of the procedural rights of the “injured party”, guardianship would be the prevailing and practically the only mechanism for those victims who need the support of another person when exercising their procedural rights due to their mental disability²¹¹, together with the right to free legal representation by an attorney as legal agent, the implementation of which is, however, very problematic (see above).

“I had a case of a 12-year-old girl with an intellectual disability who was the victim of multiple rapes in a psychiatric hospital. I stood up in court to point out that if she was the perpetrator she would have an immediate right to an attorney. And the judge came down on me, saying it wasn’t his fault, it was the prosecutor’s and the police’s. And I said to him, ‘Your honour, you ordered the main trial without an attorney for the girl. And I got the case two days before the court hearing. You didn’t give a damn that the kid didn’t have an attorney’.”

attorney specialised in victims’ rights

Provision of information to victims of crime

A) Framework

In national legislation²¹², there is no special regulation relating to the provision of information to victims during the court trial. Since the provision of the information to victims of crime concentrates significantly in the first contact of law enforcement authorities with the victim, courts play a minor role in the field except for the information on how to claim damages. The amendment to the Code of Criminal Procedure by the Victims Act in 2013 requires courts to actively inform the victim claiming damages if his/her claim is not sufficient and needs to be completed by further specification or evidence.²¹³ The court must also provide the victim with reasonable time to complete the claim.

²¹⁰ Note of the researchers: unfortunately not in the rights of persons with disabilities and the CRPD.

²¹¹ It should be noted that as an institute of substitute decision-making, guardianship is not in compliance with Articles 12 and 13 of the CRPD.

²¹² Victims Act; Code of Criminal Procedure.

²¹³ Code of Criminal Procedure, § 43 (3).

However, there are no explicit mechanisms for the court to inform the victim about the available support if the victim needs it (for instance, if he/she is not represented yet by an attorney as his/her legal agent).

There are no legal provisions to regulate the adaptation of court documents in formats accessible to individual victims according to their specific communication needs, instead, national legislation relies on substitute decision-making mechanisms: guardianship. Furthermore, court documents often contain very sensitive information about the victim's private life, including intimate information about the victim's sexuality and sexual life (in case of sexual crimes – see also the case study in chapter 6).

“The judgment is a completely legal matter. As an attorney, no other aspect ever occurred to me until I met the victim's perception of it. The judgment cites the contents of gynaecological reports, psychological examinations, expert witnesses, and those judgments are public. And to me, victims break down from the fact that somewhere their sexual lives are described as reacting to an erect penis. It's written in those words, and they point out that it was delivered to the perpetrator. I'm trying to explain to them that the perpetrator knew all along, that he had access to the file. And now it's, 'The perpetrator raped me, and now he knows that I cut myself when I was 11, that we don't like each other with my mother, that I've had two miscarriages.' I try to explain to them that the perpetrator doesn't care, but the victim doesn't feel that way.”

attorney specialised in victims' rights

B) Implementation

In practice, there are no special procedures for providing information to particularly vulnerable victims. If the victim is represented, either by his/her guardian or an attorney acting as the legal agent, the information is provided to his/her representative(s)²¹⁴. If the victim is not represented, the information is provided directly to the victim in a standard format.

The first contact of the victim with the court takes usually the form of summons to the criminal trial. The victim who qualifies as an injured party has the right (but not the obligation) to be present in the courtroom. If the victim is summoned to give testimony, he/she must appear before the court, but he/she may require avoiding immediate visual contact with the offender.²¹⁵ The summons contains the basic information about the victim's right in the criminal proceedings, especially his/her right to claim damages or compensation for immaterial harm until the court starts taking evidence.²¹⁶ If not represented, the victim is notified of the summons by mail, in certain cases after a considerable period of time since the victim was last in contact with the police.

“I got a summons for the court hearing. I didn't know what they would want me to do there. It had already been about a year since the last contact with the police. It came by mail, no one prepared me for the trial. Luckily, I was already in contact with the social services by then, I consulted them.”

person with a psychosocial disability,
victim of a long-term deprivation of liberty and beating

²¹⁴ The victim may be represented by both a guardian and an attorney as legal agent.

²¹⁵ Victims Act, § 20 (4).

²¹⁶ Code of Criminal Procedure, § 43 (3) and § 206 (2).

As mentioned above, the legislation requires the court to actively support the victim if claiming damages or compensation for immaterial harm. Unfortunately, the practice varies significantly and depends on the approach of the specific judge. There are still judges who view the purpose of the criminal proceedings very conservatively and are not willing to award compensation to the victim (see the case study in chapter 6). But some judges try to support the victim in his/her claim as much as possible.

“Generally, claiming damages is just a big issue. If it’s a damaged car or torn clothing, it’s actually pretty easy. Once the immaterial harm or the loss of profit starts to play a part there, that tends to be a huge problem. So, I almost always tell the victims that I recommend consulting a lawyer. Even a number of these attorneys can’t really submit a proper claim. That’s not unusual. But it has the advantage for the court that at least the basics are there, and then, when you ask the attorney to do something specific or to show you something concretely, he/she usually responds to that, unless he/she is out of line. But if the claim is submitted by a person who doesn’t know, doesn’t have the experience - maybe he/she has never needed it before, so if you tell him/her, I need this and that, he/she doesn’t understand. And I have an information document that I send to those people when they’re injured parties telling them what to do - along with the summons to the trial. Not that I’ve explained to them how to claim damages, but when to claim it and what they’re claiming, but the fact of the matter is that the claim is not such that I could work with it without further ado. I try to help them. It’s not like I have it that the evidence of a claim for damages goes beyond the criminal trial and should be adjudged in civil proceedings, but of course, very often, those statements refer a part of it to civil proceedings, yes. But if I can, I’m trying to make a decision, I’m trying to work it out with these people so that something can be done about it at all.”

criminal law judge

The judgment is not adapted to a format that would be more accessible and understandable for a victim with an intellectual or psychosocial disability. It is a legal professional document, often containing very sensitive information about the victim when summarizing the evidence. At the end, it contains information about available remedies. If the victim does not claim damages or compensation for immaterial harm, the judgment does not have to be delivered to him/her.²¹⁷ At this stage of the proceedings, the victim is not systematically provided with information about available support mechanisms, even in case his/her claim is referred to civil proceedings or needs another form of support.

Communication with victims of crime

A) Framework

As for the previous stages, there is not any specific framework for communication support for the court stage of the proceedings except for the general special measures under Article 23 of the VRD. The only specific measure relating to the court stage of the proceedings is the victim’s right to be accompanied by two support persons in the courtroom even in a situation when the court hearing

²¹⁷ Code of Criminal Procedure, § 131.

is held in private if the victim is the injured party at the same time.²¹⁸ The victim also has the right to request the hearing to be held in private, but the final decision on private hearing is at the court's discretion.²¹⁹ Also, he/she has the right to request the avoidance of immediate visual contact with the perpetrator (see above).

The National Plan to Support Equal Opportunities for Persons with Disabilities 2021-2025 requires developing trainings for judges, public prosecutors, and judicial staff on communication with persons with disabilities, but the impact of these trainings may be very limited regarding their voluntary basis (even though they are organised by the Judicial Academy of the Czech Republic).

B) Implementation

The implementation of support measures for the communication with victims with mental disabilities in the courtrooms may be poorer than the framework, also due to scarce experience of the court system with these victims. The Czech judicial system is not used to adopting procedural measures for the benefit of persons with mental disabilities, this is also an issue in proceedings where it would be necessary for judges to meet persons with disabilities more frequently such as in guardianship proceedings. For criminal judges, contacts with victims with mental disabilities are even rarer.

Moreover, experience concerning the application of special measures under Article 23 of the VRD in the court stage of the proceedings is worse than in the pre-trial stage. The role of the victim's attorney acting as his/her legal agent seems to be crucial for the effective enforcement of the victim's rights in the court stage of the proceedings, including special measures. The attorney may also be appointed as the person's guardian but this practice is not in compliance with Articles 12 and 13 of the CRPD.

Although particularly vulnerable victims should be interrogated in a way that the interrogation does not have to be repeated, their repeated hearing in the court stage of the proceedings is not rare, even though there are judges that do not allow it. Defence counsels usually request the hearing of the victim directly in the courtroom and it depends completely on the judge if he/she admits it or not (and many of them decide to prefer "the right of the defence"). Also, courts fail to control the way the defence counsel treats the victim when asking him/her questions. Victims may be mistreated or humiliated in the courtroom also by experts or lay judges. Many judges, however, can't resist the defence's motion to repeat the interrogation of the victim and are afraid that otherwise they might be accused of violating the right to a fair trial.

"The rule of the non-repetition of interrogations of particularly vulnerable victims generally doesn't work for adults, usually the problem is to get the interrogation recorded. The issue between the law on victims and the right to a fair trial in terms of the rights of the defence is fundamental. A lot depends on defence counsels. If a defence counsel wants to, he's/she's usually able to put victims on trial as witnesses."

attorney specialised in victims' rights

²¹⁸ Code of Criminal Procedure, § 201 (2).

²¹⁹ Code of Criminal Procedure, § 200.

“From my point of view, if a person is heard in a pre-trial hearing, and most of the time there are also video recordings, that is fully sufficient. I, for example, play the recording repeatedly because of the details that may be there for me to play some role in the observation, the credibility assessment of the testimony, etc. I simply do not allow repeated interrogation, or I cannot imagine a situation where I would allow repeated interrogation if the defence objected. First, I don't think it can bring anything new, and second, knowing what the defence can do with the victim in the courtroom, I don't want to allow that under any circumstances. On the other hand, I am aware of a situation where the appellate court has concluded that the person concerned needs to be heard again.”

criminal law judge

The victim's repeated interrogation may take place in the absence of the defendant, but that measure may not be sufficient for the victim's protection since the court may fail to protect the victim from defaming and humiliating treatment by the defence counsel.

“Two of the three victims with intellectual disabilities I represented (one with her legal capacity restricted) did not have to go to trial. We had the interrogation video recorded, and I agreed with the prosecutor about not asking for their re-interrogation. If the victim already has to go to trial, I always make sure that the courts check what time the trial starts, what time my client is supposed to be there, I want to know if it will be from a special room, whether the voice will be modified, and to make sure that the victim and the defendant do not meet. And I have to say, maybe with the two courts I go to most often, I have this set up already perfectly. But asking for this somewhere else... It took a lot of effort to get there, and you can't give up after the first two failures. It's been going great for the last two years now. Those courts I go to, already know how to communicate with victims. But it required two or three complaints on the judge's behaviour. For example, they could ask a victim of rape, 'And why do you want the money?' But we've cleared that up, and that question hasn't been asked in a very long time. But those beginnings were rough.”

attorney specialised in victims' rights

10. Stage 4: Post-judicial

General introduction to the post-judicial stage of the proceedings

In the post-judicial stage of the criminal proceedings, the status of a victim of crime plays only a marginal role although the victim may still go through a lot of formal procedures that have come about as a result of the crime. These are not only civil proceedings on damages or compensation for the immaterial harm, but, for instance, insolvency or enforcement proceedings, if the perpetrators have put the victim in debt. The greatest importance of the status of a victim of crime lies in the victim's right to contact providers of assistance to victims of crime and to be provided with financial support by the State if he/she meets the legal conditions determined by the Victims Act²²⁰. However, the practical accessibility of these rights may be very problematic (see below).

The victim has practically no procedural role in the court proceedings on the execution of the punishment even if he/she has the status of the injured party.

Provision of information to victims of crime

A) Framework

There is no specific framework regulating the provision of information to victims of crime in the post judicial stage of the proceedings. Although victims still have rights that are not dependent on the status of the injured party in the criminal proceedings (see above), they are not systematically informed about those rights, not even when being notified of the final judgment²²¹. Even if the final judgment refers the claim of the victim for damages to civil proceedings, the framework does not require the court to provide him/her with more detailed information about how to proceed or where to find appropriate support. The court also does not need to inform the victim about his/her right to financial support.

If the perpetrator was placed in any form of detention the victim has the right to be informed about the perpetrator's release or escape. This right, however, applies only upon request²²² and the victim is informed about it already in the first contact with the law enforcement authorities, i.e. at the beginning of the proceedings. The framework does not require the criminal law authorities, including the criminal court, to repeat this information. The repetition of the information is subject to the victim's request.²²³

The question is whether this legal framework is contrary to the VRD, especially as regards the information about available support and relevant claims after the criminal proceedings are over. The VRD is not explicit in this regard, it only establishes the requirement to inform the victim without unnecessary delay, from the first contact of the victim with a competent authority [Article 4 (1)].

²²⁰ Victims Act, §§ 23-37.

²²¹ The right to be notified of the final judgment is guaranteed only to those victims who have claimed damages or compensation of the immaterial harm in the criminal proceedings.

²²² The request is not necessary unless criminal law authorities assess that the victim is in danger.

²²³ Victims Act, § 3 (4).

There is no doubt that the criminal court is also a competent authority in terms of the cited provision, but in the Czech legal system, it will come in contact with the victim after the victim has been formally provided with all the information. The court's role should be rather that of repeating the information to the victim, not informing him/her for the first time, but such a role is not explicitly enshrined in the cited provision of the VRD. The European Commission's DG Justice Guidance document related to the transposition and implementation of the VRD is more explicit than the VRD itself when it emphasises that "the practical effectiveness of the Directive could be improved by ensuring that the authorities (police, prosecutors and judges) keep the victim informed continuously during the course of proceedings, where necessary and appropriate. This means that authorities would provide relevant, updated information at the relevant time to enable victims to understand the process and their rights" (emphasis added).²²⁴

Nevertheless, even if the court's role to inform the victim repeatedly about his/her rights that are relevant in the post judicial stage does not stem directly from the VRD, it may still be understood as part of the right of persons with disabilities to access to justice under Article 13 of the CRPD.

B) Implementation

The practice corresponds to the poor framework. Criminal courts still view the victim rather as the injured party and focus their information obligation on the procedural rights of the injured party in the criminal proceedings. Criminal courts do not mediate contacts to providers of assistance to victims of crime, but some judges may do this on their own initiative. Usually, the victim will have effective access to support and to the exercise of his/her rights in the post-judicial stage of the proceedings if he/she has already been in contact with a support professional or organisation – victim support organisation, the PMS or an attorney. Victims without this support must search for the relevant information on generally available platforms, especially on the Internet where all the information may not be comprehensible and easily accessible even for victims without disabilities.

"They took huge loans on my behalf, I was in debt and subjected to enforcement proceedings. My social service helped me to contact a counselling centre. They helped me a lot, stripped me of all the enforcement proceedings. We were in court, too, showing that someone had signed documents instead of me. But that was outside of criminal proceedings. (...) I don't know if the police would let me know if they caught the perpetrators."

woman with a psychosocial disability,
unlawfully detained, beaten, and financially abused by the perpetrators;
the perpetrators managed to escape from the country

²²⁴ DG JUSTICE GUIDANCE DOCUMENT related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, p. 15. The document is to be downloaded from: <https://e-justice.europa.eu/fileDownload.do?id=05758a3a-9e2e-49a5-a7ec-3737c3ad6876> [accessed 7 December 2021].

Communication with victims of crime

A) Framework

All the procedural safeguards for victims apply only in criminal proceedings. Even though the obligation to respect the personality and dignity of the victim, treat him/her with courtesy and care, and accommodate him/her as far as possible, while taking into account the victim's age, state of health, including mental state, intellectual maturity, and cultural identity is formulated in very general terms and covers all public authorities²²⁵, it is not in any way reflected in civil or administrative or administrative court procedure regulations. These contain only general provisions on the right to interpretation which is understood in the narrow sense and apply only to persons who do not understand Czech or have a hearing or a combination of a hearing and a visual impairment.²²⁶

For a person with mental disabilities who need support in exercising his/her procedural rights, the civil and administrative procedure regulations know practically only one mechanism based on substitute decision-making: guardianship.²²⁷ The proceedings on the compensation of damages or immaterial harm caused by a criminal offence are standard adversarial proceedings and no specific provisions are reflecting the status of the victim of crime, except for exemption of the victim from court fees.²²⁸ Neither is there any specific regulation taking into account the status of a victim of crime when the victim applies for financial support by the State according to the Victims Act, again except for his/her exemption from court fees if challenging the Ministry's decision by action brought before an administrative court.²²⁹

Furthermore, the legal framework does not provide particularly vulnerable victims with the right to free legal assistance for civil proceedings nor for proceedings before administrative courts. Free legal assistance may be granted to the victim once the proceedings are initiated upon the victim's request if he/she substantiates his/her unfavourable financial condition and if the court finds that it is strictly necessary to protect his/her rights in the proceedings.²³⁰ This may make the administrative court or civil court proceedings inaccessible for many particularly vulnerable victims.

The same rules apply also for those civil proceedings that arise for the victim as a result of the criminal offence, for instance when the victim was financially abused and have debts due to the perpetrator's behaviour. Neither in these proceedings, victims of crimes, including particularly vulnerable victims, are provided with any specific support.

²²⁵ Victims Act, § 3 (2).

²²⁶ See the Act no. 99/1963 Coll., Code of Civil Procedure, § 18 (2); Act no. 500/2004 Coll., Code of Administrative Procedure, § 16 (3) – (5); Act no. 150/2002 Coll., Code of Administrative Court Procedure, § 64.

²²⁷ See the Act no. 99/1963 Coll., Code of Civil Procedure, §§ 22 and 29; Act no. 500/2004 Coll., Code of Administrative Procedure, § 32; Act no. 150/2002 Coll., Code of Administrative Court Procedure, §§ 35 (1) and 64. It should be noted that as an institute of substitute decision-making, guardianship is not in compliance with Articles 12 and 13 of the CRPD.

²²⁸ Act no. 549/1991 Coll., on Court Fees, § 11 (2) (q).

²²⁹ Ibid., § 11 (2) (l).

²³⁰ Act no. 99/1963 Coll., Code of Civil Procedure, § 30 (1); Act no. 150/2002 Coll., Code of Administrative Court Procedure, § 35 (10).

B) Implementation

The insufficient framework of support for victims in the post-judicial stage of criminal proceedings significantly impedes access to the rights guaranteed to victims of crime.

Many victims may decide not to pursue their claim for damages or compensation of immaterial harm suffered by the criminal offence since they are afraid of undergoing the civil proceedings without any explicit guarantee of their special protection from secondary victimisation and procedural accommodations. They may also not be able to prepare the civil action on their own while they may not remember the information about the providers of assistance to victims of crime they were given in the first contact with the law enforcement authorities.

The administrative proceedings on the financial support from the State are lengthy and very rigid. Therefore, they do not fulfil their initial objective, i.e. to provide the victim whose social situation deteriorated due to the criminal offence with quick financial support. The harm suffered by the victim is assessed practically only on the basis of the victim's medical examination, other sources of evidence are not relied on.

"The Ministry of Justice says there is no problem with the application for the financial support for some small items, but for more vulnerable victims it often comes down to formalities. The rejection results, for example, from the failure to prove certain long-lasting harm to health through medical reports, etc. Even if officials would like to grant the support, they are unable to defend it to their superiors. An amendment to the Victims Act allowing explicitly to prove personal injury in a way other than medical reports –by psychologists' reports, as a minimum – is necessary."

attorney specialised in victims' rights

"The only thing you can do against these decisions is to bring administrative actions. But the victims can't manage it. I've never brought an administrative action against this in my life. If they don't admit it to us, we let it go, because I can't do it for free, and those people can't do it on their own. They are not even in a mental condition to deal with it."

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11. Key findings, Conclusions and Recommendations

A summary of the existing provisions and an assessment of access to justice for people with disabilities

In general, the criminal justice system remains inaccessible for victims with mental disabilities due to several reasons. Their common denominator is the intersection of the conservative attitude of the system to punish the perpetrator and of the prevailing medical approach to disability. This makes the system both victim and disability unfriendly. It remains closed to many of those victims and it may treat those who succeed in entering it in a very degrading way, reinforcing their discrimination and stigmatisation.

Reinforcing the accessibility of the criminal justice system for victims with mental disabilities does not necessarily require legislative amendments. The research showed that the approach of specific individuals – representatives of criminal law authorities is crucial. If the victim, including a victim with a mental disability, meets the right professionals, he/she may go through the whole proceedings without any further harm and get justice. Unfortunately, the system seems unable to guarantee the victim that he/she will meet the right professionals.

Low awareness of the human rights model of disability causes that even if a professional wants to be responsible, he/she is simply not able to accommodate the victim's needs because he/she is of the view in good faith that medical responses and substitute decision-making measures are the best responses to the victim's situation.

Main gaps and the impact

1) Insufficient access to free legal representation for particularly vulnerable victims

The legislative framework already guarantees a whole set of rights that should ensure both the participation and the special protection of victims. However, the complexity of the criminal justice system means that the effective implementation of these rights in a specific case is dependent on the availability of legal advice and assistance. This assistance should be ensured to particularly vulnerable victims based on their right to free legal representation by an attorney acting as their legal agent. However, the research showed that the practice of the implementation of this right is insufficient.

Article 13 of the VRD imposes the obligation to ensure that victims have access to legal aid, where they have the status of the parties to criminal proceedings. The conditions of such access and the relevant procedural rules should be determined by the national law, but the national must comply with the basic requirements of legality. It must be clear, foreseeable, and accessible so that it ensures the rule of law instead of the rule of persons. Unfortunately, the vague formulations of the Czech Victims Act do not meet those requirements and do not provide victims with the necessary legal certainty that they have the right to free legal representation in the proceedings and that they

will not be asked at the end of the proceedings to reimburse the costs of their attorney, if they have any. This significantly deprives the right to legal aid for particularly vulnerable victims as enshrined in the Czech legislation of its effectiveness.

For victims with mental disabilities, ensuring systematically early access to an attorney specialised in victims' rights - together with the abolition of guardianship - is a suitable support to ensure their active participation in the criminal proceedings. Although the guardian may also be an attorney in one, that is not a general rule and even in such cases, guardianship remains to be a measure based on substitute decision-making. The relationship of a person with his/her attorney acting as a legal agent is governed by different rules than that with his/her guardian and corresponds much more to the right of persons with disabilities to equal recognition before the law as guaranteed in Article 12 of the CRPD because it is based on the recognition of the person's legal capacity.²³¹ The UN CRPD Committee emphasised in the context of Articles 12 and 13 of the CRPD that "states parties must also ensure that persons with disabilities have access to legal representation on an equal basis with others".²³² The UN International Principles and Guidelines on Access to Justice for Persons with Disabilities also emphasise the significant role of free legal representation as a support for persons with disabilities who may be disadvantaged in communicating, understanding or being understood in the process²³³ and urge States to ensure that free legal assistance is available to persons with disabilities on terms that are no less favourable than those for persons without disabilities²³⁴ and to "repeal or amend any laws, regulations, policies or practices that restrict the legal capacity of persons with disabilities to retain and instruct a lawyer."²³⁵ Unfortunately, guardianship disadvantages victims with mental disabilities in the access to free legal representation by an attorney acting as the victim's legal agent that is, otherwise, guaranteed to all particularly vulnerable victims and deprive them of their right to instruct the attorney.

Of course, further efforts in the education of attorneys in the human rights model of disability and disability rights are necessary for the effective implementation of free legal representation of victims with mental disabilities.

"An attorney is certainly key to ensuring the accessibility of the criminal justice system for particularly vulnerable victims. But not any attorney, they must be good professionals. If people know who to turn to, it all works out. If they don't know, and they're unlucky in that they meet a police officer who isn't very active, that basically determines the outcome."

attorney specialised in victims' rights

"In my opinion, the best thing would be the most extensive representation by a lawyer at the expense of the State. To be there as attorneys, and to have to be there. Because that's not happening enough. The police officers should have only minimum discretion when assessing the particular vulnerability of the victims and the appointment procedures should be as simple as possible, and, especially,

²³¹ The UN CRPD Committee has emphasised in its General Comment no. 1 on Article 12 of the CRPD that „the recognition of the right to legal capacity is essential for access to justice in many respects. In order to seek enforcement of their rights and obligations on an equal basis with others, persons with disabilities must be recognized before the law with equal standing in courts and tribunals.“ – CRPD/C/GC/1, para. 38.

²³² Ibid., para. 38.

²³³ The UN International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 6.2 (b) (iii).

²³⁴ Ibid., Principle 6.2 (c).

²³⁵ Ibid., Principle 6.2 (e).

transparent. Thereafter, responsibility for sufficient and comprehensible guidance is largely transferred from criminal justice authorities to the attorney.”

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2) Insufficient network of support organisations and centres for victims with mental disabilities

In the supportive network for victims with mental disabilities, there is a significant blank space. Some organisations provide persons with mental disabilities with support in their everyday activities but are not specialised in victims' rights and other organisations provide support to victims of crime but may not always be able to accommodate a victim with a mental disability, although it may not be the case of all of them.

The significance of a network of victim support organisations is underlined both by the VRD and by the disability rights standards. The VRD guarantees the right to access to victim support services in its Article 8 which imposes, inter alia, the obligations of Member States to ensure that victims have access to confidential support services (para. 1) and establish free of charge and confidential specialist support services (para. 3). Similarly, the UN International Principles and Guidelines on Access to Justice for Persons with Disabilities reminds us of the importance of victim support services in the context of violence.²³⁶ It is obvious that the obligations of the State are not only negative, but also positive, i.e. the State must actively take all the necessary steps to ensure an available and accessible network of victim support services for all categories of victims regardless of their needs and the crime committed against them. Czechia fails to meet these positive obligations.

3) Concentration of the provision of information in the first contact with the law enforcement authorities

The national legislation does not apply the “without unnecessary delay” principle but requires law enforcement authorities to provide the victim with all the information in their first contact. The provision of information thus becomes a one-time act rather than a form of continuous accompanying of the victim throughout the whole proceedings in a way adequate to the victims' situation.

The information role of the court is completely inadequate since the court focuses only on the procedural rights of the victim as the injured party in the criminal proceedings and does not support the victim in his/her access to support organisations where he/she could get further help, also in the post judicial stage of the proceedings.

This is, however, not in compliance with Article 4 (1) of the VRD which does not require the provision of information to the victim in the first contact with the law enforcement authorities but from the first contact with a competent authority and it is based on the “without unnecessary delay” principle. It is thus much broader that the relevant Czech provisions and, as opposed to Czech legislation, the obligation also applies to criminal courts. The VRD, as opposed to Czech legislation, requires the establishment of an effective system for the provision of relevant information to the victim throughout the whole proceedings, including its judicial and post-judicial stage.

²³⁶ Ibid., Principle 6.2 (k).

The right to accessible information is also an important part of the right of persons with disabilities to access to justice guaranteed by Article 13 of the CRPD. The UN International Principles and Guidelines on Access to Justice for Persons with Disabilities list the right to access legal notice and information in a timely and accessible manner on an equal basis with others as one of the principles.²³⁷ The UN CRPD Committee has emphasised that an effective access for justice for persons with disabilities depends on, *inter alia*, delivery of information in an understandable and accessible manner. To concentrate the provision of information up to one moment in the proceedings does not seem either understandable nor accessible. The cited principles should be rather interpreted as referring to such forms of provision of information that would enable the person to understand it and benefit from it during the whole proceedings. Which is not, unfortunately, the case of the Czech legislation and practice.

4) Lack of procedural accommodations for victims with disabilities to exercise their procedural rights

The national legislation relies massively on guardianship for victims who are injured parties in the criminal proceedings and who, on account of their mental disability, need support in exercising their procedural rights as parties to the proceedings. This practice violates the persons' right to equal recognition before the law under Article 12 of the CRPR and their right to access to justice under Article 13 of the CRPD. Persons with mental disabilities are provided with procedural accommodations not as participants in the criminal proceedings, but as witnesses. The efforts for direct communication with them are taken only if they are to give testimony. This approach places them in the role of a passive object of the proceedings.

The recital of the VRD recalls that Member States should ensure that victims with disabilities are able to benefit fully from the rights set out in the VRD, on an equal basis with others. Guardianship should be seen as a violation of this equality before the law. As mentioned above, it deprives persons with disabilities of the recognition of their legal capacity in the criminal proceedings and significantly impedes access to their rights guaranteed by the VRD, including the right to information or the right to legal aid. The UN International Principles and Guidelines on Access to Justice for Persons with Disabilities emphasise that all persons with disabilities have legal capacity²³⁸ and call for repealing or amending "all laws, regulations, policies, guidelines and practices that impose substitute decision-making in legal proceedings, including those that allow for the appointment of decision makers against the will of persons with disabilities (e.g. guardians ad litem, next friends and similar arrangements); or decisions made on basis of the 'best interests' of the person concerned, as opposed to being based on their own will and preferences."²³⁹ The Czech legislation does not meet these standards.

5) Too narrow scope of application of the victim's status

The status of a victim of crime seems to have a very narrow scope of application. Concerning the right to decent treatment and special protection, it does not extend beyond the criminal proceedings although the victims must go through other proceedings which are directly connected with the criminal offence. This concerns not only civil proceedings on damages or compensation for the immaterial harm caused by the criminal offence, but also proceedings that are the direct outputs of the crime, like insolvency or enforcement proceedings if the perpetrators put the victim in debt.

²³⁷ Ibid., Principle 4.

²³⁸ Ibid., Principle 1.

²³⁹ Ibid., Principle 6.2 (j).

The VRD does not explicitly require the application of special protection measures outside criminal justice and criminal proceedings. Nevertheless, there is still the perspective of the right of persons with disabilities to access to justice. The VRD provisions may give good guidance on what procedural accommodations may be necessary for victims with mental disabilities even outside the scope of the criminal proceedings to provide them with an effective access to justice. The UN International Principles and Guidelines on Access to Justice for Persons with Disabilities emphasise that procedural accommodations for persons with disabilities to ensure their effective and equal participation in all legal proceedings “encompass all the necessary and appropriate modifications and adjustments needed in a particular case, including intermediaries or facilitators, procedural adjustments and modification, adjustments to the environment and communication support, to ensure access to justice for persons with disabilities.”²⁴⁰ Procedural accommodations deriving from the right of persons with disabilities to access to justice are thus broad enough to cover also the special protection measures and other provisions relating to decent treatment of victims of crime enshrined in the VRD whenever the victim with a disability needs them in other legal proceedings. Unfortunately, the Czech legislative framework is too rigid and does not explicitly enable the application of such a broad concept of procedural accommodations.

6) Lack of data on victims with mental disabilities in the criminal justice system and the procedural accommodations provided to them

Finally, Czechia fails to systematically collect data on victims with disabilities in the criminal justice system, disaggregated by the relevant factors, especially the disability, age, gender, ethnicity, and type of crime committed against the victim. Similarly, Czechia fails to collect information on the procedural accommodations provided to victims with disabilities, at least in their roles as witnesses of crime and not parties to the proceedings, in a sufficiently disaggregated manner. Due to these failures, Czechia is not able to systematically monitor if the criminal justice system is sufficiently accessible for victims with disabilities and victims with mental disabilities, in particular, at each stage of the criminal proceedings, including reporting.

The monitoring duty is an integral part of all human rights and freedoms. As the UN Committee on Economic, Social and Cultural Rights highlights it, it is an obligation of immediate effect, independent of resource constraints²⁴¹, and this is surely not less true for the rights classified traditionally as “civil and political”.²⁴² The CRPD establishes the monitoring obligation explicitly in Article 31 which requires States to collect appropriate information, including statistical and research data, disaggregated, as appropriate, to enable them to formulate and implement policies to give effect to the CRPD provisions and to identify and address barriers faced by persons with disabilities in exercising their rights. The situation of persons with disabilities, including persons with mental disabilities, as victims of crime within the criminal justice system constitutes undoubtedly an important area to monitor and to be addressed by effective State policies. These, unfortunately, cannot be adopted without appropriate, relevant, and sufficiently disaggregated data.

²⁴⁰ Ibid., Principle 3.1.

²⁴¹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 3 (1990): The nature of States parties obligations (Art. 2, par. 1), para. 11. The General Comment is available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4758&Lang=en [accessed 7 December 2021].

²⁴² Although we should note that this traditional division is rather artificial and more recent human rights conventions, including the CRPD, are based on the principles of interdependence and indivisibility of human rights.

Potential practice, policy, and resources that could be developed

During the conduct of the research, we encountered several good practices that were usually closely connected with the approach of specific professionals. These examples show that even though the current framework may not be ideal, it works well if supported by adequately motivated, active, and qualified professionals who understand the purpose of the VRD and the Victims Act as well as the human rights model of disability.

From a more systemic perspective, the practice of the PMS may provide inspiration. This public authority disposes of a nationwide network of offices (centres) where it can provide support to all the categories of victims of crime, including victims with mental disabilities. It can provide victims not only with counselling, but also offer them a restorative solution to the consequences of the crime.

The promotion of restorative principles and measures may significantly promote the accessibility of the criminal justice system for victims with mental disabilities and their active participation in seeking justice and reparation since they break the traditional focus on punishing the perpetrator that inevitably treats the victim primarily as a source of evidence in the centre of the fight between the prosecution and defence what leads to the victim's further objectification in the form of medical examinations (in certain cases, even in a repeated manner) etc. On the contrary, restorative justice first restores the human dignity of all persons affected by the crime by returning them the status of the subject and not the object of the whole process.

Recommendations with respect to legal matters, policy, and practice

Legal matters

We recommend:

- 1 adopting all the necessary legislative amendments to establish a solid antidiscriminatory framework within the criminal justice system, including the assistance to and protection of victims of crime. The framework should be based on the concepts enshrined in the CRPD, namely the right of persons with disabilities, including mental disabilities, to accessibility of the criminal justice system, to be provided with reasonable accommodation and procedural accommodations and their right to the adoption of specific measures if necessary to attenuate or suppress conditions that perpetuate discrimination on the grounds of disability.

Targeted Institution(s): Ministry of Justice

- 2 incorporating mechanisms that would extend the right to free legal representation and promote its implementation. Particularly vulnerable victims should be provided with an attorney since the very beginning of the criminal proceedings and the police and public prosecution could follow the same mechanisms that already exist for the accused if they must be provided with an attorney. Access of particularly vulnerable victims to an attorney should thus be governed by the principle opposite to that which has been followed hitherto : the provision of a lawyer would be the rule, and the person would always have the right to decide otherwise, and to this

end he/she would have to be given all the information about what this would mean for him/her, as well as information that he/she could change his/her decision at any time. The obligatory provision of legal assistance by an attorney should not mean at the same time that the victim is not entitled to choose the attorney.

Targeted Institution(s): Ministry of Justice

- 3 that the State should narrow the discretion of the criminal justice authorities when assessing whether the victim is particularly vulnerable or not. Concerning the definition of persons with disabilities as particularly vulnerable victims, the Victims Act should rely only on the definition enshrined in Article 1 of the CRDP and should not establish any additional criteria. The definition should reflect that the status of particularly vulnerable victim is relevant not only for the protection of the victim from secondary or repeat victimisation but also for his/her effective access to justice, since that status is also related to the right to free legal representation by an attorney. The only relevant aspect to take into account when identifying a person with an impairment as a particular vulnerable victim should thus be if the impairment in interaction with various barriers may hinder the victim's full and effective participation in the criminal proceedings on an equal basis with others, but not, for instance, the victim's financial situation or his/her other circumstances, or the circumstances of the case.

Targeted Institution(s): Ministry of Justice

- 4 adopting the necessary legislative amendments to ensure the availability of procedural accommodations for persons with mental disabilities to enable full and effective participation in the entire justice process from first contact with the authorities not only as witnesses (a source of evidence) but also as participants in the criminal proceedings, when exercising their procedural rights, including in the reporting stage of the proceedings; eliminating guardianship entirely and, instead, relying on CRPD-compliant measures so that victims may effectively exercise their legal capacity such as, for instance, legal representation by an attorney acting as the person's legal agent and support provided by the victim's trusted person²⁴³, including at the reporting stage; ensuring that the attorney is specialised both in victims' rights and the rights of persons with disabilities and that the support person is a trusted person freely chosen by the victims themselves and that they are not required to appoint such a person if they do not wish so.

Targeted institution(s): Ministry of Justice

- 5 amending the legislation regulating the provision of information to victims of crimes in order to require providing the victim with information not only in the first contact with law enforcement authorities, but consistently throughout the justice process at relevant points and to respect the "without necessary delay" principle.

Targeted institution(s): Ministry of Justice

- 6 adopting a broader concept of the right to interpretation as enshrined in § 28 of Act no. 141/1961 Coll., the Criminal Procedural Code, so that the right is not limited to situations when the person does not understand the official language or have a hearing or a combination of a

²⁴³ Victims Act, § 21.

hearing and visual impairment and also covers other situations when the person needs some alternative form of communication (alternative and augmentative methods of communication, Braille, etc.) due to his/her disability, including mental disability.

Targeted institution(s): Ministry of Justice

- 7 adopting all the necessary legislative changes to ensure that persons who qualify as particular vulnerable victims in terms of the Victims Act (§ 2 para. 4) have the right to enhanced procedural protection ensuring their effective participation, including the right to free legal representation, as well as to special measures of protection from secondary and repeat victimisation not only in the criminal proceedings but also in administrative, administrative judicial and civil proceedings, provided that these are directly related to the crime of which they are victims (civil domestic violence proceedings, civil proceedings for damages caused by the crime, civil enforcement proceedings against the victim if the victim has fallen into debt, which is being enforced, as a result of the crime, administrative proceedings and administrative judicial proceedings on financial support for victims of crime, etc.)

Targeted institution(s): Ministry of Justice

Policy

We recommend:

- 8 recognising the potential of restorative justice principles to make the criminal justice system more sensitive and responsive to the victim's needs and voicing and promoting their implementation; ensuring that victims with mental disabilities are guaranteed the access to their benefits on an equal basis with others. This recommendation must not be understood as legitimising the establishment of parallel criminal justice systems for victims with disabilities, including mental disabilities, or allowing to apply restorative justice measures to victims with disabilities, including mental disabilities without their free and informed consent.

Targeted institution(s): Ministry of Justice, PMS

- 9 promoting the availability and accessibility of restorative justice solutions for persons with mental disabilities who have become victims of acts of violence or abuse which are not punishable within the criminal justice system, including acts of structural violence, often legitimised by the national legislation; taking all the necessary measures, including the budgetary ones, to this end.

Targeted institution(s): Ministry of Justice, PMS

- 10 implementing, including by targeted budgetary investments, a plan for the development of the network of victim support services that are both accessible and adaptable to victims with mental disabilities.

Targeted institution(s): Ministry of Justice, PMS

- 11 systematically supporting the PMS in the development of its services for victims of crime, including the contact points (counselling offices for victims) and specialised counsellors for victims, to ensure that they meet the needs of and are fully accessible to victims of crime with disabilities; ensuring that the PMS is provided with appropriate budgetary allocations for these services as envisaged by the national strategic documents.

Targeted institution(s): Ministry of Justice

- 12 implementing targeted strategies to raise awareness about the existence of victim support organisations and the PMS and their services for victims among persons with mental disabilities and providers of social services to persons with mental disabilities.

Targeted institution(s): Ministry of Justice, PMS

- 13 adopting and implementing a national strategy to promote the informational role of criminal courts toward victims of crime, including particularly vulnerable victims; ensuring, that the courts provide information to victims about all their relevant rights according to the Victims Act in the court stage of the proceedings and not only about the relevant procedural rights of injured parties.

Targeted institution(s): Ministry of Justice

- 14 adopting and implementing a national strategy to promote information accessibility of judgments and other authoritative decisions issued in the criminal justice system for persons with mental disabilities.

Targeted institution(s): Ministry of Justice

Practice

We recommend:

- 15 abandoning the practice of the deficits-based, functional medical or psychological assessment of the credibility of persons with mental disabilities in their roles of witnesses of crime. The testimony given by persons with mental disabilities must not be denied relevance on basis of the person's medical, psychiatric or other capacity assessment.

Targeted Institution(s): Ministry of Justice, courts, Ministry of Interior, Police Presidium

- 16 implementing educational programmes on the rights of persons with disabilities as enshrined in the CRPD, particularly the human rights model of disability, the right to non-discrimination, equality before the law, and access to justice, for all legal professionals in the criminal justice system, i. e. law enforcement authorities, public prosecution, judges, and attorneys; adopting mechanisms to encourage the widest possible participation of criminal justice professionals in these programmes.

Targeted Institution(s): Ministry of Justice, Judicial Academy, Czech Bar Association, Ministry of Interior, Police Presidium

- 17 creating and implementing tools that would support all criminal justice professionals in their informational and communicational role towards victims with mental disabilities which would be both CRPD and VRD compliant.

Targeted Institution(s): Ministry of Justice, Judicial Academy, Czech Bar Association, Ministry of Interior, Police Presidium

- 18 implementing educational programmes building on the existing good practices within all stages of the criminal proceedings and using peer teaching methods and sharing of experiences.

Targeted Institution(s): Ministry of Justice, Judicial Academy, Czech Bar Association, Ministry of Interior, Police Presidium

- 19 in collaboration with organisations of persons with intellectual disabilities, preparing and applying an easy-to-read version of the information document and all other documents that victims are entitled to access for victims with intellectual disabilities and implement other accessible formats for the provision of information to victims with mental disabilities, such as instructional videos etc.; ensuring that victims with disabilities have access in practice and in a manner they can understand to all information to which they have a right, including information on decisions not to proceed with prosecution and on the release or escape of the perpetrator.

Targeted Institution(s): Ministry of Interior, Police Presidium, Ministry of Justice

- 20 to the extent they concretise how the police should treat a person, that the police internal guidelines should be made available online in such formats that would be accessible to the widest public, including persons with mental disabilities. They should be held secret only to the extent they contain information on investigation tactics; easy-to-read versions informing persons with intellectual disabilities about the police's duties towards them under the police internal guidelines should also be available.

Targeted Institution(s): Police Presidium