

Voices for Justice

Victims of crime with disabilities in Slovakia



Voices for Justice: Victims of crime with disabilities in Slovakia

Voices for Justice

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 the 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' Right 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



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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.

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Executive Summary

Slovakia seems to fail to ensure an accessible and effective criminal justice system for victims with mental disabilities¹. This is for several reasons. In general, Slovakia has implemented the VRD only recently and the practitioners are still learning the paradigm shift this should bring in the approach to victims of crimes. Furthermore, the Slovak victims' rights legislation cannot deny that its main focus lies in the protection of victims against secondary or repeat victimisation. The new legislation has thus enhanced measures of special protection of victims but on the contrary, has insufficiently considered the participative dimension of the victims' role. It has not enacted effective mechanisms to strengthen the procedural position of the victim when claiming his/her rights both in the criminal proceedings as well as beyond them (for instance when applying for financial reparation by the State), for instance, free legal assistance at least for those victims who are particularly vulnerable according to the legal definition. This absence of effective participatory support makes, however, also the application of special measures of protection fully dependent on the discretion of the criminal justice authorities because the victim may not have sufficient support to effectively defend his/her rights.

Persons with disabilities belong among the most vulnerable victims. Although they are considered particularly vulnerable by the law, they may not find available and adequate support. The status of a particularly vulnerable victim grants them the right to specialised professional assistance, but there is no mechanism ensuring the availability of persons or bodies providing such assistance. Despite significant developments, the network of victim support organisations in Slovakia remains poor and oriented predominantly on women who are victims of domestic or gender-based violence and children. Persons with disabilities who become victims of other crimes may find no specialised organisation to turn to. There are organisations providing support to persons with disabilities which are, however, not specialised in criminal law issues.

The situation of victims with mental disabilities may be even more precarious, due especially to the prevailing medical approach to disability. The medical approach affects victims with mental disabilities in both their procedural roles in the criminal proceedings – their role as a participant in the criminal proceedings and their role as a witness of crime. As a participant, the victim with a mental disability is usually denied legal standing in the criminal proceedings. Not formally, but materially because victims with mental disabilities are supposed to be represented by a guardian and the whole communication between criminal justice authorities and the person takes place through the guardian except for when the person should be heard as a witness. As a witness, the victim with a mental disability is routinely subjected to expert examination of his/her credibility based on a functional examination of his/her cognitive capacities. If found not credible, his/her testimony is deemed as practically irrelevant. In some cases, especially in the case of institutionalised persons, victims with mental disabilities are automatically presumed unable to testify by the police and the whole investigation is based on testimonies and statements of the staff.

Nevertheless, the agenda of victims' rights is still quite new in Slovakia and the situation in the field is very dynamic. Promising practices progressively emerge, usually in specific areas of criminality, like human trafficking or domestic violence. One of the main efforts is the establishment of contact

¹ By "mental disability" we understand an intellectual or psychosocial disability.

points for victims (information offices for victims) across the territory of Slovakia. This takes place as part of a nationwide project implemented by the Ministry of Interior. The contact points for victims have a big potential to raise awareness about victims' rights and to compensate, albeit to a limited extent, the insufficient network of victim support organisations.

However, despite all these promising practices, further structural reforms need to take place, not only on the practical level but also on the legislative and strategic ones. The Slovak victims' rights system is still not able to effectively cope with the major barriers to access to justice victims, especially the particularly vulnerable ones, may face. As mentioned above, it needs to enhance the position and the rights of the victim as a party to the criminal proceedings, including the right to free and affordable legal representation, or the right to benefit from restorative justice principles and techniques. For victims with mental disabilities, the criminal justice system needs to abandon all practices based on the medical model of disability. This includes the reliance on "guardianship" as practically the only mechanism for enabling the exercise of procedural rights. In effect this is both a violation of the rights of a person with disabilities and a denial of their right as a victim of crime to access the justice system. Similarly, prejudices against the credibility of victims with mental disabilities need to be abandoned, taking, *inter alia*, the form of the functional examination of their personal characteristics and cognitive capacities.

Finally, the system should be able to react adequately to those situations when persons with mental disabilities become victims of structural violence or structural violations given by the State's failure to comply with the CRPD or other human rights treaties like, for instance, the UN Convention against Torture. These violations may cause harm that is at least similar or even more serious than the harm suffered by crimes defined as criminal offences in the Criminal Code. Nonetheless, the victims of these structural violations have practically no opportunity to seek redress or rehabilitation, because of their approval by the national law. Formally, they are denied the status of a victim of crime together with all the victims' rights, even though their material situation is often similar to the situation of victims of crime.

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 the 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 now a part of European Union law, and each Member State was required to transpose it into their national legal systems by 2015.

In addition to this, the United Nations Convention on the Rights of Persons with Disabilities (CRPD), establishes the rights of persons with disabilities to equal recognition before the law² and to access to justice,³ at the same time as asserting the rights to equality and non-discrimination,⁴ 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."⁵ 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, our findings indicate that victims with disabilities experience multiple barriers to accessing justice, their rights are not respected, and discrimination is common. This research, together with the six other national

² CRPD Article 12.

³ CRPD Article 13.

⁴ CRPD Article 5.

⁵ CRPD Article 4.

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 Slovakia.

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 13 individual interviews and 1 focus group with the representatives of a new project of contact points for victims run by the Ministry of Justice were carried out between 10th March and 5th May 2021. All the interviews and the focus group took place online except for one interview held by phone.

The research team worked with Validity Foundation to prepare and submit official requests for collaboration on the research to the Ministry of Justice, the Prosecutor General, the Ministry of Interior – the Police Force Presidium, and the Slovak Bar Association. The only authority that responded to the official requests was the Ministry of Justice which informed us that the Ministry found it important to monitor the implementation of the VRD “to improve the standards of victims’ rights in practice”. Unfortunately, the Ministry was not able to identify from their data the judges that could have experience with criminal cases where victims were persons with disabilities. The Ministry thus referred the research team to the respective chairmen of the regional and district courts.

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 60 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, judges and public prosecutors, probation and mediation officers, attorneys, including a special unit within the Slovak Bar Association specialised on domestic violence – Attorneys Against Violence⁶, Police Academy, and psychologists.

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, however, in most cases remained silent at our kind request for cooperation. Finally, the research team managed to find three persons with an intellectual disability who were willing to share their experience as victims of crime, one woman and two men. All these persons were supported by another person

⁶ More information is available in Slovak at: <http://advokatinavasejstrane.sk/> accessed 11 October 2021.

during the interview – one of them by her mother who was also her guardian and two of them by their social workers. One interview took place via phone and two interviews were held online due to the pandemic and extremely difficult travel conditions.

Another challenge was to find criminal justice professionals, including attorneys providing legal representation to victims, 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. The research team, thus, also tried to contact those criminal justice professionals who specialise in domestic violence, but it was mostly unsuccessful. For instance, the secretariat of Attorneys Against Violence, a platform of attorneys specialised in domestic violence organised within the Slovak Bar Association, replied to the kind request for cooperation that the target group was very specific and they were still searching for a suitable person that would be willing to take part in the interview. Unfortunately, they finally did not find anyone.

The research team also used the opportunity of a training event organised by FORUM and the International Commission of Jurists for Czech and Slovak judges, public prosecutors, and other judicial staff to spread the information about the research and the opportunity to take part in it. Only one participant – a public prosecutor replied that she was willing to participate, but then, unfortunately, she called it off due to personal reasons.

Not even victim support organisations reacted to the kind request for cooperation in the research, including the only two victim support organisations among the bodies assisting victims of crime accredited by the Ministry of Justice who should be specialised, according to the register of the Ministry, inter alia, on victims with disabilities. The research team, thus, also tried to contact organisations destined for women who became victims of gender-based or domestic violence and informed them that it would welcome any experience with the criminal justice system treating particularly vulnerable victims although the experience did not directly concern a victim with a mental disability. However, not even these requests were answered.

We can only guess what is behind all this silence. The experience of the research team gained from the interviews with three victims with intellectual disabilities and from studying published court decisions⁷ might suggest that victims with mental disabilities are generally significantly underrepresented in the criminal justice system and the professionals thus do not feel confident to talk about that topic. This was the most common reaction of those criminal justice professionals who responded to our request, usually probation and mediation officers. Concerning the attorneys, the problem may be that due to the lack of a systemic guarantee of free or affordable legal representation for victims, at least the particularly vulnerable ones, the attorneys do not have any real opportunity to specialise in this field.

Most of the interviews were recorded and transcribed. But in several cases, the interviewee mentioned that he/she would feel more comfortable if not being recorded, although he/she was 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.

⁷ Slovakia systematically publishes anonymised court decisions on the website of the Ministry of Justice: <https://obcan.justice.sk/infosud/-/infosud/zoznam/rozhodnutie> accessed 11 October 2021.

Some interviewees preferred to remain anonymous. The research team finally preferred to anonymise all the statements by the interviewees to avoid that the anonymised statements or experiences described in the text are incorrectly 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.

3. Issues addressed by the report

The report is divided into 7 thematic chapters. In the beginning, the report brings a general overview of Slovakia concerning the main political characteristics of the country, the situation of persons with disabilities living in the country, the national criminal justice system, and the implications 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 in the field of the rights of persons with disabilities and the rights of victims of crime with the specific emphasis on victims with mental disabilities and gives a brief description of how the Slovak criminal justice system operates. 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 stage. The analysis is always completed by one or more case studies at the end of the chapter. The final chapter summarises the key findings and draws the basic conclusions. Based on them and on the relevant international documents from both the field of rights of persons with disabilities and victims' rights it also formulates the key recommendations for Slovakia to improve access to justice for victims with mental disabilities and make them respected and active participants in the criminal proceedings.

4. Context for people with disabilities in Slovakia

Slovakia 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 Slovakia 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 unicameral Parliament – the National Council of Slovakia with 150 deputies elected for 4 years. The Economist Intelligence Unit rated Slovakia as a ‘flawed democracy’ in 2020 (overall score 6,97; rank 47).⁸

The judicial power in Slovakia is held by general courts, administrative courts, and the Constitutional Court. The system of general courts consists of 54 district courts, 8 regional courts, the Specialised Criminal Court, and the Supreme Court. Administrative courts include the regional courts and the newly established Supreme Administrative Court. The Specialised Criminal Court rules in the most serious criminal cases, including corruption, organised crime and terrorism. The Constitutional Court remains separate within the justice system. It fulfils many roles but for individuals, the most important one is that they may recourse to the Constitutional Court if their human rights and freedoms have not been protected by general and administrative courts.

Slovakia has an accredited human rights institution with status B. It is the Slovak National Centre for Human Rights. The National Centre also fulfils the role of the equality body.⁹ The main domain of the National Centre’s activity is the right to equality and non-discrimination. The National Centre provides free legal aid to victims of discrimination and represents participants in the anti-discrimination proceedings. The National Centre also adopts expert statements and carries out an independent investigation of discrimination.¹⁰ It also does research¹¹ or organises educational activities¹² in the field of human rights and non-discrimination.

Another important independent institution promoting human rights is the Public Defender of Rights. It was established in 2002 as a standard ombudsman institution but it has progressively gained further and further human rights powers.¹³ The Public Defender of Rights is thus nowadays entitled not only to deal with individual complaints against administrative authorities, but also to initiate proceedings before the Constitutional Court if he/she finds that a law or other legal regulation violates human rights and freedoms¹⁴, or to take part in calling to account the representatives of public authorities if they violated human rights or freedoms.¹⁵ The Public Defender of Rights is also entitled to enter places of detention if the detention takes place in connection with the exercise of public power. Unfortunately, he/she does not have the status of

⁸ 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 September 2021.

⁹ Information about the Slovak National Centre of Human Rights is available in English at: <https://www.snslp.sk/en/about-us/> accessed 11 October 2021.

¹⁰ Information available in Slovak at: <https://www.snslp.sk/nasa-cinnost/pravne-sluzby/> accessed 11 October 2021.

¹¹ Information available in Slovak at: <https://www.snslp.sk/nasa-cinnost/vyskumna-cinnost/> accessed 11 October 2021.

¹² Information available in Slovak at: <https://www.snslp.sk/nasa-cinnost/vzdelavanie/> accessed 11 October 2021.

¹³ Act no. 564/2001 Coll. on the Public Defender of Rights, in effect since 1 January 2002.

¹⁴ The Constitutional Law no. 460/1992 Coll., the Constitution of the Slovak Republic, Article 151a (2)

¹⁵ Ibid., Article 151a (1).

the National Preventive Mechanism because Slovakia has not yet ratified the Optional Protocol of the UN Convention Against Torture (OP-CAT).¹⁶

In 2015 Slovakia established two specialised human rights institutions – the Commissioner for Children and the Commissioner for Persons with Disabilities.¹⁷ These institutions should fulfil the role of national human rights institutions for children and persons with disabilities. The Commissioner for Persons with Disabilities should defend the rights of persons with disabilities according to the international treaties ratified by Slovakia, especially the CRPD. The Commissioner deals with individual complaints; monitors the implementation of the rights of persons with disabilities and to this end does research; promotes interests of persons with disabilities in the society and to this end cooperates with persons with disabilities; raises awareness of the rights of persons with disabilities in the society; and cooperates with foreign partners and international subjects active in the field of the rights of persons with disabilities.¹⁸ He/she is entitled to enter institutions¹⁹, or to submit communications to the UN Committee on the Rights of Persons with Disabilities according to the Optional Protocol to the CRPD.²⁰

Slovakia and disability

Slovakia does not have any universal legal definition of disability. Disability is defined differently for different branches of the law (social insurance and employment, provision of social services, education, legal capacity and guardianship, criminal law, victims' rights, etc.), and is based very often on the medical model²¹ of disability.²²

There are no official statistical data on the total number of persons with disabilities in Slovakia.²³ Thanks to the National Programme of Development of Life Conditions for Persons with Disabilities 2014 – 2020 and 2021-2030²⁴ the Slovak Statistical Office gathers data on “selected indicators of the social situation of persons with disabilities” based on two sample surveys: i) labour force sample survey and ii) income and living conditions sample survey. Both surveys use different approaches to disability – the labour force sample survey is based on the objective definition of

¹⁶ See the information on the website of the Office of the High Commissioner of Human Rights https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=SVK&Lang=EN accessed 11 October 2021.

¹⁷ Act no. 176/2015 Coll. on the Commissioner for Children and the Commissioner for Persons with Disabilities, in effect since 1 September 2015.

¹⁸ Ibid., § 10 (1).

¹⁹ Ibid., § 26 (1) (a) and (c).

²⁰ Ibid., § 10 (2) (c).

²¹ The medical model of disability has been defined, inter alia, by the UN Committee on the Rights of Persons with Disabilities in its General Comment no. 6 of 2018 on equality and non-discrimination: “Individual 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. (...)” See CRPD/C/GC/6, para. 8. The General Comment is available at: <https://undocs.org/CRPD/C/GC/6> accessed 10 December 2021.

²² This was criticised by the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations on the initial report of the Slovak Republic of 2016. The UN Committee recommended to Slovakia to “adopt a human rights-based definition of disability in the regulations relating to the assessment of disability.” See CRPD/C/SVK/CO/1, paras. 11 and 12. The Concluding Observations are available at: <https://undocs.org/en/CRPD/C/SVK/CO/1> accessed 30 September 2021.

²³ The Slovak Commissioner for Persons with Disabilities, Zuzana Stavrovská, criticised this failure in the context of the preparation of the 2nd and 3rd periodic report of Slovakia to the UN Committee on the Rights of Persons with Disabilities. TASR, ‘Stavrovská: SR potrebuje štatistiky o ľuďoch so zdravotným postihnutím’ (2020) <https://www.teraz.sk/slovensko/stavrovska-sr-potrebuje-statistiky-o-488646-clanok.html> accessed 30 September 2021.

²⁴ The National Programme is available in Slovak at: https://www.komisarprezdravotnepostihnuty.sk/getmedia/f5d309c8-6eaa-48f9-b590-ef7d776ddf77/Material_NPRZPOZP_2021-2030.aspx accessed 30 September 2021.

disability (considering if the person was formally granted the status of a person with a disability for the purpose of the labour market²⁵) while the income and living conditions sample survey focuses on the subjective one – how the person considers himself or herself to be limited in exercising everyday activities due to his/her chronic illness or long-term health condition. The person may feel: i) very limited; ii) limited, but not very limited; and iii) without any limitations.²⁶ This survey thus may provide more reliable data about the number of persons with disabilities in Slovakia than the first one, also in terms of the definition of disability according to Article 1 of the CRPD.

In 2019 (the latest available data), persons with disabilities (defined according to their subjective assessment) represented 31,1 % of the Slovak population and were living in 53,9% of the Slovak households. The data, unfortunately, are not further disaggregated by the type of disability, so it is not possible to determine how many of these persons are persons with intellectual and/or psychosocial disabilities. Furthermore, this number does not include persons with disabilities who are living in different types of institutional settings (social care, health care, educational, and child protection).

Slovakia still relies extensively on institutional care for persons with disabilities, across different age groups. For instance, in December 2019, the four major types of residential social care facilities for persons with disabilities (homes of social services; facilities for seniors; specialised facilities; nursing services facilities) had more than 40,000 beds and accommodated more than 40,000 people.²⁷ This capacity represented in 2019 approximately 85,9 % of the total capacity of social service facilities for persons dependent on the support of other persons²⁸ and the number of clients exceeded approximately 2,5 times the number of clients who are provided with nursing service in their community.²⁹

Although the Slovak Government committed itself to deinstitutionalisation already in 2011, the process is “slow and partial”.³⁰ The National Strategy on Deinstitutionalisation was renewed in 2021³¹, but its implementation is very slow and there is strong opposition from most municipalities and regional governments in Slovakia. Slovak legislation still fails to enact measures that would ensure reorientation of the social care system from institutional care to community-based support, especially supporting the creation of personal assistance as “a tool for independent living”,³² alongside other community-based services. Slovak legislation still enables the establishment and extension of existing institutional infrastructure and there is no moratorium on new admissions,

²⁵ Medical definition based on the assessment of the person's capacity to perform a paid job. See Act no. 461/2003 Coll. on Social Insurance, § 71, in connection with Act no. 5/2004 Coll. on Employment Services, § 9.

²⁶ Slovak Statistical Office, ‘Vybrané indikátory sociálnej situácie osôb so zdravotným postihnutím’ [Selected Indicators of Social Situation of Persons with Disabilities] (2021). The report may be downloaded in Slovak from: https://slovak.statistics.sk/wps/portal/ext/themes/living/disabled!/ut/p/z0/04_Sj9CPyKssy0xPLMnMz0vMAfIjo8ziw3wCLJycDB0NLDw8XA0cA0wDgky9Ao3cA030C7ldFQGjl-qd/ accessed 30 September 2021.

²⁷ The exact numbers are: 940 facilities, 40 330 beds and 40 896 persons in 2019. Data by the Ministry of Labour, Social Affairs and Family.

²⁸ See the National Strategy to Deinstitutionalise the System of Social Services and Alternative Care, 2021, p. 17-18. The National Strategy is available in Slovak at: <https://www.employment.gov.sk/files/slovensky/rodina-socialna-pomoc/socialne-sluzby/narodna-strategia-deinstitucionalizacie-systemu-socialnych-sluzieb-nahradnej-starostlivosti-2021.pdf> accessed 30 September 2021.

²⁹ 16 124 in December 2019. See the Report on the Social Situation of the Population of the Slovak Republic for 2019, Annex to Chapter III. Available in Slovak at: <https://www.employment.gov.sk/sk/ministerstvo/vyskum-oblasti-prace-socialnych-veci-institut-socialnej-politiky/spravy-socialnej-situacii-obyvatelstva/rok-2019.html> accessed 30 September 2021.

³⁰ CRPD/C/SVK/CO/1, para. 55.

³¹ The Strategy is available in Slovak at: <https://www.employment.gov.sk/files/slovensky/rodina-socialna-pomoc/socialne-sluzby/narodna-strategia-deinstitucionalizacie-systemu-socialnych-sluzieb-nahradnej-starostlivosti-2021.pdf> accessed 30 September 2021.

³² CRPD/C/GC/5, para. 16 (d).

which prevents any systemic change from taking place.³³ The legislative framework of planning the development of the net of social services and their capacities is neutral as to obligations deriving from the right of persons with disabilities to independent living since it does not require the progressive elimination of the capacities of institutional services in favour of community-based services and therefore does not provide an adequate structure to regulate the redistribution of financial (and other) resources allocated by the state for social services for persons with disabilities.

Victims with disabilities and the criminal justice system

Victims' rights have been systematically introduced into the Slovak national legislation only recently – by Act 274/2017 Coll. on Victims of Crime (hereinafter “the Victims Act”) which came into effect on 1 January 2018 (see below). The Slovak criminal justice system, nevertheless, still focuses more on the perpetrators than the victims. Concerning statistical data, there is no framework for systemic collection of data on victims of crime. The Strategy of the Prevention of Crime and Other Anti-Social Activities 2016-2020 planned to incorporate effective analytical and monitoring mechanisms which would focus, however, on the efficacy of the different preventive programmes and not the situation of victims of crime.³⁴ The Police Presidium publishes data on criminality³⁵, but these give only partial information about victims, especially child victims. Similarly, the Ministry of Justice systematically gathers and publishes data on criminal cases in courts, not on victims of crime. Concerning victims, the statistical data gathered and published by the Ministry of Justice contain only the information about the payments to the fund for victims administered by the Ministry of Justice.³⁶ There is also no information on procedural accommodations for victims.

Official data on victims of crime are available only partially, for a particular group of victims, and very often as a result of a specific research by public authorities or institutions. Unfortunately, none of these groups are victims with disabilities. The Work and Family Research Institute is implementing a project focused on violence against women and the Ministry of Interior on prevention of criminality. The data usually take the form of analytical materials focused on a specific topic – for instance, the number and type of crimes committed against women³⁷, the activity of contact points for victims or the development of crimes committed against older persons³⁸. There are also statistical data on human trafficking, including data on victims of human trafficking.³⁹ Unfortunately, none of these statistics include disability as a monitored category.

³³ Ibid., para. 49: „To respect the rights of persons with disabilities under article 19 means that States parties need to phase out institutionalization. No new institutions may be built by States parties, nor may old institutions be renovated beyond the most urgent measures necessary to safeguard residents' physical safety. Institutions should not be extended, new residents should not enter when others leave and “satellite” living arrangements that branch out from institutions, i.e., those that have the appearance of individual living (apartments or single homes) but revolve around institutions, should not be established.“

³⁴ The Strategy is available in Slovak at: <https://www.minv.sk/?zakladne-dokumenty-rvpk> accessed 30 September 2021.

³⁵ Police criminality statistics are available in Slovak at: <https://www.minv.sk/?statistika-kriminality-v-slovenskej-republike-xml> accessed 1 October 2021.

³⁶ Data from 2020 are available in Slovak at: https://web.ac-mssr.sk/wp-content/uploads/2021/Statisticka_rocenka_2020/I.%20Trestn%C3%A1%20agenda_2020.pdf accessed 1 October 2021.

³⁷ Available in Slovak at: <https://www.zastavmenasilie.gov.sk/statistiky/> accessed 1 October 2021.

³⁸ Both materials, together with others, are available in Slovak at: <https://prevenciakriminality.sk/p/analyzy> accessed 1 October 2021.

³⁹ Available in Slovak at: <https://www.minv.sk/?obchodovanie-s-ludmi-a-slovenska-republika> accessed 21 February 2022.

On the other hand, the National Programme of Development of Life Conditions for Persons with Disabilities 2021-2030 requires the Slovak Statistical Office to continue gathering data specifically focused on persons with disabilities which reflect only the socio-economic situation of persons with disabilities and their economic and work activities (see above).

The situation of persons with disabilities as victims of crime thus remains invisible. The intersectionality of disability and the status of a victim or crime falls out of the interest of the relevant systems – the criminal justice system, including its relatively new part of victims' rights, and the system of support for persons with disabilities. The own experience of the research team confirms this finding – only one of the organisations providing support to persons with disabilities reacted to our request for their involvement in the research.

*"You approached us with a request for cooperation.
We do not have the information you are asking for."*

a nationwide organisation providing support to persons with intellectual disabilities

And, the approached victim support organisations were quite reluctant to take part in the research, probably due to their insufficient experience with victims with mental disabilities (for more information about victim support organisations and their availability and accessibility for victims with mental disabilities in Slovakia see chapter 5.).

Impact of COVID and COVID restrictions on people with disabilities

Persons with disabilities belonged to the most vulnerable groups during the pandemic, especially those who were living in residential facilities. In Spring 2020 these people often remained closed in the facilities and without any possibility of being visited by their relatives or friends. The Commissioner for the Persons with Disabilities together with non-governmental organisations issued several recommendations trying to mitigate as much as possible the negative impact of the restrictive measures on the rights of persons with disabilities in institutions, including recommendations to support as much as possible the contact of these persons with the outside world via online tools.⁴⁰ The ambulatory social care services for persons with disabilities were closed during the first phase of the pandemic in Spring 2020.⁴¹ This situation was very challenging and exhausting for informal carers.

"In my world, it goes like this: the COVID-19 situation shows us two things. The first - how very dangerous large-scale institutions, where we involuntarily concentrate many of the most vulnerable groups - senior and people with disabilities, are. These people were the first to be isolated and closed without the possibility of visitors, we had to put a crisis regime in place, no new clients are admitted (except in urgent situations) and the whole system of institutional care of this type is heading for

⁴⁰ The recommendations are in Slovak, available at:

<https://www.komisarprezdravotnepostihnutych.sk/Zverejnovanie/Informacie?path=odpor%C3%BA%C4%8Dania> [Návrhy pro zatvorenie zariadení a zavedení núdzového stavu v súvislosti s COVID-19 pre ZSS] accessed 5 October 2021.

⁴¹ Measure of the Public Health Authority of the Slovak Republic of 24 March 2021, no. OLP/2775/2020. Available in Slovak at: https://www.ruvztv.sk/wp-content/pdf_downloads/covid_19/opatrenie_uvzsr_poskytovanie_socialnych_sluzieb24032020.pdf [Usmernenia, opatrenia a odporúčané postupy v súvislosti s COVID-19] accessed 7 February 2022.

collapse in this situation, not to mention the huge risk of increasing violations of fundamental human rights of people in large-scale facilities. The second – in the ordinary community, it has shown how self-help and support for vulnerable groups works, but also overall self-help in the community. (...)."

Miroslav Cangár, Social Work Advisory Board,
citing his status report on social networks of 17 March 2020⁴²

After some consolidation in Summer 2020, the situation deteriorated again in Autumn 2020. The Public Health Authority of the Slovak Republic again banned the residents from being visited by their relatives and friends.⁴³ The ambulatory social care services were not closed absolutely but depending on the situation in the ambulatory facility and the district.⁴⁴

Victim support services were not officially closed, even during the first stage of the pandemic in Spring 2020, but due to the pandemic, they often limited their services to counselling provided only via online platforms and via telephone.⁴⁵ Practically the same situation was repeated during the second stage of the pandemic in Autumn 2020 and Winter 2020/2021⁴⁶ although the protective measures might not have been always as strict as during the first stage.

"I think in the second stage, pandemic plans, based on the government's guidelines contained in its resolution and many recommendations, made it a little easier. Of course, we've adapted. We do counselling over Skype, Zoom, email, but not all victims have the necessary skills to communicate that way. So, there are clients who need face-to-face counselling. But one unwritten rule says that it is harder to communicate with the public authorities in corona time. Doctors need to be telephoned through their nurse, interrogations are postponed, what was true yesterday, may not be tomorrow, and this uncertainty plays into an escalation of the shortcomings in victims' psychosocial skills to decide to "take off the mask" and work on change. Which is never easy."

Iveta Schusterová, executive director of Victim Support Slovakia
[Pomoc obetiam násilia]⁴⁷

Concerning the criminal proceedings, Slovakia adopted a special law dealing with court proceedings in time of the pandemic.⁴⁸ The Act provides for that in the time of an extraordinary

⁴² Cited according to Miroslav Cangár, 'Prečo dnes, ešte viac ako inokedy, potrebujeme deinštitucionalizáciu a komunitné služby?' (2020) <https://www.rpsp.eu/2020/04/27/preco-dnes-este-viac-ako-inokedy-potrebujeme-deinstitucionalizaciu-a-komunitne-sluzby/> accessed 6 October 2021.

⁴³ Decree of the Public Health Authority of the Slovak Republic no. 43/2020, in effect since 21 December 2020. Available in Slovak: https://www.employment.gov.sk/files/slovensky/rodina-socialna-pomoc/socialne-sluzby/covid/ciastka_26_2020.pdf accessed 5 October 2021.

⁴⁴ The so-called „traffic light for ambulatory social services“ is available in Slovak at: <https://www.mpsvr.sk/files/slovensky/rodina-socialna-pomoc/socialne-sluzby/covid/1.pdf> accessed 5 October 2021.

⁴⁵ See, for instance, the example of Victim Support Slovakia [Pomoc obetiam násilia] – probably the biggest victim support organisation in Slovakia - which was providing counselling only via online platforms and telephone between 6 March 2020 and 3 June 2020. Information available in Slovak at: <http://pomocobetiam.sk/nasa-poradna-pocas-pandemie/> and <http://pomocobetiam.sk/nasa-poradna-opat-otvorena/> accessed 6 October 2021.

⁴⁶ See, again, the example of Victim Support Slovakia [Pomoc obetiam násilia] which announced on 28 October 2020 that the counselling must operate in crisis regime, i.e. with the personal contact only in exceptional circumstances and if arranged in advance. Information available in Slovak at: <http://pomocobetiam.sk/poradna-pon-opat-zatvorena/> accessed 6 October 2021.

⁴⁷ See the interview with Iveta Schusterová, the executive director of Victim Support Slovakia [Pomoc obetiam násilia] of 11 November 2020. Available in Slovak at: https://dennikn.sk/2134499/iveta-schusterova-pocas-prvej-vlny-korony-nam-obete-nasilia-casto-volali-z-kupelni-ci-pivnic/?fbclid=IwAR3iUjy424yNmTfV5mZdjFDH7qwqg8ghUoRhMfY8_aDHCMvmyXfu-mY accessed 6 October 2021.

⁴⁸ Act no. 62/2020 Coll. on certain extraordinary measures in connection with the spread of the dangerous contagious human disease COVID-19 and the justice system.

situation, or a state of emergency court proceedings can take place only if necessary and inevitable.⁴⁹ Criminal proceedings deemed as necessary and inevitable were according to the decree of the Ministry of Justice:

- custody proceedings;
- judges' ruling in the investigation stage of criminal proceedings;
- parole proceedings;
- proceedings on protective treatment.⁵⁰

Other criminal court proceedings thus had to be adjourned. Since 28 April 2021, the decree allowed courts to hold also court trials except for the cases suitable for adjournment.⁵¹

Act no. 62/2020 Coll. also entitled the courts to hold hearings in the time of an extraordinary situation or a state of emergency closed for the public under the condition that the hearing is audio-recorded. The record is accessible to anyone.⁵²

Nevertheless, the Act did not regulate the investigation stage of the proceedings. This was thus going on as required by the law, regardless of the pandemic.

"(...) law enforcement authorities, despite the declared state of emergency, did not have an emergency, nor did they have a legal reason to limit the investigative acts of pre-trial proceedings to any extent. To do otherwise would be contrary to the legal order in force concerning the regulation of criminal proceedings."

František Vojtuš, Comenius University in Bratislava,
Faculty of Law, Criminal Law Department⁵³

⁴⁹ Ibid., § 3 (1) (a).

⁵⁰ Decree no. 24/2021 Coll., in effect from 23 January 2021 to 30 April 2021.

⁵¹ Amendment to Decree no. 24/2021 Coll., no. 159/2021 Coll.

⁵² Act no. 62/2020 Coll. on certain extraordinary measures in connection with the spread of the dangerous contagious human disease COVID-19 and the justice system, § 3 (1) (b) and (2).

⁵³ František Vojtuš, 'Pandémia a vykonávanie úkonov prípravného konania' (2020)

<https://comeniusblog.flaw.uniba.sk/2020/04/20/pandemia-a-vykonavanie-ukonov-pripravneho-konania/> accessed 6 October 2021.

5. Legal and policy framework

Overview of the intersection of the international framework and national legislation

Although Slovakia ratified the CRPD on 26 May 2010, it still faces severe deficiencies in its implementation. In general, Slovakia is a country where the medical model of disability dominates in many branches of law and legal practice⁵⁴, including the criminal justice system. For instance, the country still lacks supported decision-making alternatives to restriction of legal capacity and guardianship⁵⁵ although reformatory efforts are currently taking place⁵⁶, applies a segregated educational system for children with disabilities⁵⁷, allows the use of netted cage-beds and other restraint measures in psychiatric facilities⁵⁸, allows civil detention of persons with mental disabilities in psychiatric hospitals due to their “dangerousness”⁵⁹ and massively institutionalises persons with mental disabilities across different age groups in various types of institutions (see above chapter 4.).

The national antidiscrimination legislation is built on the transposition of the relevant European directives. It thus fails to address discrimination on the grounds of a disability in its complexity as understood by the CRPD. For instance, it requires the provision of a reasonable accommodation to persons with disabilities only in employment and vocational training.⁶⁰ This has been criticised also by the UN Committee on the Rights of Persons with Disabilities⁶¹ which has also expressed its concern that “reasonable accommodation has been misinterpreted as a temporary special measure” and that “there is a lack of an explicit definition of reasonable accommodation in legislation” as well as that “the denial or reasonable accommodation as disability-based discrimination is not recognized in law.”⁶²

The National Programme of Development of Life Conditions for Persons with Disabilities 2021-2030 anticipates legislative amendment to the Antidiscrimination Act that would enact the definition of disability-based discrimination and reasonable accommodation, require to provide a person with a disability with reasonable accommodation in all areas of life, and clearly state that the denial of reasonable accommodation constitutes disability-based discrimination. The amendment should be prepared by the Ministry of Justice by 2023.⁶³

⁵⁴ In its Concluding Observations on Slovakia of 2016 the UN Committee on the Rights of Persons with Disabilities has expressed its concern that „the medical approach to disability is still used in assessments and provisions addressing persons with disabilities, and is also concerned about the lack of understanding of the rights of persons with disabilities among professionals” and recommended Slovakia „to adopt a human rights-based definition of disability in the regulations relating to the assessment of disability. The Committee also recommends that the State party provide policymakers and professionals with training and raise awareness among them on the rights of persons with disabilities, in line with the Convention.” – see CRPD/C/SVK/CO/1, paras. 11 and 12.

⁵⁵ Act no. 40/1964 Coll., the Civil Code, § 10 and § 27 (2).

⁵⁶ The National Programme of Development of Life Conditions for Persons with Disabilities 2021-2030 foresees a reform of the guardianship system [measure 5.1.2; deadline: 2022], accompanied by the analysis of the possibilities of supported decision-making principles in the Slovak legislative framework [measure 5.1.3; deadline: 2022]. These reforms are, however, likely to focus predominantly on civil substantive law. The National Programme is available in Slovak at: https://www.komisarprezdravotnepostihnuty.sk/getmedia/f5d309c8-6eaa-48f9-b590-ef7d776ddfd7/Material_NPRZPOZP_2021-2030.aspx accessed 25 August 2021.

⁵⁷ Act no. 245/2008 Coll., School Act, § 94 et seq.

⁵⁸ Methodological ordinance of the Ministry of Health no. 13787/2009 – OZS adopted on 27 May 2009 on the Use of Restraint Means Against Patients in Health Care Settings Providing Psychiatric Care.

⁵⁹ Act no. 576/2004 Coll., on Health Care, § 6 (9) (d).

⁶⁰ Act no. 365/2004 Coll., the Antidiscrimination Act, § 7.

⁶¹ CRPD/C/SVK/CO/1, para. 13.

⁶² Ibid., para. 15.

⁶³ The National Programme of Development of Life Conditions for Persons with Disabilities 2021-2030, measure 5.1.1. The National Programme is available in Slovak at: https://www.komisarprezdravotnepostihnuty.sk/getmedia/f5d309c8-6eaa-48f9-b590-ef7d776ddfd7/Material_NPRZPOZP_2021-2030.aspx accessed 25 August 2021.

Slovakia lacks appropriate mechanisms supporting the active participation of persons with mental disabilities in formal proceedings.⁶⁴ All the procedural codes⁶⁵ rely in this context predominantly on guardianship, rather than for instance free legal representation of persons with mental disabilities in different formal proceedings by an attorney.⁶⁶ The issues relating to access to justice are not specifically discussed even in the national strategies. The National Programme of Development of Life Conditions for Persons with Disabilities 2021-2030 focuses mainly on the necessary reform of the substantive law, i.e. of the system restricting the legal capacity of persons with mental disabilities and subordinating them to guardianship. It is not clear how much the potential changes in substantive law introducing supported decision-making options will influence the procedural law.

The VRD was transposed to Slovak law quite late, in 2017 by the adoption of the Victims Act, which also enacted some necessary changes in the Act no. 301/2005 Coll., the Code of Criminal Procedure (hereinafter “the Code of Criminal Procedure”). The whole implementation of the VRD in Slovakia was in the spirit of ensuring that the victim was protected from secondary victimisation. Slovakia thus focused on introducing measures ensuring special protection of the victim, especially in his/her role as a witness of crime, but in a certain way lost sight of the victim’s status as a party to criminal proceedings. It thus hasn’t brought a system of supportive measures that could serve as procedural accommodations for the victim when exercising his/her procedural rights.

National legislation, policy, and guidance in details

As mentioned above, the implementation of the VRD predominantly focused on ensuring the protection of the victim against secondary and repeat victimisation and not as much on ensuring his/her active position in the criminal proceedings. For instance, the individual assessment was explicitly incorporated in the national legislation but relates only to special measures of protection of the victim, not to the identification of necessary procedural accommodations for the victim’s practical and effective participation in the proceedings. Furthermore, the formulation of the purpose slightly differs from that of Article 22 of the VRD since the individual assessment should serve to identify the particular vulnerability of those victims who are not considered as particularly vulnerable directly by the law. In other words, it enables to broaden the category of particularly vulnerable victims merely on basis of their personality or the type or motivation of the crime. Victims with disabilities are considered particularly vulnerable directly on basis of the law so, theoretically, stay outside the scope of the individual assessment.⁶⁷ The assessed elements of the INA are: 1) the victim’s specific characteristics; 2) his/her relationship to or dependence on the perpetrator; 3) type and nature of the crime; or 4) circumstances of the crime.⁶⁸ The Victims Act refers to the CRPD when defining the disability.⁶⁹

⁶⁴ In its Concluding Observations on Slovakia of 2016 the UN Committee on the Rights of Persons with Disabilities has pointed out “the lack of procedural accommodation and reasonable accommodation in the justice and law enforcement sector, especially with regard to persons with intellectual disabilities.” – See CRPD/C/SVK/CO/1, para. 40.

⁶⁵ Act no. 301/2005 Coll., the Code of Criminal Procedure, § 48; Act no. 160/2015 Coll., the Code of Civil Procedure, §§ 68 and 69; Act no. 71/1967 Coll., the Code of Administrative Procedure, § 16; Act no. 162/2015 Coll., the Code of Administrative Court Procedure, §§ 36 and 37.

⁶⁶ The UN Committee on the Rights of Persons with Disabilities has recommended Slovakia to „amend procedural rules to ensure that persons with intellectual disabilities are provided with procedural accommodation from the outset. It also recommends that the State party make legal aid available to persons with disabilities so that they have access to justice on an equal basis with others.” – See CRPD/C/SVK/CO/1, para. 41.

⁶⁷ This does not mean that these victims would be denied the right to support. Right to support and measures of special protection are guaranteed to all particularly vulnerable victims. But it could mean that the victim is viewed through the specific characteristics of his/her „category”, without appropriately taking into account his/her individual needs.

⁶⁸ The Victims Act, § 2 (1) (c) (6).

⁶⁹ Ibid., § 2 (1) (c) 4., footnote no. 1.

The right to understand and to be understood is implemented only as a general principle to be applied to the conduct of criminal justice authorities⁷⁰ and organisations assisting victims of crime, more detailed rules are lacking. Any support in communication for persons with mental disabilities, like adaptation of communication or reliance on support persons to mediate communication, is available especially in their role as witnesses and not as much in their role as parties to the criminal proceedings. This is not a direct consequence of the legal framework which, for example, does not limit the right to be accompanied by a support person to acts where the victim is to give evidence⁷¹, but of reliance on the institute of guardianship when a person on account of a mental disability needs the support of another person in the exercise of his/her procedural rights as party to the proceedings (see above).

The most important and practically only tool to support victims in their procedural role as parties to criminal proceedings is the availability of appropriate organisations assisting victims of crime. The Victims Act helped strengthen their position⁷² and enacted the right of a victim of crime to general and specialised professional assistance⁷³ by these organisations, but unfortunately failed to establish the responsibility for systematically developing their availability and accessibility for all categories of victims. According to the registers administered by the Ministry of Justice⁷⁴, there are currently 35 organisations providing support to victims according to special laws (especially the Act no. 448/2008 Coll., on Social Services) and 14 organisations with accreditation providing support to victims according to the Victims Act while some of the organisations are on both lists. Most of these organisations specialise in helping women and children who are victims of domestic and gender-based violence. Of course, some of these organisations can accommodate victims with mental disabilities as well, but only in case they are victims of domestic and gender-based violence. Persons with mental disabilities who have become victims of other crimes may stay outside the whole network of victim support organisations.

Although the Victims Act enacted the right of victims of crime to legal assistance, it did not really improve the already existing mechanisms of free legal aid, including legal representation in the criminal and other relevant civil or administrative proceedings. The access to free legal representation in the criminal proceedings thus remains subject to a claim for damages and the necessity test, including for particularly vulnerable victims (for more information see chapter 7.). Furthermore, even under these conditions, there is no legal claim to free legal representation. The decision which is adopted by a judge is always discretionary.⁷⁵

⁷⁰ Criminal justice authorities must consider the “difficulties in understanding or communication resulting from a certain type of disability, language knowledge, or victim’s restricted ability to express himself or herself”. [the Victims Act, § 3 (4)]. They are also required, during the whole proceedings, to enable the victim to exercise her rights and to treat him/her and his/her family members with respect while taking into account his/her personal circumstances and immediate needs, age, gender, disability, and maturity, and safeguarding his/her physical, mental and moral integrity [the Code of Criminal Procedure, § 2 (21)].

⁷¹ The Code of Criminal Procedure, § 48a.

⁷² The Act introduced a system of their registration, accreditation and funding subventions.

⁷³ The Victims Act, § 5 and 6.

⁷⁴ The numbers are of 30 January 2019 which is the date of the last update of the registers on the website of the Ministry of Justice. The registers are available at: <https://www.justice.gov.sk/Stranky/Registre/Zoznamy-vedene-MS-SR/Register-pomoc-obetiam-zoznam.aspx> accessed 25 August 2021.

⁷⁵ The Code of Criminal Procedure provides for that the judge may and not must appoint free legal representation for the injured party if he/she finds this is necessary for the protection of the victim’s interests. See the Code of Criminal Procedure, § 47 (6).

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

The Slovak government is currently implementing several projects focused on victims' rights, but none of them is specifically focused on victims with mental disabilities. We would like to mention particularly three projects. One of them is a national project on domestic and gender-based violence implemented by the Ministry of Labour, Social Affairs, and Family through the Coordination-Methodical Centre for the Prevention of Violence against Women – Stop Violence [Zastavme násilie]. As part of the project, the Centre published several analyses and research findings, guidelines, standards, and reports. Ones of the guidelines⁷⁶ deal with the individual assessment and aim to teach the police to assess the person's particular vulnerability and to ask the victim about his/her individual needs. However, they address disability only generally, as one of the indicators the police should consider. They do not contain any specific recommendations for communication with a victim with an intellectual or psychosocial disability. Rather, they teach the police the general principles of sensitive and responsive treatment of victims. The project also includes awareness-raising activities in the field of domestic and gender-based violence against women.⁷⁷

The second project is a project implemented by the Ministry of Interior⁷⁸ and one of its major activities consists in establishing contact points for victims. This is very important especially for those victims of crime whom the current network of organisations assisting victims is not able to accommodate (see above). Although victims with mental disabilities are not explicitly mentioned among the prioritised target groups (older persons; victims of violent crimes; victims of hate crimes and extremism; victims of human trafficking; and child victims), the contact points are open to all victims regardless of the type of the crime or the victim's needs. Their role is to provide the victim with basic social, legal, and psychological counselling, and to fulfil it the contact points cooperate with extern specialists in the relevant fields. The contact points are placed in the district offices since people are used to going there to solve different problems. There are currently 16 contact points, 2 in each region (in every regional city and then in another place identified by analysis) and the Ministry of Interior systematically spread the information about them in the media.⁷⁹

Unfortunately, contact points for victims cannot fully compensate for an inadequate network of organisations assisting victims of crime. Their role is to provide the victim with basic counselling and relevant references to other services that could provide the victim with more complex and continuous support. In the case of a non-existent network of victim support organisations, there is nowhere to refer. There is a blank space caused by the fact that organisations for persons with mental disabilities (usually social services) are not specialised in criminal law and support of victims of crime while victim support services have only a narrow target group of who they provide with assistance. The unavailability of relevant victim support organisations significantly worsens the victim's access to appropriate and free legal assistance in criminal proceedings.

⁷⁶ The methodological guidelines are available in Slovak at: https://www.zastavmenasilie.gov.sk/resources/data/Prirucka_Metodicka-pomocka-pre-kontakt-s-obetami-Tc.pdf accessed 23 August 2021.

⁷⁷ The website of the project is available in both Slovak and English at: <https://www.zastavmenasilie.gov.sk/en/> accessed 25 August 2021.

⁷⁸ More information about the project is available in Slovak at: <https://prevenciakriminality.sk/> accessed 25 August 2021.

⁷⁹ Information received from the interview with the director of the relevant department at the Ministry of Interior broadcast on TV3 on 12 August 2021. The interview is available in Slovak at: https://www.ta3.com/relacia/21411/pomoc-pre-obete-trestnych-cinov-viete-na-koho-sa-obratit?fbclid=IwAR0KYNrDfoe_jg_14ecMbys-KrH_Es3rJOcN0m-c--TxuDIXfvI0x72HZTY accessed 25 August 2021.

The last project we would like to mention is a State-run Programme of Support and Protection of Victims of Human Trafficking. The Programme is implemented by the Ministry of Interior with the cooperation with Caritas Slovakia and Greek Catholic Charity Prešov and guarantees to victims of human trafficking who are often victims with mental disabilities various types of assistance⁸⁰ (social, legal, health, etc.), including the provision of temporary accommodation or legalisation of the stay on the Slovak territory.⁸¹

Description of the criminal justice system and procedures

The detailed description of criminal justice procedures is given below in parts relating to the different stages of criminal proceedings. Hereby, we would like to introduce the main characteristics of the Slovak criminal justice system.

The criminal justice system in Slovakia is conceived still quite conservatively and traditionally. It is oriented predominantly on the State -offender relationship and its main objectives are to find the facts and punish the perpetrator. This aspect makes the whole system prioritise the victim in his/her role as a witness over his/her role as a participant in the proceedings.

The implementation of the VRD which was understood mainly as the requirement to enact mechanisms ensuring special protection of the victim from secondary or repeat victimisation (see above) did not eliminate some significant barriers to the active involvement of the victim in the criminal proceedings. The Code of Criminal Procedure still makes certain rights relating to the victim's participation in criminal proceedings conditional on his/her claiming damages, including the right to free legal representation, or the right to be delivered the final judgment (see below).

The primary focus on the victim as a witness and thus source of evidence easily leads to make his/her the object of the criminal proceedings rather than their active participant. Concerning persons with mental disabilities, this impact is further exacerbated by the prevailing medical approach to disability. Their personality, capacities, and experiences are examined by experts – psychologists and psychiatrists and become one of the subjects of evidence. This situation may not only be disrespectful for the victim but it also undermines his/her active involvement in the proceedings since expert voices are heard instead of the victim's.

Also, the restorative justice principles and measures promoting the active involvement of victims in dealing with the consequences of a criminal offence are poorly implemented in the Slovak legislation and practice. From a wide range of restorative measures, Slovakia currently applies only mediation and that in a limited scope of cases which may be resolved, according to the Code of Criminal Procedure, by a settlement between the victim and the offender.⁸² The settlement is, however, possible only in cases of minor offences⁸³, what makes restorative justice completely unavailable in other cases. Furthermore, the system does not always ensure adequate conditions to successfully carry out mediation, even in cases when it is possible. Mediation is ensured by specialised departments of the district courts which are responsible also for probation and may

⁸⁰ Information obtained by interviewing relevant professionals.

⁸¹ The information about the programme is available in Slovak at: https://www.minv.sk/?program_podpory_a_ochrany_obeti accessed 25 August 2021.

⁸² The Code of Criminal Procedure, §§ 220 – 227.

⁸³ Offences which are punishable by imprisonment for a maximum of five years. – See Ibid., § 220 (1).

not always have the necessary time for mediation. Furthermore, cases for mediation are usually referred to these departments by the public prosecutor, in certain cases by the court. Although theoretically, the participants may ask for a mediation themselves, this does not happen in practice. For victims with mental disabilities seem to be significantly underrepresented in mediation procedures. Either their cases are not referred to mediation at all, or they are represented by a guardian.

“In fact, we haven't had in mediation, as I recall, in the last 5 years, a person like that who had that type of disability [note: intellectual or psychosocial]. I don't remember at all. Unless we're prepared, should it happen, for some people to call a sign language translator or any other type of accompanying person, whether they are already appointed by a prosecutor or a judge. And if they aren't, then in mediation or even during probation, we can ask for a translator, or I don't know what they're called in other disabilities. So, I can't tell you about any practical experience in that regard. (...) It occurs to me that these people may be represented by someone who comes to the mediation, and we don't really see them. You don't read these diagnoses from the file, so we don't even need to know that they're represented by someone in mediation. They'll bring the authorization and we won't know.”

a probation and mediation officer

“I may disappoint you, but we don't meet victims with any serious disabilities, either on probation or in mediation. In mediation, there have always been only healthy persons.”

a probation and mediation officer

“I don't remember a person with a disability being involved in mediation, but I've only been in court for one and a half years. But there is always a person to represent and protect the victim with a disability – the victim's close person, guardian, or for children the authority for social and legal protection. These persons would be present at the mediation.”

a probation and mediation officer

“I see cases where victims with intellectual or psychosocial disabilities are also referred to mediation, it's not that common, but these cases do occur.”

a probation and mediation officer

The Ministry of Justice is currently implementing a project that should promote the use of mediation both in criminal and civil law matters. The project, however, does not focus specifically on victims with mental disabilities.⁸⁴

⁸⁴ Information about the project is available in Slovak at: <https://www.justice.gov.sk/Stranky/Nase-sluzby/Nase-projekty/Budovanie%20a%20posilnenie%20alternat%C3%ADvneho%20rie%C5%A1enia%20s%C3%BAdnych%20sporov/-Budovanie-a-posilnenie-alternativneho-riesenia-sudnych-sporov.aspx> accessed 25 August 2021.

6. Stage 1: Reporting the crime

General introduction

Reporting stage is an independent stage outside the formal scope of criminal proceedings in the strict sense.⁸⁵ Criminal proceedings in the strict sense, i.e. its investigation stage⁸⁶ are always launched by a decision or an immediate act of a criminal justice authority (the police or the public prosecution)⁸⁷, not by the criminal complaint. The complaint may be filed by anyone, not only the victim, but anyone else who feels that he/she has learnt of a crime. The complaint may not be anonymous. Nevertheless, the police are not dependent on criminal complaint to initiate the criminal proceedings in the strict sense so even an anonymous complaint may become an impulse for criminal investigation if it gives rise to a reasonable suspicion that an offence has been committed.⁸⁸ The criminal complaint may be submitted in writing, orally, or electronically with a certified electronic signature.⁸⁹ If the complaint is being submitted orally, the author should be heard on the circumstances in which the offence was committed, the personal circumstances of the person against whom the report is made, the evidence and the amount of the damage and other consequences caused by the offence; if the person making the report is also the victim or his/her legal agent, he/she must also be heard on whether he/she wishes the court to decide on his/her claim for compensation in the criminal proceedings. The questioning of the person making the notification shall be carried out in such a way as to provide the basis for further proceedings. At the request of the author of the complaint, his/her identity shall not be included in the criminal complaint. Material enabling the identity of such an author to be established shall be deposited with the public prosecutor's office. They shall be placed in the file only with his/her consent.⁹⁰

The author of the complaint should receive a written acknowledgement of receipt of the criminal complaint filed by the victim, which shall include the time and place of filing, the designation of the authority that received the criminal complaint and the basic facts of the criminal complaint. If the criminal complaint was made orally by the victim, the prosecutor or police officer shall, at the request of the victim, provide a copy of the minutes of the complaint.⁹¹ The criminal justice authority may dismiss a criminal complaint and in such a case the victim and the author of the complaint (if he/she is not the direct victim) may file a complaint against such a dismissal.

The reporting stage may be tricky, especially for particularly vulnerable victims, since many accommodations may not be available until the criminal proceedings in the strict sense of the term, i.e. from the investigation stage onwards. Persons with mental disabilities are thus extremely dependent on criminal justice authorities and their proper action or in case the criminal justice authorities do not proceed properly, on informal support which may not always be available, especially if they are not victims of domestic and gender-based violence (see above chapter 5.).

⁸⁵ The Code of Criminal Procedure, §§ 196-198.

⁸⁶ Ibid., § 10 (14).

⁸⁷ Ibid., § 199 (1).

⁸⁸ Ibid., § 62 (3).

⁸⁹ Ibid., § 62 (1). See also the information on the website of the Ministry of Justice, available in Slovak at: <https://www.justice.gov.sk/Stranky/Ministerstvo/Pomoc-obetiam/Pre-obete/Co-je-to-trestne-konanie/Ako-sa-zacina-trestne-konanie.aspx> accessed 13 December 2021.

⁹⁰ The Code of Criminal Procedure, § 62 (2).

⁹¹ Ibid., § 196 (1).

Provision of information to victims with mental disabilities

A) Framework

The Slovak legislation seems to implement Article 4 of the VRD correctly⁹² with only one exception concerning the information under Article 4 (1) (e) of the VRD – how and under what conditions the victims can access compensation. According to the Slovak legislation, the criminal law authorities are required to provide the victim only with the information about procedures relating to claiming damages in the criminal proceedings.⁹³ There is no formal requirement to inform the victim also about the State's mechanism of compensating victims of violent crimes. Such a duty is imposed only on the registered persons and bodies assisting victims of crime⁹⁴, but, unfortunately, the legislation fails to guarantee the availability of these services for all categories of victims. Therefore, there can easily be a blank space causing that for certain victims there will be nobody responsible for giving them the information about this option. This situation has become even less understandable with the latest amendment to the Victims Act in effect since 1 July 2021⁹⁵ which allows the victims to apply for the compensation by the State under the determined conditions not only after, but also during the criminal proceedings.⁹⁶

The Slovak legislation does not necessarily require providing the victim with all the listed information on the first moment he/she meets the law enforcement authorities but asks the authorities to consider the victim's legitimate needs, including his/her age, mental capacity, health condition, including mental health condition and the nature of the crime.⁹⁷ It also requires the police officer or the public prosecutor to assist the victim in contacting a person or body providing assistance to victims of crime.⁹⁸ However, the provision of assistance depends on the victim's request.

B) Implementation

Unfortunately, the practical implementation of the relevant provisions of the Victims Act seems problematic. Even though the legislative framework not only enables but requires the maximum individualisation of the information provided to the victim⁹⁹, the practice relies predominantly on universal information documents which are very bulky and formulated in legal terms that are hardly understandable even to victims without mental disabilities. In practice, it is very much up to the person of the specific investigator how much he/she tries to explain the content of the document to the victim. Unfortunately, there are still examples of bad practices while persons who face structural discrimination may be particularly vulnerable in this regard.

“I became an attorney when the law was already in practice. I can't tell what the previous practice had been, if anything's changed. I just don't really feel that the law exists. I do not see much difference from the time I represented the injured parties as an NGO lawyer. At the beginning of the interrogation, the police give the victim the document where there is all this information. But otherwise, those law enforcement authorities leave it to those people to read for themselves. And since

⁹² The Victims Act, § 4 (2) and (3).

⁹³ Ibid., § 4 (2) (j).

⁹⁴ Ibid., § 4 (5) (b).

⁹⁵ Act no. 217/2021 Coll.

⁹⁶ The Victims Act, new § 11 (3).

⁹⁷ Ibid., § 4 (2).

⁹⁸ Ibid., § 4 (4).

⁹⁹ Ibid., § 4 (1) in conjunction with § 3 (4).

I've had experience with Roma communities, they don't read it. They just sign something, but there's no given awareness. Not always, but many times it is like this. If there's a legal agent of the injured, they'll usually say, 'Well, he'll inform you.' That they'll move it to an attorney."

an attorney experienced in representing victims in criminal proceedings

"No victim is able to understand and read the (miniature) text of the information document he/she will be given by the police. Just coming to the police and report a crime is a trauma for the victim. All that remains is to entertain and empathize with the victim in an acceptable way and explain to him/her in turn what he/she has rights to. This must be done sensitively, because it can be exhausting for him/her, etc. It doesn't have to be the police's fault that the victim doesn't immediately understand the information and procedures because he/she's traumatized."

a coordinator of a contact point for victims [information office for victims]

The obligation to consider the person's age, mental capacity, and health condition, including mental health condition, may be understood in an environment with a prevailing medical approach to disability as an excuse for not providing the victim with any information, neither the information document on the grounds that the victim couldn't understand it anyway. This was the experience of one victim with an intellectual disability who reported a theft in his apartment.

"I reported the crime myself. The police first came to my apartment. I cannot remember if I got the information document or a copy of my complaint. [Comment by the victim's social worker who was his guardian ad litem in the criminal proceedings: All we have on file are items that were delivered to us by post. Most probable the victim did not receive the information document. And if he were asked to just sign it, he would not know what he was signing.]"

a victim with an intellectual disability and his social worker

Furthermore, the legislative framework may not be effective in cases when the victim reports the crime in writing, especially if the case is dismissed without any personal contact with the victim as an unfounded suspicion. This practice may be common in cases of structural violence against persons with disabilities in mental health or social care institutions, especially if the violence consists in its legally accepted forms by the national legislation like using restraints or netted cage-beds in psychiatric hospitals, etc. (see the case study below).

The project being implemented by the Ministry of Interior seems to bring some promising practices, especially as regards the establishment of the contact points for victims (information offices for victims) which are open to all categories of victims and although they should only serve as the place where the victim gets basic information and contacts to other forms of support, they may at least to a certain extent compensate the non-existent network of victim support organisations designed for other categories of victims than women and children who are victims of domestic or gender-based violence. The coordinators and assistants working at the contact points confirmed that even though it is not common, they have already been contacted by persons with intellectual or psychosocial disabilities or by their relatives. Unfortunately, the information about the contact points is not part of the official information document for victims since the police seem to interpret its duty to inform about persons or bodies assisting victims rigidly so that it covers only the information about organisations or individuals who are in the register of the

Ministry of Justice. Nevertheless, the coordinators and assistants working at the contact points confirmed that in certain cases the victims were recommended to their office by the police, although these cases are still rather rare. Furthermore, the Ministry of Interior is spreading information about the contact points and what they may offer to victims through different forms of media, including radio, social networks (for instance Facebook) as well as through presentations designed for particularly vulnerable groups like older citizens, etc. The project has so far lacked a stronger focus on victims with disabilities among whom the awareness of information offices, in general, may be low although these offices could appropriately support the provision of information to these victims.

“In general, victims do not have an overview of the rights and follow-up to criminal proceedings. This needs to be explained to them. At the police, the victims are under acute stress and all the actions and processes are incomprehensible, it's too much information, the document is long. It is often the case that a client returns after being interrogated by the police – he/she does not understand everything, the information document ... People go where they were first received positively.”

coordinators and assistants of coordinators of contact points for victims

In addition, examples of good practices may be identified in the field of fight against human trafficking. Slovakia has established a National Reference Mechanism, i.e. a network of relevant organisations and bodies dealing with victims of human trafficking¹⁰⁰, and is running a supportive programme for victims of human trafficking. These victims are then referred directly by the police to relevant supportive bodies, including victim support organisations and social services providers which can provide the victim with reasonable accommodation and necessary psychosocial support. The programme is important also for victims with intellectual or psychosocial disabilities because victims of human trafficking are often persons with mental disabilities.

“We have cooperation with the Ministry of the Interior, via Caritas Slovakia. And if they discover or report to them that there's a girl out there, they contact us and ask if we have a place, which we do, because we're in the project and we must have one. Then we're taking the girls to our place. And then the healing begins.”

a social worker of a shelter facility for women

“Victims come in a miserable condition; they are the ones that will already fall out of other forms of help, even family help. We're cooperating with the police. We are the source country, victims being trafficked to the UK, Germany, Austria. We are approached by the police, consulates, and we work with British organisations. We are more rarely contacted by hospitals. I remember one victim was contacted by a Slovak doctor from Germany or Austria. Some victims call through our line, but victims with disabilities usually don't - they can't call themselves. This is perhaps the only difference regarding victims with disabilities.”

a lawyer of an organisation providing support to victims of human trafficking

¹⁰⁰ More information are available in Slovak at: https://www.minv.sk/swift_data/source/mvstr/obchodovanie_ludmi/2020/NRM_final_2020.pdf.

Communication with victims with mental disabilities

A) Framework

The Slovak legislative framework seems to be quite friendly to the special communication needs of persons with disabilities, although it formulates the requirements to accommodate a person with a disability merely on the level of general principles. The Victims Act provides for as one of the fundamental principles of protection and support for victims that all the criminal justice authorities, including criminal courts, must inform the victim about his/her rights in a simple language and in a way understandable for the victim, while considering the person's difficulties in understanding or communication resulting from a disability, knowledge of the language, or his/her limited ability to express himself or herself.¹⁰¹ Unfortunately, concrete rules to specify these general principles in different contexts, including the context of mental disabilities, are lacking, especially for the reporting stage. For instance, the right to interpretation is understood narrowly to cover only the need for interpretation from and to a foreign language, but not the need for specific support in communication for persons with disabilities who may have very specific ways of expressing themselves. The major weakness of the Slovak legislative framework is that the reporting stage remained virtually without any concrete measures to support the communication with the victim with communication needs. The whole implementation of the VRD was mainly carried out in the spirit of special protection of victims against secondary or repeat victimisation. Thus, also the measures incorporated to enhance communication with the victim had their primary purpose to protect him/her during the investigative acts and not to ensure his/her active participation in the proceedings, including the stage of reporting the crime. One of such measures is for instance the obligatory involvement of a psychologist in the interrogation, but this measure applies only when the victim is interviewed as a witness after the police decide to launch criminal proceedings.¹⁰² Unfortunately, many criminal complaints made by persons with mental disabilities or on their behalf are simply rejected and the criminal proceedings won't even begin. No specific rules are requiring making the official documents issued by criminal justice authorities understandable for the victim. These documents, including the rejection of the criminal complaint, are formulated in legal terms. They contain information about the available remedy which is also formulated in legal terms.

This problem is closely connected with the one of insufficient framework to ensure support by other persons of victims who need such support to understand the documents and exercise their procedural rights, including the right to filing a complaint against the police's decision not to initiate criminal proceedings. Of course, the person may be assisted by one of the organisations assisting victims of crime which are, unfortunately, not always available for victims with mental disabilities, especially if they are not victims of domestic or gender-based violence. As an alternative, victims with mental disabilities may use informal support of their close persons or social services they are in contact with, albeit these are not usually specialists in criminal law and victims' rights and, therefore, may not always be able to provide the victim with relevant assistance. But if the victim does not have any support, he/she may be left to fend for himself or herself.

The Code of Criminal Procedure knows practically only one mechanism for persons with mental disabilities who need support from another person to exercise their procedural rights practically and effectively : guardianship. Based on principles of substitute decision-making, this mechanism is in violation of the rights of persons with disabilities to equal recognition before the law under Article 12 of the CRPD and access to justice under Article 13 of the CRPD. Furthermore, even this

¹⁰¹ The Victims Act, § 3 (4).

¹⁰² The Code of Criminal Procedure , § 134 (4).

mechanism, however illegitimate from the perspective of the CRPD, is not available for every person with a mental disability, especially in the reporting stage. The framework is built on the rule that if the person's legal capacity is restricted, he/she is represented by his/her guardian appointed by the civil court.¹⁰³ The criminal court may appoint a guardian for the person itself (a guardian ad litem) if the person is not able to exercise his/her procedural rights on his/her own, but this legal provision should apply only after the criminal investigation was initiated by the decision of the police and not in the reporting stage.¹⁰⁴ Very probably a person with a mental disability who does not have a guardian since his/her legal capacity is not restricted but needs support from another person with understanding the legal documents issued by the police or filing a complaint against the police's decision on not launching criminal proceedings will not get any form of support.

Furthermore, free legal representation is not available earlier than in the investigation stage of the criminal proceedings.¹⁰⁵ This may significantly impede the access to an effective and practical exercise of their procedural rights for victims with mental disabilities, even if they are represented by a guardian. As mentioned above, guardianship is itself a deeply flawed institute since it is based on substituted decision-making. For this reason alone, it is problematic. The system relies on the victim's being represented by another person who is not bound by the victim's instruction and the victim's will. Furthermore, this person is usually not a legal specialist, very often guardians may be the victim's relatives, other close persons, or social workers, even from the facility where the person lives.¹⁰⁶ They may not be competent to adequately represent the person in the reporting stage and eventually complain against the police's decision not to initiate the criminal proceedings.

The police may have their intern guidelines on how to deal with particularly vulnerable victims when they file a complaint, but these are not public. As mentioned in chapter 5, the Labour and Family Research Institute under the supervision of the Ministry of Labour, Social Affairs, and Family issued through the Coordination-Methodical Centre for the Prevention of Violence against Women–Stop Violence¹⁰⁷ [Zastavme násilie] methodological guidelines for contact with victims of crime.

B) Implementation

Practice shows that the general principles are often not followed with respect to victims with mental disabilities, especially in the reporting stage. Of course, this depends on the nature of the crime the person is to report. Reporting the acts where there is no doubt that they may constitute a crime may be easier for a person with a disability than reporting the acts which are either difficult to prove or do not fit into the conventional view of criminal justice authorities on what constitutes a crime. In both of those cases, a complaint made by a victim with a mental disability or on his/her behalf may be easily rejected while the person may not be provided with any specific support in communication. If the complaint is made in writing, the victim may not even talk to the criminal justice authorities. He/she may be just delivered the rejection of his/her complaint which may be a common practice especially when the complaint concerns structural violence that is considered by the criminal justice authorities as legitimate (see the case study).

“Mr. Y was swindled by a ‘friend’ who took around €3,000-3,500 in cash from his flat. There were no criminal proceedings at all. The police argued that if Mr. Y let

¹⁰³ Ibid., § 48 (1).

¹⁰⁴ The Code of Criminal Procedure establishes that the guardian is appointed first for the investigation stage which starts with the police decision – see Ibid., § 48 (2) in conjunction with § 10 (14).

¹⁰⁵ Ibid., § 47 (6).

¹⁰⁶ Act no. 40/1964 Coll., Civil Code, § 27 (3).

¹⁰⁷ The website of the project is available both in Slovak and English at: <https://www.zastavmenasilie.gov.sk/en/> accessed 23 August 2021.

the 'friend' into the apartment, there was nothing they could do about it. Mr. Y was at the police station twice, the second time I went with him. We've been turned down at the gatehouse."

a social worker from social service working with persons with intellectual disabilities, the victim was present at the interview

Furthermore, many victims may find it difficult to report a crime since they may face rejection based on social stereotypes. This may be the case of victims of domestic violence, but also victims with mental disabilities.

"I'd say it's a case-by-case scenario. It cannot be generalised, it's different from police officer to police officer. We have encountered both mocking and very understanding reactions. I can't answer that question. There is no such thing as a police officer, or a man in general. I can't really express it. I have good experience as well as very good, and some police officers were brilliant and did things beyond what they had to do, and it was very pleasant. But I've also had experiences where they turned us around slowly in the doorway and they wanted to send us away and they didn't want to let us file criminal charges, which struck me as nonsense that we had to fight our way through the police district department to file criminal charges. They wanted to bring us back. These things are very surprising, startling."

a social worker of an organisation providing support to women who are victims of domestic violence

The victim has the right to file a complaint against the rejection of his/her criminal complaint, but he/she must meet the legal requirements on the complaint form. If not, he/she will be informed by an official document about these requirements and the requirement to comply with them, otherwise, his/her complaint will not be addressed (see the case study).

It is to note that a victim with a mental disability does not have necessarily any assistance that could help him/her to file the complaint. Since Slovakia fails to ensure systemic access to support services and legal assistance for victims with mental disabilities, these remain in a very precarious position in which it may be for them virtually impossible to challenge the decision on rejecting their complaint.

Case studies

1) CASE 1

Ms. X is a 38-year-old woman with an intellectual disability and autism. In 2012 she was hospitalised in a psychiatric hospital and during the hospitalisation placed in a netted cage-bed and subjected to chemical restraints.¹⁰⁸ Later, the hospital denied the use of the netted cage-bed against Ms. X although the information about it was part of her release report. The hospital explicitly claimed in her official response to the guardian's request that they had never placed Ms. X in a netted cage-

¹⁰⁸ Please note that these practices are still allowed under the Slovak law – not directly by the relevant law [Act no. 576/2004 Coll., on Health Care and Services Associated with the Provision of Health Care] but by a methodological ordinance of the Ministry of Health no. 13787/2009 – OZS adopted on 27 May 2009 on the Use of Restraint Means Against Patients in Health Care Settings Providing Psychiatric Care.

bed and that no such procedure was recorded in their files. Ms. X's mother acting as her guardian tried to get more information, she wanted to fight for her daughter's rights, but the hospital refused to appropriately communicate with her.

"No one helped us then. There wasn't a single person in the hospital who would confirm that this treatment was unacceptable. I had no one to talk about it. I didn't know any lawyer who was dedicated to patients' rights. I'm on disability pension, I have no contacts."

Ms. X's mother and guardian

Finally, Ms. X's mother succeeded to get a contact to a lawyer specialised in human rights litigation with a specific focus on persons with mental disabilities. The lawyer helped Ms. X and her mother with filing a criminal complaint. Nevertheless, he was not formally representing Ms. X so the police could not know that Ms. X is in contact with a professional who can provide her with the necessary information and support in exercising her procedural rights. The criminal complaint was filed in writing in 2018, i.e. after the Victims Act had come into effect. Referring to the relevant international law of human rights, the criminal complaint argued that the use of netted cage-beds violates the person's absolute right not to be subjected to torture or inhuman or degrading treatment or punishment. The national legislation enshrining the criminal offence of torture and other inhuman or cruel treatment¹⁰⁹ must be interpreted in compliance with international law and should be thus applicable also to Ms. X's case.

There was not a single contact between the police and Ms. X and her mother as her guardian. The police just sent to Ms. X's mother their decision on dismissing the criminal complaint. In the decision, the police informed Ms. X's mother that to assess the justification of the criminal complaint, they required from the hospital a report about Ms. X's hospitalisation which they found in compliance with the release report and with the conclusion that Ms. X had not been placed in the netted cage-bed during her hospitalisation in 2012. In addition, the police included some arguments to support the position that the use of netted cage-beds is not in breach of the person's human rights and may be, in certain cases and under certain conditions, legal and justified.

The police's decision contains the exact quotations from the relevant provisions of the Code of Criminal Procedure and other professional terms of criminal law. At its end, the decision informed Ms. X's mother in one sentence that the available remedy against the decision is a complaint that must be lodged within 3 days with the investigator. There was no information about victim's rights according to the Victims Act and about available persons and bodies assisting victims of crime.

With the support of the human rights lawyer, the mother lodged a complaint against the police's decision on dismissing her criminal complaint, again in writing. The complaint was dealt with by the public prosecutor but again there was no direct contact with Ms. X or her mother. The mother was just sent a written decision dismissing her complaint against the police decision, again formulated traditionally, i.e. in legal terms. The only information she got at the end of the decision was that there was no available remedy against that decision.

¹⁰⁹ Act no. 300/2005 Coll., the Criminal Code, § 420. According to this legal provision, the offence of torture and inhuman or cruel treatment is committed by those who cause another person physical or mental suffering by acts of abuse, torture or other inhuman or cruel treatment in connection with the exercise of power by a public authority, at its instigation or by its express or tacit consent. The crime is punishable by imprisonment from 2 to 6 years.

Thanks to the support of the human rights lawyer, the mother filed on behalf of her daughter a constitutional complaint before the Constitutional Court but even the Constitutional Court dismissed the complaint and found no violation of Ms. X's fundamental rights and freedoms. The Constitutional Court referred to its subsidiary role and argued that:

“since the applicant was able to seek redress for the alleged infringement of her rights by a complaint lodged under the Code of Criminal Procedure against the contested decision of the police, having availed herself of that legal remedy, the Constitutional Court does not have jurisdiction to review it.”

To the argument pointing to the violation of Ms. X's right to the effective investigation of ill-treatment, the Constitutional Court responded that rights under Article 8 of the European Convention on Human Rights and Fundamental Freedoms only exceptionally require criminal law protection.

“The Constitutional Court finds that the interference alleged by the applicant, which should have consisted of placing her in a netted cage-bed, was not, at the material time of her hospitalisation (...), an unlawful practice on the part of a psychiatric hospital (...). The applicant herself stated in the constitutional complaint that the form of so-called mechanical restraint in question was permitted by domestic law in the context of the provision of psychiatric care (...) it could not be argued that the treating doctor who decided to place the patient in the bed of the bed was acting with the intention to cause her physical or mental suffering.”

The decision of the Constitutional Court shows well why there hasn't been any single effort of the police or the public prosecution to meet Ms. X and treat her as a victim of crime with all her rights according to the Victims Act which has already been in effect. The structural nature of the alleged offence and the fact that the practice was allowed by the national law made them adopt an easy position rejecting any criminal dimension of the practice. They did not even try to hear Ms. X's experience and find out the circumstances of her placement in the netted cage-bed; they relied solely on the hospital's report and the national legislation. For Ms. X this meant not only the inaccessibility of justice but also the inaccessibility of any support which should be available for victims of crime although the harm she suffered may not be less serious than the harm caused by more conventional offences.

By their approach to Ms. X, the police and the public prosecution acted in breach of one of the general principles of the Victims Act which is the presumption of the status of a victim of crime whenever the victim claims so until the opposite is proven.¹¹⁰

2) CASE 2

Ms. X had another experience with the inaccessibility of the criminal justice system, again in a case of ill-treatment in an institution for persons with mental disabilities. In 2015, i.e. before the adoption of the Victims Act, her mother as her guardian filed on her behalf a criminal complaint claiming that Ms. X was subjected in a social care home where she was living to long-term and repeated beating, including with sticks, slapping, at least six-fold straitjacket binding, telling clients to beat her, letting her sleep on the floor and locking her in the room at night. The staff allegedly also gave Ms. X incorrectly indicated psychiatric drugs.

¹¹⁰ The Victims Act, § 3 (1).

In this case, Ms. X filed the criminal complaint together with her mother acting as her guardian in person.

"We filed a criminal complaint by phoning the police to say we were coming. I asked if my daughter could be interviewed by a woman, which was granted. Then my daughter and I got in a cab and drove. Then they called us in again, this time to investigators. There was already a male investigator and a female recorder. I asked for a psychologist, but he didn't have to be there, according to the investigator."

Ms. X's mother and guardian

In the reporting stage, when deciding whether to launch the criminal proceedings or not, the police heard the director of the facility who denied all the suspicions claimed in the criminal complaint. The police further gathered all the documents relating to complaints against the social care home filed by Ms. X's mother to the Ministry of Labour, Social Affairs and Family and the Region which was the maintainer of the facility. The police relied on the findings by these authorities and concluded that "beyond reasonable doubt", Ms. X was not subjected to the described ill-treating behaviours and, therefore, there was no suspicion of a crime of maltreatment of the entrusted person¹¹¹ or any other crime defined by the Criminal Code. The police thus issued a decision on dismissing the criminal complaint. The police decision was delivered to Ms. X's mother as her guardian in writing by post. At its end, it just informed the mother that the remedy against that decision can be lodged in the form of a complaint within 3 days with the police.

Ms. X's mother lodged the complaint against the police's decision, but the public prosecution found it unfounded and rejected it. The public prosecution found that the police "*secured more documentary evidence. It follows that the allegations made by the complainant have already been properly and consistently examined by the competent control authorities, and their veracity has not been confirmed.*" Its decision is formulated in standard legal language and at its end, it contains only the information that no remedy was available against its decision.

Ms. X's mother then called the national helpline for maltreated women and children. She was then informed by a written letter that the record of her call was referred as a criminal complaint to the relevant district public prosecution. By another letter, Ms. X's mother was informed that her criminal complaint was duplicate since both the police and the public prosecution had already decided on it.

Ms. X's mother called again to the national helpline and asked for the review of the district public prosecutor's procedure. The regional public prosecution office sent her an information document, formulated again in a standard legal language with citing the relevant legal provisions, informing her about the inappropriate form of her application which had to be made either orally at the public prosecution office or in writing. Ms. X's mother was thus informed that the regional public prosecution office would deal with her application only if she made it once again orally or in writing.

Ms. X's mother filed the application in writing, and she was partially successful. The regional public prosecution office found that the district public prosecutor did not sufficiently investigate the suspicions concerning the restriction of Ms. X's personal liberty – locking in the room at night and straitjacket binding. Following these findings, the police launched the criminal proceedings, but only for the suspicion of unlawful restriction of Ms. X's personal liberty. The other alleged acts of ill-treatment remained apart from the criminal proceedings.

¹¹¹ Act no. 300/2005 Coll., the Criminal Code, § 208.

Although the criminal proceedings were finally launched, to a limited extent, the investigation was dropped anyway – due to Ms. X's alleged incapacity to testify examined by an expert and given by her mental disability (see below). As mentioned above, the case dates back before the adoption of the Victims Act, and compared to the current situation, there may be some slight developments, like providing the information document for victims. However, the way of communication might have remained the same. The official documents are still formulated only in legal language citing the relevant legal provisions and appropriate procedural accommodation may still not be available in the reporting stage of the criminal proceedings.

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

General introduction

In the investigation stage the victim has a double role – the role of a participant in the criminal proceedings (injured party) and the role of a source of evidence (witness). Concerning the available support, the criminal justice system seems to concentrate predominantly on the latter. Unfortunately, for victims with mental disabilities even their role as witnesses of crime is not always available for them. The major barrier is the prevailing medical approach to disability making victims with mental disabilities being ordinarily subjected to expert examination and depending on its findings also disqualified from giving evidence.

Provision of information to victims with mental disabilities

A) Framework

In the criminal proceedings, the victim has the position of, inter alia, the injured party who is a party to the proceedings with several procedural rights, including the right to be informed about the proceedings and be provided with contact information where he/she can claim this information.¹¹² The injured party has the right to be delivered the important decisions in the criminal proceedings – the decision on launching the criminal proceedings¹¹³, bringing charges against a concrete person¹¹⁴, widening the charges¹¹⁵, referring the case to administrative authority because the offence has administrative and not criminal nature¹¹⁶, suspension of prosecution¹¹⁷ and conditional suspension of prosecution¹¹⁸, interruption of prosecution¹¹⁹, and submission of the indictment to the court¹²⁰. The injured party is further informed about closing the pre-trial investigation and is allowed to study the file and adduce further evidence.¹²¹ If the criminal proceedings should end by the approval of a reconciliation between the defendant and the injured party and the public prosecutor finds it necessary to hear them, the injured party must be informed about the consequences of the reconciliation approval.¹²² He/she is also informed about different acts of the public prosecutor towards the police concerning the criminal proceedings.¹²³ If the injured party claimed damages, he/she must be informed about plea bargaining and take part in it.¹²⁴

Unfortunately, the legal framework fails to incorporate any mechanisms ensuring that the documents are comprehensible for the victim. It only provides for translations of documents in foreign languages, not their adaptation to formats that are accessible for persons with mental

¹¹² The Code of Criminal Procedure, § 46 (1).

¹¹³ Ibid., § 199 (1).

¹¹⁴ Ibid., § 206 (1).

¹¹⁵ Ibid., § 206 (5).

¹¹⁶ Ibid., § 214 (3).

¹¹⁷ Ibid., § 215 (5).

¹¹⁸ Ibid., § 216 (5) and § 218 (3).

¹¹⁹ Ibid., § 228 (6).

¹²⁰ Ibid., § 234 (1).

¹²¹ Ibid., § 208 (1).

¹²² Ibid., § 221 (2).

¹²³ Ibid., § 230.

¹²⁴ Ibid., § 232 (2).

disabilities and that can be understood by them.¹²⁵ The legal provisions on the right of the injured party to the support of an interpreter or translator covers from persons with disabilities only those with a hearing impairment or a combination of a hearing and visual impairment.¹²⁶

As mentioned above, for persons with mental disabilities, guardianship is considered to be a “procedural accommodation” in the exercise of their procedural rights.¹²⁷ As explained earlier, this is problematic, because it is a measure of substituted decision-making that is unlawful since the ratification of the CRPD by the government. The legislation assumes that if the person is represented by a guardian, criminal law authorities communicate about his/her procedural rights only with the guardian. The victim is therefore completely denied his/her right to participate. Direct contact with the person remains limited in these cases to situations when the victim is to give evidence, i.e. when he/she is in his/her role as a witness of crime (while victims with mental disabilities may not even be heard as witnesses – see chapter 8. below). Furthermore, the representation of the victim by the guardian may cause that the victim may lose some important rights, for instance, the right to free legal representation in criminal proceedings or the right to financial compensation from the State which are both conditional upon claiming damages in criminal proceedings because the guardian may decide not to claim damages or these rights or even does not know about them (see below – chapter 8.). And last, not all the victims that need the support of another person to effectively communicate during the criminal proceedings and exercise their procedural rights receive any support in the exercise of their procedural rights, even in the form of a guardian, however illegitimate this form is. That, unfortunately, does not mean that the victims who are not represented by a guardian can effectively participate in the proceedings, on the contrary, they rather remain apart from the proceedings. The legislation is clear for persons who have their legal capacity restricted.¹²⁸ Otherwise, it is up to the criminal justice authorities’ assessment if the person needs a representative to exercise his/her procedural rights or not¹²⁹, while criminal justice authorities may have a very conservative approach to the victim’s role in the criminal proceedings, overlooking the victim’s role as its active participant and focusing solely on his/her status as a witness of crime.

The implementation of the VRD led to incorporating a general obligation of criminal authorities to inform the injured party about his/her rights in criminal proceedings, like the right to request the public prosecutor to review the police’s procedure¹³⁰, and provide him/her with full opportunity to exercise them¹³¹. However, this provision does not guarantee persons with mental disabilities their direct and effective inclusion in the exercise of their rights in the proceedings. It does not guarantee that the duty is not fulfilled only towards the person’s guardian if the person has any on the one side, and that the criminal law authorities can make the necessary procedural accommodations to make the victim able to exercise his/her rights, on the other side.

B) Implementation

In general, for victims with mental disabilities, it may be very difficult to get to the investigation stage of the proceedings since their criminal complaints may be often dismissed. The information that should be provided to the victim as the injured party in the proceedings is part

¹²⁵ Ibid., § 28 (6) and (7).

¹²⁶ Deduced from the list of interpretation and translation disciplines – see the Annex no. 3 to the Ministerial Decree no. 228/2018 Coll.

¹²⁷ The Code of Criminal Procedure, § 48 (1) and (3).

¹²⁸ Ibid., § 48 (1).

¹²⁹ Ibid., § 48 (3).

¹³⁰ Ibid., § 210.

¹³¹ Ibid., § 49.

of the information document for victims that is passed to the victim in the first contact with the police. It thus depends on the specific police officer how he/she will explain the rights to the victim. Victims with mental disabilities will be in direct contact with the police or public prosecutor especially when they are to be heard as witnesses while this depends much on the medical examination of the victim (see below). They are thus informed especially about their rights and duties during the interrogation. We can identify examples of both good and bad practices.

If the victim is provided with support by a victim support organisation, the provision of the information may work well since the police explain only the basics and the person is further accompanied by the organisation which may have a better opportunity to explain him/her the necessary information thanks to their mutual trust.

"Interviews are now video recorded. Even before the camera is turned on, the investigator is talking to the victim, and I'm talking to him/her, as a legal agent. We have a relationship of trust. Investigators rely on such a victim being represented, but I don't see it as a problem. I can do it; the police officer may not have room to do that. We cannot expect the victim to truly understand everything."

a lawyer working for an organisation
providing support to victims of human trafficking

"The police inform the victim when they go to interrogate him/her. But probably for no reason at all because the victim is under so much stress, I can't believe he/she's getting anything out of it. But then when they enter the protection programme for victims of human trafficking, the forms come in, and I discuss the stuff with them. And then when they are working with Caritas Slovakia. That's where they have accessible information."

"The police contact us when they need to pass on information to the victim. For example, the police tell us, "Well, she's going to come here, to be examined by an expert." It all goes through us, through the workers. They don't contact the victim directly, which I think is normal, since the victim has enough problems with herself. We all work with the police, responding to their calls, etc., just to make sure the victim is okay."

a social worker of a shelter facility for women

Unfortunately, as mentioned above the system does not guarantee the availability of victim support organisations to all categories of victims, but mainly to children and women who are victims of domestic violence and gender-based violence. This blank space could be filled to a certain extent with contact points for victims (information offices for victims – see above) but they too must have a place to refer the victim which is a problem when the appropriate victim support organisations are not available.

"After networking, I see a hole in accredited organizations for victims - there are facilities and accredited organizations for victims of domestic violence and children, but there is virtually nothing for seniors and persons with disabilities as a priority."

coordinators and assistants of contact points for victims

“Organisations that help persons with disabilities are plentiful, but once these persons are victims of a crime, they can't help them.”

coordinators and assistants of contact points for victims

Judgments concerning cases of victims with mental disabilities show that although these victims may be represented by a guardian, the guardian is not able to appropriately exercise the victim's rights, especially to claim damages which is, however, a precondition of other victim's rights, including the right to free legal representation and the right to compensation from the State. These experiences only show that guardianship, as an institution of substituted decision-making, cannot constitute a procedural accommodation for persons with disabilities in terms of Article 13 of the CRPD and the prohibition of discrimination on grounds of disability.

Communication with victims with mental disabilities

A) Framework

The implementation of the VRD brought several measures to ensure smoother communication with the victim during the investigation stage of the proceedings. Nevertheless, practically all these measures have their primary aim to protect the victim from secondary or repeat victimisation and not to make him/her an active and full participant in the proceedings. They have the nature of special measures in terms of Article 23 of the VRD. Among the most important changes brought by the implementation of the VRD has been the enactment of the rule that particularly vulnerable victims when being interrogated as witnesses should be treated with respect and in such a way to avoid repeat interrogation. The interrogation should be video recorded and led by the same person. If the particularly vulnerable victim is to be interrogated about issues that may be sensitive for the victim due to his/her specific characteristics, his/her relationship with the perpetrator, or his/her dependence on the perpetrator, nature, and circumstances of the offence, the criminal justice authorities are required to involve a psychologist or another expert who could contribute to the right way of questioning and to consult with him/her the way of questioning.¹³²

Another measure of special protection of the victim enacted in Slovak legislation under the implementation of the VRD is a rule restricting criminal justice authorities in what they can interrogate a witness about. This rule provides that witnesses may be interrogated only to the extent necessary for the criminal proceedings and may be asked additional questions to complete or clarify the testimony or remove discrepancies, and in a respectful and understandable manner. The questions mustn't interfere with the witness's privacy for no reason.¹³³

The framework supporting effective communication with the victim beyond his/her role as a witness of crime seems to be virtually lacking. It is reduced to the general right to be accompanied by a support person whose role is to provide the victim with psychological support¹³⁴ which has been enacted in Slovak legislation since 1 January 2016, i. e. before the adoption of the Victims Act, with the reference to the VRD. Nevertheless, the right to be accompanied by a supportive person applies only if law enforcement authorities are willing to

¹³² Ibid., § 134 (4).

¹³³ Ibid., § 132 (2).

¹³⁴ Ibid., § 48a.

enter in direct contact with the victim. This may not be the case for victims with mental disabilities for whom, as mentioned in the context of the provision of information, the system relies predominantly on guardianship.

An important safeguard improving the communication with victims with mental disabilities as active participants in the criminal proceedings could be effective access to legal representation in the criminal proceedings. Unfortunately, this remains very limited in the Slovak legislation. The Slovak legislation makes the victim's access to legal aid subject to the victim's application and three further conditions: 1) that the victim has already claimed damages; 2) that he/she successfully passed the necessity test, and 3) that the judge finds the legal representation necessary for the protection of the victim's interests.¹³⁵ A victim with a mental disability would thus first have to prepare a claim for damages and fill in an application proving his/her financial and material condition and even in such a case he/she still does not have any legal certainty that he/she will be appointed an attorney for free because the final decision is on the judge. It is obvious, that all these steps may render free legal aid practically inaccessible for victims with mental disabilities. The situation of victims with mental disabilities is further exacerbated by the poor net of organisations that specialise in assistance to victims of crime and that would be also able to accommodate victims with mental disabilities. This deficiency seems to constitute a big barrier to setting up a CRPD-compliant criminal justice system for victims since wide access to free legal representation by a lawyer acting as the person's legal agent as a measure of supported decision making could constitute, together with the necessary communication support, for instance, in the form of support of a communication intermediary or accessible formats of legal documents, appropriate procedural accommodations as opposed to guardianship as a measure of substituted decision-making.

The ineffective system of support of persons with mental disabilities in the exercise of their procedural rights (see above) has serious consequences for the victim's access to the State compensation mechanism for victims of violent offences. The victim may apply for compensation from the State only if he/she claimed damages in the criminal proceedings.¹³⁶ This condition does not apply only to situations when the criminal offence led to the victim's death, or in cases of human trafficking, rape, sexual violence, sexual abuse, maltreatment of a close person or a person the offender was supposed to care for, or involuntary disappearance. Thus, when persons with mental disabilities become victims of other crimes and do not have effective legal support to claim damages what they must do in the investigation stage of the proceedings, by the end of the investigation at the latest¹³⁷, they lose any chance to apply for compensation from the State.

B) Implementation

We have encountered a good experience with the application of the cited special protection measures. They seem to work well for victims of human trafficking.

“The Victims Act is in effect from 1 January 2018. I've only encountered its application in the investigation stage during that time. So, it is my experience that a psychologist is involved, and interrogation is being video recorded. Interrogation is difficult for the victim as well as for the investigator. In our case, offences are investigated by the National Unit to Combat Illegal Migration of the Bureau of the Border Police and the Alien Police of the Presidium of the Police Force. There are

¹³⁵ Ibid., § 46 (6).

¹³⁶ The Victims Act, § 11 (5).

¹³⁷ The Code of Criminal Procedure, § 46 (3).

specialists, they have training. It depends very much on the person of the interrogator - some are more empathetic, some less so; in most cases, I have encountered an empathetic approach. The investigator also involves a psychologist. The psychologist explains a concept the victim doesn't understand. I also encountered that the investigator requested from the psychologist a statement as to the person's actual condition. The psychologist tried to explain that the victim had such a diagnosis that he/she understood what the subject matter was, what was going to happen. The psychologist describes, for example, that pushing tears into a victim's eyes means that it was a great emotional trauma for him/her, even if he/she can't express it. Or that he/she can't answer - that it's a natural manifestation. This statement will complement the interrogation."

a lawyer of an organisation providing support to victims of human trafficking

However, access to the above-described special protection measures for victims with mental disabilities may be seriously impeded by the prevailing medical approach to a disability. Victims with mental disabilities are regularly subjected to expert examination of their credibility even before they are interrogated as witnesses. The findings of the examination may prevent the victim from even being heard as a witness. Cases, when a victim with a mental disability was not even heard are quite common.

"Then we had one murder, in an institution for persons with disabilities, where one patient stabbed another patient with a knife, and that was right there in the psychiatric hospital. Of course, these cases are investigated as if these individuals were perfectly healthy, and if it gets to the point that the crime was caused by an insane offender, then the prosecution stops. That was the case here. But there was a problem interviewing this person -- experts said that he was not at all able to make any statement, so we didn't even question him. But the victim too was a patient. He wasn't interviewed either, there was the same problem. Only the staff of the hospital were interviewed, a crime scene examination was conducted, and the core work was done by psychiatric experts. Witnesses, too -- it happened in a yard where there were a lot of people, but they were all persons with a psychiatric diagnosis. So, we didn't question any of them. Just the staff of the institution."

a former policeman

Even if the victim is finally interrogated as a witness, he/she does not necessarily benefit from the above-described special measures of protection. As for the reporting, it seems that the nature of crime is decisive here. The more serious the crime is, the more effort is made to protect the victim. Persons with mental disabilities who become victims of minor frauds and thefts may remain without any such protection and are not assisted by a psychologist. Their individual needs in communication are likely to be assessed as their incapacity to testify, which is further supported by the functionally focused expert examination. These deficiencies in access to justice concern not only persons with mental disabilities but also older persons.

"One of our clients with an intellectual disability was approached in a shopping centre by a man who claimed to be a policeman and was cold and asked the victim if he could invite him home for tea. Eventually, he robbed the victim of his money in his apartment. The victim ran out after the perpetrator, a neighbour saw. In the proceedings, the victim was subjected to a psychiatric examination, on which basis

I was appointed the victim's guardian ad litem. I wasn't consulted on the manner of the interrogation, but I could be present and interpret. Eventually, it ended up with the victim not being able to identify the perpetrator in the photos. Even though they had camera records showing the two of them leaving together from the shopping centre, even after they interviewed a neighbour, they stopped the criminal proceedings. They did not question the perpetrator at all, though they seemed to know who he was. We haven't seen the psychiatric report to this day. We always try to encourage people to file a criminal complaint because otherwise, the perpetrators grow in courage and self-confidence, but not once did it get anywhere. People with mental disabilities, when they testify, they tell more stories, have associations, but the police can't pick the important ones out of it. The perpetrator then tells it differently and the police believe him. Moreover, police officers use a special language, legal, which is incomprehensible to a person with a mental disability."

a social worker working with persons with intellectual disabilities,
the victim was present at the interview

"We were dealing together with Mr. X who is a person with an intellectual disability and his case where he was fooled by one of his 'friends'. The 'friend' asked him to lend money for various purposes, for instance for being able to pay child support money. We went to make the criminal complaint together, contacted a police officer we knew from the social service as a volunteer. We wanted to discuss how to proceed. At least they listened to us then. Then the police interrogated the suspect. His statement diverged from Mr. X's, so the police moved in on the confrontation. But probably there was no one with Mr. X [Mr. X no longer remembers; I was on maternity leave at the time]. For example, the suspect said he had no wife and children, so why he would want child support money, as the victim testified. And that confused Mr. X, so he said, "Okay, so you didn't want it for child support." The police stepped in, and Mr. X corrected himself again. Finally, the complaint was dismissed – referring to Mr. X's health condition – that he was unable to assess routine details, unable to assess the situation. Yet the perpetrator was not unknown to the police, he was apparently doing similar things to other people. All the documents were delivered by mail. Mr. X then studied them with the support of our social service. The decision to take no further action also concludes that experts were involved and their findings, but these parts are difficult to understand. When we work with a person for a long time, we know him, we know we can trust him, but it's hard to convince the police."

a social worker from social service working
with persons with intellectual disabilities,
the victim was present at the interview

The role of victims with disabilities as active parties to the criminal proceedings seems very marginal. Again, in specialised branches of the criminal justice system dealing with very serious offences like human trafficking, there may be examples of good practices, but even these are dependent on the availability of victim support organisations and their ability to assist the victim with finding and paying for an attorney to represent him/her in the criminal proceedings, etc.

"We provide legal representation as part of our programme. We assess on a case-by-case basis to whom we provide it. It depends on the victim's ability, their

willingness to cooperate. If the victim can get through the proceedings, can respond, we do everything we can to get him/her a lawyer. I'm more a representative of the bleak cases where a victim is in danger of disappearing. We also have cases where the victim must be placed in a specialised facility and that is where it stops because the interrogation is out of the question. Clients die, too. There is a possibility in the Code of Criminal Procedure of an attorney filing a claim for damages if the victim proves that he/she is in a bad financial situation and cannot afford an attorney. But we don't go the in the direction of attorneys ex officio, we have cooperative attorneys who provide pro bono services. We are able to reimburse them for the cash expenses from the funds and donations saved."

a lawyer providing support to victims of human trafficking

As a rule, victims with mental disabilities are subjected to expert examination of their credibility and their capacity to testify the findings of which may deprive them even of their role as a witness in the criminal proceedings (see the case study). It happens that more attention is paid to them – their characteristics, their capacities, their experiences than to those of the defendant. This may have a very objectifying impact on the victim. The expert examination, usually psychiatric and psychological, is understood functionally and represents thus an important medical aspect of the criminal justice system towards victims with mental disabilities. The expert findings may play and usually have a determining impact on the whole proceedings and its outputs (see below chapter 8.). Furthermore, many mechanisms of special protection may not apply for the expert examination since the system is built on the simple but not necessarily true assumption that in the hands of the expert the victim feels safe and all his/her specific needs, including in the field of provision of information or communication, are accommodated.

"We do not accompany victims to expert examination, that's what they do to themselves. There's no need, there she just circles answers in the form and writes. Although I think it would be good if I just sat there, too. Of course, I can't tell her, "circle this". But I would just sit there. Once an expert requested a psychological report from me and I came in and I saw the victim's eyes, those eyes I'll never forget. Completely terrified expression. I could see she needed help. At the time, I didn't dare to ask the expert to allow me to stay, but I could see the victim was completely terrified. All these issues, again and again. I understood her."

a social worker of a shelter facility for women

Case study

Let's return to the case of a 38-year-old woman with intellectual disability and autism who has been victim of ill-treatment in a social care facility described in chapter 6. As mentioned above, despite the initial rejection, the woman's mother as her guardian finally managed to have the criminal proceedings launched, although to a limited extent.

After the criminal proceedings were launched, the police heard as witnesses Ms. X's mother and then the facility's director and staff. Concerning Ms. X, the police ordered before hearing her the expert examination of Ms. X by a psychologist (expert in clinical psychology of adults) focused on:

- Ms. X's personality and intellectual capacity;
- her capacity to appropriately perceive, remember and reproduce her experiences concerning the investigated offence;
- if her capacity to appropriately perceive, remember and reproduce her experiences concerning the investigated offence had been under influence of something or somebody;
- her tendency to confabulate;
- her ability to truthfully testify about the offence and understand the sense and the consequences of her testimony for the criminal proceedings. The police explicitly asked the expert psychologist if he recommends that Ms. X is heard as a witness in the ongoing criminal proceedings and if such testimony would be credible especially from the perspective of her capacity to perceive, remember and reproduce her experiences;
- any other findings the expert finds important for the criminal proceedings.

The expert gave a purely medical and functional view on Ms. X's mental capacities. He found that she was a person with "medium mental retardation" [words used by the expert] and was not able to appropriately perceive, remember and reproduce her experiences due to her insufficient perceptive and cognitive capacities, and her inability to distinguish her own experiences from what she heard from her mother. Her testimony might be determined rather by her self-interest. The expert concluded that:

"The general and specific credibility of the testimony of (...) [Ms. X] for mental retardation, emotional lability, and behavioural disorders is not fulfilled, the intellect deficit of the witness is so severe that it does not even meet the basic criterion for credibility."

Based on these expert findings the police decided not to interrogate Ms. X as a witness. Neither they heard any of the persons with mental disabilities living in the facility. Instead, they stopped the criminal proceedings arguing that it was obvious that the criminal offence had not happened. The police referred mainly to the testimonies given by the facility's director and staff.

"The investigator asked us then a rhetorical question whether he should trust rather a person with an IQ of 50 than workers with a university degree."

Ms. X's mother and guardian

Ms. X's mother lodged a complaint against the police decision referring to, inter alia, inappropriateness, and inconsistency of the expert findings. She argued that the police should try to hear Ms. X as a witness with a support of a psychologist. Unfortunately, the public prosecution office dismissed the complaint. Its decision summarized the content of the complaint and then referred to the relevant legal provisions and quoted them. The public prosecution office argued that none of the heard witnesses confirmed the allegations while the expert examination of Ms. X apparently proved her "serious intellectual deficit" due to which she was totally incredible. The expert psychologist was according to the public prosecution office an experienced professional who was "undoubtedly capable of delivering informed expert conclusions". The public prosecution office thus found the objections of Ms. X's mother to his findings unfounded. It is to be noted that in all its decisions the public prosecution office marked Ms. X's mother as the injured party instead of Ms. X.

With the support of the above-mentioned human rights lawyer, Ms. X's mother filed on Ms. X's behalf a constitutional complaint in which she argued that refusing to hear Ms. X as a witness due to her mental disability constituted discrimination on the grounds of disability. But the most serious deficiency of the criminal proceedings was the absence of any involvement of Ms. X as a victim of crime in the investigation. The constitutional complaint claimed as follows:

“It follows from the decision of the criminal justice authorities that the applicant, a victim of a criminal offence, was seen only as an object and not as a subject with equal rights. The very fact that the criminal justice authorities identify as the injured party the applicant's mother, although it was obvious that the injured party was the applicant herself (even though the mother was procedurally active, which is natural) suggests a disregard for the applicant and her rights.”

The constitutional complaint also emphasised the need to adopt procedural accommodations when hearing Ms. X like the adaptation of the place where the interrogation would take place or of the communication with Ms. X.

Unfortunately, the Constitutional Court dismissed the complaint as manifestly unfounded. The Constitutional Court argued practically in the same way as in its above-mentioned decision concerning the criminal justice authorities' decision not to launch criminal proceedings in the case of the use of netted cage-bed in a psychiatric hospital (see above chapter 6.). The Constitutional Court emphasised that the police and the public prosecution:

“correctly established that no offence had been committed against the applicant and correctly pointed out that, during the investigation, there was no evidence of such conduct on the part of the specific staff (...) [of the facility] capable of constituting a criminal offence within the meaning of the Criminal Code (...).”

The Constitutional Court did not react to the arguments pointing to the medical approach to Ms. X and to the failure of respectfully involving her in the investigation.

This second experience of Ms. X shows how strongly the medical approach to people with disabilities is rooted not only in the Slovak criminal justice system, but in Slovak law practice in general, and that even for the Constitutional Court, it may be difficult to understand the arguments based on the human rights approach. The prevailing medical approach makes the role of expert psychologists and psychiatrists crucial and determining the extent to which the victim will be involved in the proceedings. The potential involvement, nevertheless, still concerns only the victim's status as a witness and not as a party to the criminal proceedings.

It is to note that all these proceedings, including the proceedings before the Constitutional Court, took place before the Victims Act entered into force, but that does not necessarily mean that the situation has changed significantly for persons with mental disabilities. Other examples prove rather the opposite that the medical approach to persons with mental disabilities still prevails and significantly restrains their role in the criminal proceedings, both as participants and as witnesses.

8. Stage 3: Trial and Court procedures

General introduction

The legislative framework regulating the trial and court procedures was not much affected by the implementation of the VRD, albeit some of the legislative changes adopted for the investigation stage should have an important effect also for the judicial stage. The judicial stage is still conceived very traditionally concerning the role of the victim and connects some of his/her procedural rights with the condition that the victim claims damages in the criminal proceedings. Cases concerning victims with mental disabilities do not appear in the judicial stage easily (see above). If so and if the person is represented by a guardian, he/she may be totally cut off the possibility to exercise his/her procedural rights and express his/her feelings about the criminal offence.¹³⁸ Also the judicial stage is dominated by experts and their findings on the capacities and credibility of persons with mental disabilities.

Provision of information to victims with mental disabilities

A) Framework

The provision of information to victims in the trial stage of the criminal proceedings is regulated still on the level of general principles, which, unfortunately, may not be sufficient in an area with a prevailing medical approach to a disability and conservative approach to the victim's role in the proceedings. These general principles are the same as for the investigation stage – the requirement for the criminal justice authorities to enable the victim to exercise his/her rights according to the Victims Act and the Code of Criminal Procedure and in case of a reasonable need cooperate with persons or bodies assisting to victims of crime¹³⁹, and to inform the victim about his/her rights as the injured party and provide his/her with the opportunity to exercise them¹⁴⁰. The Code of Criminal Procedure then specifies the procedural rights of victims as injured parties in the proceedings. These procedural rights are: the right to be delivered the indictment¹⁴¹, be informed about the place, date, and time of the court hearing¹⁴², be informed that if the injured party will not attend the court hearing, the court will decide on his/her claim for damages based on the written documents in the file¹⁴³, be informed about the court's decision and the right to challenge it by a legal remedy¹⁴⁴. The final judgment must be delivered to the victim only if he/she claimed damages in the criminal proceedings and only in such a case the victim has the right to challenge the judgment by an appeal, but only to the extent relating to her claim.¹⁴⁵ Similarly, the decision of the appellate court will be delivered to the victim only if it concerns his/her claim for damages.¹⁴⁶

¹³⁸ The Code of Criminal Procedure, § 48.

¹³⁹ The Victims Act, § 3 (5).

¹⁴⁰ The Code of Criminal Procedure, § 49.

¹⁴¹ Ibid., § 240 (1) (b).

¹⁴² Ibid., § 247 (2).

¹⁴³ Ibid., § 247 (3).

¹⁴⁴ Ibid., § 173 (1), and § 66 (1) in conjunction with § 281 (5), § 284 (4).

¹⁴⁵ Ibid., § 173 (1) and § 307 (1) (c).

¹⁴⁶ Ibid., § 179 (1).

The victim has further the right to be present at the court hearing¹⁴⁷, ask questions from persons who are interrogated¹⁴⁸, comment on the evidence¹⁴⁹ and make a final statement but only to the extent concerning his/her claim for damages¹⁵⁰. Nevertheless, there is no explicit obligation of the court to inform the victim about these rights. There is only the general obligation of the law enforcement authorities and the court to enable the injured party to fully exercise his/her rights, of which he/she must be properly, appropriately and intelligibly informed, established as one of the fundamental principles of the criminal proceedings.¹⁵¹ However, this obligation may not, due to its general tone, be necessarily effective in practice to ensure that the victim is provided with the information he/she needs repeatedly so that he/she is able to really and effectively benefit from this information.

As in the investigation stage, there is no legislative framework ensuring the comprehensibility of the written documents delivered by the court. The only mechanism available to persons with mental disabilities is the representation by a guardian¹⁵² which is, as mentioned above, contrary to the CRPD. Furthermore, not all persons with mental disabilities are necessarily represented by a guardian. If their legal capacity is not restricted, it is subject to the criminal justice authorities' assessment whether persons need a guardian to exercise their procedural rights or not.¹⁵³

If the person has a guardian, all the information will be delivered to the guardian, and it is up to him/her to forward it to the victim. The guardian will also be entitled to exercise other victim's procedural rights on his/her behalf, including the right to make the final statement. In such a case, the victim loses all of his/her procedural rights.¹⁵⁴

B) Implementation

In practice, the role of victims with mental disabilities in court proceedings seems marginal. As mentioned already in the part on the investigation stage, victims with mental disabilities often may not even be heard as witnesses since they are declared unable to be interrogated. In these cases, they are not even present at the court hearing. It is not rare that in those cases which finally end up in court, victims with mental disabilities are not claiming damages, even though they suffered severe injury.

The judgment of the District Court Spišská Nová Ves of 21 June 2016, no. 4T/138/2015¹⁵⁵, was issued in a case of suspicion of a very serious domestic violence against a Roma woman committed by the woman's husband. The husband was finally found guilty of the crime of grievous bodily harm which he committed by hitting his wife with a wooden table leg, stabbing her twice in her thigh with a fork, and then beating her with a wooden pole over her whole body and on her head and causing her severe intracranial bleeding. The bleeding worsened the woman's mental disability. The husband was also suspected of

¹⁴⁷ Ibid., § 46 (1).

¹⁴⁸ Ibid., § 258 (3), § 261 (4), § 272 (1).

¹⁴⁹ Ibid., § 271 (1).

¹⁵⁰ Ibid., § 274 (2).

¹⁵¹ Ibid., § 2 (21).

¹⁵² Ibid., § 48.

¹⁵³ Ibid., § 48 (3).

¹⁵⁴ Ibid., § 274 (2).

¹⁵⁵ The judgment may be downloaded in Slovak from: <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/6f4c524f-fbc8-4958-b1df-d13acd1f8e6e%3A3a11f264-a2f8-4b78-9bd8-093a8d96e648> accessed 23 August 2021.

having subjected his wife to continuous severe domestic violence for at least two years. The husband allegedly repeatedly beat his wife's head and body with various objects, kicked her until she was on the ground, pulled her hair on the ground, and doused her with gasoline, which he then set alight, causing first- and second-degree burns to 2-3 % of her body. Regarding this suspicion, he was finally acquitted, because there was not enough evidence to prove the perpetrator's guilt. The victim first refused to testify, then testified once in the investigation stage, but refused to testify again directly in the courtroom although she was present there. And there were many witnesses, usually the defendant's relatives living with him and the victim in the same household, who testified in his favour. It is clear that no one provided her with real support to defend her rights which she needed due to her mental impairment. She was given only passive roles – both as a party to the proceedings as well as a witness. She did not even claim damages although she suffered serious damage to her health with lasting effects on her mental capacity. The victim was subjected to psychologic and psychiatric expert examination while both found that she was not able to credibly reproduce her memories. Thus, the victim was not considered credible by the court. Furthermore, the court argued that if the victim's injuries were caused by her husband, she could have told the doctors who treated her directly, but she didn't. On the contrary, she gave to the doctors a completely different explanation.¹⁵⁶ The case pre-dates the transposition of the VRD into Slovak legislation; however, at that time Slovakia was already bound by the CRPD, including its Article 13 guaranteeing the right to access to justice to persons with disabilities.

Communication with victims of crime

A) Framework

The legislative framework does not contain many specific provisions relating to communication with victims during the court stage of the criminal proceedings. The same general principles cited already for the investigation stage applies also in the court stage and bind the criminal courts. The injured party's right to be accompanied by a supportive person applies also to the court stage of the proceedings. The only specific provision, that was enacted for the court stage of criminal proceedings as part of the implementation of the VRD and that relates to communication is the rule that when interrogating a witness who is a particularly vulnerable victim the court must adopt measures to avoid visual contact of the victim and the defendant, especially by using technical equipment.¹⁵⁷ The amendment to the Victims Act in effect since 1 July 2021¹⁵⁸ specified this obligation enacting that criminal justice authorities, including courts, must use appropriate and adapted premises or take other measures to avoid the contact between the defendant and the victim and/or his/her relatives.¹⁵⁹ Again, these provisions focus only on the special protection of victims and not on his/her practical and effective opportunity to actively participate in the court stage of the criminal proceedings.

¹⁵⁶ This may be considered as an example of the intersectional discrimination when the victim had to face both the stereotypes against persons with intellectual disabilities and women who are victims of domestic violence and the common myth that a real victim of domestic violence should make a full complaint immediately, despite the fact that the psychological impact of domestic violence often prevents this.

¹⁵⁷ The Code of Criminal Procedure, § 262a.

¹⁵⁸ Act no. 217/2021 Coll.

¹⁵⁹ The Victims Act, new § 8 (2).

Furthermore, even the special protection of victims in their role as witnesses during the court proceedings seems to be insufficient. As mentioned above, the Code of Criminal Procedure contains a rule requiring leading the interrogation of a particularly vulnerable victim as a witness in such a way that it does not have to be repeated.¹⁶⁰ But repeated interrogation is not strictly prohibited. In the end, whether the victim will be subjected to repeated interrogation in the courtroom or not, will depend on specific judges. In practice, the protection of the victim from repeated interrogation may significantly depend on expert examination and expert opinion (see below).

Expert opinions also play a crucial role in the court assessment if the victim's testimony or statements should be taken as relevant or not which is caused by the prevailing medical approach to a disability within the whole criminal justice system.

B) Implementation

Since the Victims Act entered into force on 1 January 2018 and due to the COVID pandemic which significantly slowed court proceedings that have been adjourned, there is not much experience with the application of the new legislation in court proceedings. However, existing experience shows that the implementation of the Victims Act and other specific rules of the Code of Criminal Procedure which are the results of the implementation of the VRD, and which should ensure the special protection of victims may not be as smooth, especially as regards the special protection of the victim against repeated interrogation in the courtroom. This may significantly depend on the judge's ability and courage to stand up to the proposals of the defendant or his/her defence counsel. However, the new legislation at least gives an appropriate background for the victim to argue for his/her special protection and against his/her repeated interrogation. But the victim, particularly a victim with a mental disability, will usually need expert support in claiming his/her rights in the criminal proceedings which may not be easily available for victims with mental disabilities (see above).

“Due to the epidemiological situation, the courts were adjourned last year, and I have a trial next week. There are child victims, represented by a law firm. The summons states that the defence counsel insists on re-interrogation, so in cooperation with the law firm we will be writing statements and there is a question of how the court will take this. I've got one trial scheduled for October. There, the victim has a physical disability - atrophy, but it extends to the brain as well -- the victim forgets. The judge is not at all in favour of merely replaying the recorded interrogation. When the testimony is the only evidence, courts are accustomed to hearing the victim testify at the trial. However, they accept that the victims give evidence in the absence of the defendant, only in the presence of the defence counsel.”

a lawyer of an organisation providing support to victims of human trafficking

The expert opinion may be crucial for the application of special measures of protection in the courtroom while the effects of expert input are two-sided. The expert opinion may help to protect the victim from repeated interrogation in the courtroom, but at the same time, it may cause that the victim remains apart from the whole proceedings. The understandable objective to protect the victim from secondary or repeat victimisation may in practice easily overturn in his/her paternalistic protection, avoiding any effort to search for such ways of communication with the victim that would be safe, sensitive, and respectful to the victim. The price for the protection may be then the loss of

¹⁶⁰ The Code of Criminal Procedure, § 134 (4).

an effective opportunity to participate in the proceedings and exercise the victim's procedural rights. This may be a natural consequence of too narrow understanding of the victim's role in the criminal proceedings, reducing this role only to that of a witness and understanding then the whole complex of victims' rights simply as rights to protection from secondary or repeat victimisation, typical for Slovak criminal law legislation and practice.

In the judgment of 1 April 2019, no. 6T/151/2017, the District Court Skalica¹⁶¹ dealt with a case of a 14-year minor with Tourette syndrome, speech impairment, and mild mental disability who was a victim of sexual violence on the internet. The victim was finally hospitalised in a psychiatric hospital for 3 months and then again, the following year for 3 months. The victim was not heard in the criminal proceedings as a witness but was subjected to an expert examination. The expert psychologist first contacted the victim's psychiatrist to find out if the victim was able to have an interview with the expert. The psychiatrist mentioned that the interview was possible but only under certain circumstances which were the presence of a close person and asking very clear and one-word questions that the victim would understand. Nevertheless, the psychiatrist warned the expert psychologist that not even that could guarantee that the interview would not have an impact on the victim's inner experience since he has limitations precisely in the expressive form of expression. The expert psychologist thus did not recommend the interrogation of the victim regarding the time that has elapsed since the offence was committed and *"the victim's limited way of communication, due to which interrogation would have to be lead in a very specific way."* She further mentioned that the interrogation would worsen the victim's existing psychiatric diagnoses. The court further gathered medical reports on the victim's mental health condition, including the reports from his hospitalisations and the report from his psychiatrist who mentioned that regarding the victim's diagnosis his interrogation could be questionable since the victim might have forgotten certain contexts, detailed information. She also highlighted that if the court found it necessary to hear the victim, it should ask the victim easy questions to which the victim could answer yes or no.

The District Court finally decided not to hear the victim and reject the proposal for such evidence with the reference to the victim's status as a particularly vulnerable victim who had the right to protection against secondary victimisation. *"The injured party has suffered badly over this crime, having even been acutely hospitalised in a child psychiatric hospital because of the incidents. Neither the psychiatrist nor the forensic expert-recommended questioning him as there could be a deterioration in his health. Moreover, the court points to his health handicap, his speech disorder, his limited mode of communication, where he would have to be asked leading questions, containing answers to which he would only answer a one-word yes or no. Referring to the "quality" of the interview thus conducted, compared to the real threat of harm to the victim, which might be caused to the interview, the court rejected the request to supplement the evidence of his interview."*

¹⁶¹ The judgment may be downloaded in Slovak from: <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/282e1f79-73d6-4e53-a565-9f2f5b9fde39%3A215457d7-07a1-4d2c-a83e-339d18c97677> accessed 23 August 2021.

Although the court's effort to protect the victim against secondary victimisation that could be caused by his interrogation is completely understandable, we should not lose sight of the risks of such an approach since it places the victim in the role of the voiceless object of the criminal proceedings which can be traumatising and victimising as well. That does not mean that we would argue for the victim being interrogated in the courtroom, but the criminal justice system should search for such protective measures that would be inclusive instead of paternalistic which did not happen in the described case. Such inclusive protective measures should never deprive the victim's voice, will and preferences of their relevance and should always try to find sensitive and non-damaging ways to ascertain the victim's will, including with regard to the application of protective measures.

The victim's passive role in the cited case is confirmed also by the fact that the victim did not claim damages. The defendant was finally found guilty of the production of child pornography. Since the defendant had already been sentenced to 11 years of imprisonment, the criminal court refrained from imposing further punishment.

Other examples of court judgments prove that the expert examination has a determinative impact on whether the victim's testimony will be taken as relevant or not. This again places the victim in the position of a mere object of the proceedings. This is even more sensitive for the victim considering that the victim's mental health, including very sensitive issues, becomes the subject matter of the proceedings, and therefore a field for the defence to question the victim's personality and credibility. The outputs of the victim's expert examination are then part of the written judgment, which is made publicly available, albeit in an anonymised version. The victim's mental health is described there in very medical and thus stigmatising terms.

"The defence is built on questioning the victim's credibility, it's its primary role. It knows no limits, very aggressive, not only against the victim but even against me or the investigator. Sometimes the defence insults even the public prosecutor."

a lawyer of an organisation providing support to victims of human trafficking

In its judgment of 24 October 2017, no. 4To/34/2017 the Regional Court Prešov¹⁶² dealt with an appeal against the acquittal in a case of sexual abuse of a child with a physical and intellectual disability. The acquittal was based, *inter alia*, on expert findings of the victim's incredibility. The expert on clinical psychology of children argued that the victim *"could inadvertently generate inadequate testimony, especially at the time of falling asleep [note: the crime was committed while the victim was asleep], in the emotional stress and his ability to give adequate testimony may have been substantially diminished not only by defective levels of memory skills, but also by epileptic personality changes, the lability of psychological activity in the damaged cerebral cortex, and changes in the quality of consciousness."* The Regional Court finally annulled the acquittal and referred the case back to the District Court, but its argumentation did not step out of the medical approach to the victim. In its reasoning, the Regional Court relied on a concurring expert examination by a psychologist specialised in the psychology of sexuality who

¹⁶² The decision may be downloaded in Slovak from: <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/caf6b666-ce0c-42f3-8347-d3ee28159005%3A3059b840-6d23-4923-8f52-a36eef4f6bc3> accessed 23 August 2021.

challenged the cited conclusions of the expert on clinical psychology of children and whose findings were originally rejected by the District Court that found them beyond the expert's scope of specialisation. The Regional Court explicitly argued that it was not able to challenge the findings of the expert on clinical psychology of children itself since it lacked the appropriate expertise but found that the expert on the psychology of sexuality was competent to comment on them and question them from her perspective.

According to the Regional Court *"the Court of First Instance should therefore have allowed the two experts to acquaint themselves with their findings, interview them both, confront their findings and, in the absence of any clarification of the contradictions between their conclusions, consider bringing in an expert organisation, another expert or an expert institution."* The Regional Court thus concluded that *"the question remained essentially unanswered as to the effect of the victim's cerebral palsy and epilepsy on his conscious reasoning and the creation of unconscious constructions, on his ability to be oriented in time and space, on his ability to remember and reproduce facts appropriately to reality, on his ability to think abstractly and to reason logically, not only because experts were contradictory in this regard, but also because of the fact that at this point, their conclusions are intertwined with another area of expertise, namely neurology, so it was necessary to bring in an expert from the field of neurology to clarify these issues, an expert who can provide this information on the basis of relevant and objective methods of neurological examination."*

Although the Regional Court formally argued that the court is empowered to subject even expert findings to free assessment of evidence, it actually made the whole evidence dependent on expert examination. In its reasoning, the Regional Court called on the District Court to require the experts commenting on the facts the victim had done, e.g. that he had called his grandmother for help after the offence. The victim thus became predominantly a mere source of evidence and an object of multiple expert examination and the result of the criminal proceedings dependent on expert findings.

The above-cited judgment of the District Court Spišská Nová Ves of 21 June 2016, no. 4T/138/2015¹⁶³, dealing with a case of long-term serious domestic violence comments on the victim's mental health as follows: *"The expert stated that according to the results of the psychological examination of the victim, her current intellectual performance is in the pathology range, corresponding to mild to moderate mental retardation. The exact degree cannot be determined because the victim failed to cooperate. The impaired overall memory capability was defective in all components at the time of the examination and therefore its ability to reproduce the offences committed is currently both inadequate and has no objective value. It is currently not possible to assess inclinations to distort lived facts due to organic brain damage. Given the extent of the brain damage and its health consequences, the victim is incapable of making things up on her own. Given the partial results of the psychiatric examination of the victim and the data obtained*

¹⁶³ The judgment may be downloaded in Slovak from: <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/6f4c524f-fbc8-4958-b1df-d13acd1f8e6e%3A3a11f264-a2f8-4b78-9bd8-093a8d96e648> accessed 23 August 2021.

from the file, the expert concluded that there had been permanent damage to mental health manifesting itself as an organic psycho syndrome. So, it's a mental disorder of organic origin, after an injury. The victim has a major cognitive impairment, including memory impairment, and therefore, the victim is unlikely to remember in detail the events experienced and to be able to describe them accurately and objectively. It is permissible that, in broad strokes, she may remember certain sequences from these events, without the ability to put them into the plot and temporal context. It is also possible that she will fill in the memory gaps with newly created material. So, it would be an unconscious lie with no intention of lying. (...) Her current ability to reproduce critical times of the crime is inadequate. She cannot objectively describe the events experienced. (...) She is disoriented in every way and her memory is pathological in every way. (...) S.. Z. G., a psychiatry expert, said in an expert opinion that the victim (...) has been suffering from an organic post-trauma psycho syndrome since the head and brain trauma in December 2014, with a level of intellectual function bordering on a mild to medium defect. She had suffered from congenital mild mental retardation before, but the trauma had resulted in a widening of the deficit in reasoning skills and an affliction of memory. The injured woman doesn't understand the meaning of criminal procedure. At the time of the accident, the disorder in question had not yet prevented the victim from perceiving the facts properly. However, because of brain damage, memory damage has occurred in such a way that the currently impaired woman cannot accurately reproduce the circumstances surrounding the act under investigation." As mentioned above, although there was some other evidence, including medical reports proving the injuries suffered by the victim but unable to determine their cause for 100% percent, the District Court finally concluded, that the offence cannot be proved to the defendant.

As the last cited example shows, if the expert examination finds that the victim's capacity to testify may be impaired, or if the court does not find an effective way how to communicate with a victim, the court will be only rarely willing to rely on the evidence given by the victim and rather prefers to set the offender free or to go for a lighter qualification of the offence only to the extent that it can be proved by other means. This may be a logical consequence of a deficits model approach which focuses on identifying incapacities and inadequacies in the victim rather than on what useful evidence the victim can provide and how the victim can exercise his/her rights. We would like to add another example that is older and, as the last cited example, dates back before the adoption of the Victims Act. However, we still find this example relevant since the adoption of the Victims Act did not have a direct impact on the medical approach to a disability applied massively in the whole criminal justice system and we can assume that this case might not have turned out differently today, as other recent experiences confirm (see above).

In its judgment of 18 November 2014, no. 3T/66/2013, the District Court Spišská Nová Ves¹⁶⁴ dealt with a case of a theft committed against a person with an intellectual disability. The defendant who was a minor allegedly removed the victim's glasses from his face and broke them. This attack should have been part of a series of attacks of the same defendant against the victim as the victim's relatives testified. Before the incident, the victim's relatives even tried to talk to the

¹⁶⁴ The judgment may be downloaded in Slovak from: <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/ecc0a8a7-5434-4dd8-8f23-43e6d261dbae%3Ab5b9b269-2904-41b8-9878-dd46fe0ddf3d> accessed 23 August 2021.

defendant and persuade him to stop these attacks. The District Court finally decided to acquit the defendant since it found that concurrently to the criminal proceedings for an offence that was allegedly committed on 20 April 2012 there were also administrative criminal proceedings for a similarly described offence that was allegedly committed on 1 April 2012 which had been already dismissed. The District Court mixed arguments referring to the impossibility to prove the offence, especially due to the victim's unreliability given by his disability, on the one side and to the minor gravity of the act not reaching the intensity of a criminal offence, on the other side. The District Court argued as follows:

"In the light of the above, it is clear that the proving the offence allegedly committed on 20/4/2012 overlapped with the offence of 1/4/2012, dealt with in the administrative criminal proceedings, (...). Due to his impairment, the victim could not make a coherent statement at the trial, stating the exact date of the offence. He also stated in the pre-trial proceedings that the theft took place about a year ago, confirming his inaccurate time orientation. Expert reports indicated that the victim could reproduce the events experienced, though with a tendency to misrepresent and, if the question was misunderstood, nod in agreement. The victim's criminal complaint was filed with his nephew whose testimony shows that he learned of the facts through the intermediary of the victim and subsequently of the family and stated that the victim had already had problems with the defendant in the past. (...) There are no direct witnesses to the incident. The defendant pleaded not guilty. Even if the victim is mentally retarded with a defective intellect, he can describe events, but with misdirection of time and a tendency to nod in agreement to the questions asked. His testimony, as well as that of the defendant and witness A. S. [the victim's nephew], proved that the victim and the defendant met, and there was a confrontation between them. However, the evidence did not prove that the defendant juvenile (...) intended to steal the victim's glasses, that is to say, to seize the foreign property which the victim was wearing and thus to commit the offence of theft within the meaning of § 212 (2) (c) of the Criminal Code. The glasses that were supposed to be the subject of the attack have not been found, a search of the crime scene has not been made, and those glasses, according to evidence in the file were supposed to be damaged even before 20/4/2012, and the victim (...) wore them like that."

Case studies

1) CASE 1

Ms. Y was a woman with an intellectual disability who was living in a social care home. One day she fell out of the window and the criminal justice authorities brought charges against one of the facility's staff who allegedly opened the window and let Ms. Y without any supervision. Ms. Y suffered very severe multiple fractures and life-threatening injuries with a permanent impact on Ms. Y's health condition.

Finally, there arose two versions of what happened. The prosecution claimed that the defendant opened the window and then left the room going to do some cleaning to the bathroom and let the

persons in the room without any supervision. The defendant claimed that she took Ms. Y with her to the bathroom when doing the cleaning, but Ms. Y suddenly broke free and ran back to the window, and jumped out of it. But the gathered evidence did not focus on any of these versions. The crucial issue the criminal court focused on was finally the question of why there were no bars in the windows and if the bars should have been installed.

According to the judgment of the District Court Brezno who dealt with the case¹⁶⁵ it seems that the victim was never heard or otherwise actively involved in the proceedings. As Ms. X from the previous case, she was only subjected to a psychological examination. Neither was heard any of the other persons who were allegedly present in the room. The criminal court heard only the defendant, Ms. Y's guardian, the director of the department of social services of the regional office, and then read the testimony of the former director of the facility from the investigation stage, the conclusions of Ms. Y's psychological examination, the statement by the facility staff, minutes of a staff meeting on the manipulation with the windows, report of the regional office on the replacement of the windows, collective agreement of the employees and the facility founding document.

Since Ms. Y had her legal capacity restricted, she was represented in the criminal proceedings by her guardian who was also a member of the facility staff and thus the defendant's colleague. It seems that the criminal court did not assess this situation as a conflict of interests between Ms. Y and her guardian.

As mentioned above, Ms. Y's guardian was heard even as a witness and her testimony supported the defendant. The guardian testified about the good health condition of Ms. Y and then expressed that in her view the job of the carers would be much easier if, on the upper floors, there could be bars mounted in the windows. The Guardian also mentioned the poor working conditions for carers who had to care for up to 40 persons during their night shift.

In their statement, the facility staff expressed their disagreement with the criminal charges against their colleague. The staff also supported the idea of bars in the windows which were in their view for the security and protection of their clients' health.

The criminal court finally went along with the defendant's version although the defendant was the only person who testified for this version and the court itself focused predominantly on the issue of bars in the window. The criminal court ruled as follows:

"The court thinks that the defendant acted in compliance with an internal rule, did not leave the victim alone in the room, when she left the room, she went with the victim. That the victim finally broke free, fled into the room, and subsequently jumped out the window, the defendant could no longer prevent. In that regard, it should also be pointed out that the defendant oversaw 40 patients on the night shift, having to inspect the rooms and endeavour to ensure proper care for all patients. The only reason she approached the ventilation in question was that it was impossible to ventilate the room with a ventilator; the room had unbreathable air, with other people sleeping there."

¹⁶⁵ The judgment of the District Court Brezno of 29 June 2020, no. 3T/129/2019. The judgment may be downloaded in Slovak from: <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/bf8ff65f-3787-4b16-86d6-c8ab11347fcb%3Af925f0a4-1a1c-4ed0-af30-42f774067f09>.

This court ruling is significant for several reasons. First, it shows that Ms. Y as the victim stayed outside the whole proceedings and was not given any role in them – either as a participant or as a witness. In both these roles, she was represented by her guardian. Second, the ruling clearly reveals the rationale behind the conclusions which does not consist of proving the version of the defendant but rather in the court’s sympathy for the situation of the defendant and other carers. Otherwise, the court would not mention that the defendant had to take care of 40 persons since this information was not relevant for proving whether the defendant left Ms. Y in the room without any supervision or not. Such an argument could be used as an excuse for the defendant’s procedure if she had left Ms. Y in the room what, however, the defendant denied, and the court believed her. Last, the ruling proves the domination of the medical approach of the court to persons with mental disabilities that affects even the court’s language and translates into labelling these persons as “patients”.

2) CASE 2

Mr. Z is a person with an intellectual disability living in a social care facility. In the facility, he was attacked by another person with a disability living in that facility. Mr. Z was a person with restricted legal capacity and was, therefore, represented in the proceedings by his guardian who was even heard before the court as a witness. The guardian did not claim damages on Mr. Z’s behalf in the criminal proceedings. Mr. Z thus lost his right to apply for the compensation from the State although otherwise, he belonged to the target group for whom this mechanism was designed.¹⁶⁶

Furthermore, even if compensation from the State would not require the victim to claim damages previously in the criminal proceedings¹⁶⁷, Mr. Z would be again much dependent on his guardian and his activity in applying and the mechanism could thus easily remain inaccessible for him.

¹⁶⁶ Case cited according to the judgment of the District Court Námestovo of 26 November 2020, no. 6T/145/2019. The judgment may be downloaded in Slovak from: <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/5ecd3e40-9def-47b6-93f2-c2c879000095%3Af8b4446a-ced0-4ab5-8def-310b91d9b1e5>.

¹⁶⁷ The precondition of claiming damages in the criminal proceedings is not required in certain determined cases when the victim is allowed to apply for compensation during the criminal proceedings. This is a new option incorporated into the Slovak legal framework since 1 July 2021 by the amendment to the Victims Act no. 217/2021 Coll.

9. Stage 4: Post-judicial

General introduction

The post judicial situation of the victim is reflected by the legislative framework only partially, especially in the context of financial compensation by the state and access to specialised professional assistance by victim support organisations. The role of victims with mental disabilities in the post judicial stage is the most insignificant. This is not only due to their marginal role in the previous stages (see above) which often makes it impossible to get the offence investigated and reach a conviction, but also -if the case is being investigated - due to inappropriate support in exercising their procedural rights. Several procedural rights, including the right to free legal assistance, as well as the right to get compensation from the State for victims of violent offences are conditional upon the victim's claiming damages in the criminal proceedings. Unfortunately, victims with mental disabilities are either represented by a guardian¹⁶⁸ who is not even a specialist in criminal law, or are not represented at all. Thus, they do not claim damages and lose all these rights, including those that are relevant for the post judicial stage of the proceedings.

Provision of information to victims with mental disabilities

A) Framework

There is no specific national framework regulating the provision of information in the post-judicial stage of criminal proceedings. In the final decision, all the participants are given standard legal information about the right to appeal. However, victims do not have to be notified of judgments automatically, since the framework requires such notification only if the victim claimed damages in the criminal proceedings. In case of the decision of the appellate court, the information that further appeal is not possible is given.

It seems that there is not even any general obligation providing for the victim's right to be informed about the criminal case in the post-judicial stage, at least upon his/her request. The only exception concerns the provision of the information about the perpetrator's release or escape which applies during the whole criminal proceedings and even in its post-judicial stage. Unfortunately, the Slovak legislation is narrower in this regard than Article 6 (5) of the VRD. The right to be informed about the perpetrator's release or escape is guaranteed to victims as injured parties in the criminal proceedings under the condition that it may put the victim in danger. Its applicability depends upon the victim's request which is, however, not always necessary.¹⁶⁹

Most important information for the victim in the post judicial stage may be divided into two main categories: 1) information about appropriate support services for victims, including psychosocial support and rehabilitation services; and 2) information about possible options to get compensation for the damage or immaterial harm caused by the offence. Both categories of information are given to the victim at the very beginning of the criminal proceedings, in the form

¹⁶⁸ As a measure of substituted decision-making, guardianship violates the person's right to equal recognition before the law under Article 12 of the CRPD and his/her right to access to justice under Article 13 of the CRPD.

¹⁶⁹ The Code of Criminal Procedure, § 46 (8) and (9).

of the information document¹⁷⁰ and only to a limited extent. The information about support organisations is limited to information about the persons and bodies registered under the Ministry of Justice as providers of assistance to victims of crime, health care services, and legal services, which may not be always fully appropriate for the post judicial stage. The victim may need, for instance, the support of social services which are, however, not in the register among organisations assisting victims of crime.

As mentioned in the part focused on the reporting stage, the information about the available compensation is limited to the information about how to claim damages in criminal proceedings. The national legislation does not require the criminal law authorities to inform the victim about the State's mechanism of compensating victims of violent offences, that obligation is imposed on registered persons or bodies assisting victims of crime which are not, unfortunately, available for all categories of victims. Therefore, for many victims, the information about the compensation mechanism may be very hardly accessible.

Furthermore, there are no mechanisms ensuring that the victim is provided with accessible information about how to proceed to claim damages in civil proceedings if he/she is referred with his/her claim to them by the criminal court which still happens very often. The Slovak legislation guarantees victims in these cases the right to free legal representation by the Centre of Legal Aid in civil compensation proceedings but only if the victim proves that he/she cannot afford a lawyer.¹⁷¹ This information may be part of the initial set of information, at least according to the legislative framework¹⁷², but there is no guarantee that those victims for whom the information is relevant still at the end of the criminal proceedings are systematically informed about this option again or are even given contact to the Centre of Legal Aid.

B) Implementation

The practice in the provision of information in the post judicial stage of criminal proceedings may work better than the legislative framework, thanks especially to the contact points for victims (information offices for victims). There are no barriers for victims in contacting these offices even in the post judicial stage of criminal proceedings. Here, victims can get the basic legal, social, or psychological assistance they may need after the court trial. They may also get references to other available sources of support like the above-mentioned Centre for Legal Aid that may provide the victim with free legal representation in civil compensation proceedings under the determined conditions.

The Ministry of Interior continues to establish new contact points across the whole country. The initial objective of 8 contact points was in practice extended to 16 (see above). Nevertheless, this example of good practice should not overshadow the complete failure of the criminal justice authorities to ensure the systemic provision of relevant information for the post judicial stage of the proceedings to victims. Especially the information role of the court should be strengthened so that it is not limited to legal information about the right to appeal or its absence.

¹⁷⁰ The Victims Act, § 4 (2) (b), (c), (d) and (j).

¹⁷¹ Act no. 327/2005 Coll., on the Provision of Legal Assistance to Persons in Material Need.

¹⁷² The Victims Act, § 4 (2) (d).

Communication with victims with mental disabilities

A) Framework

There is no specific legal framework regulating communication with the victim in the post judicial stage of criminal proceedings. Since the victim's rights are understood in Slovakia, both in legislation and in practice, especially in terms of the victim's protection from secondary or repeat victimisation and concentrate thus predominantly on special measures of protection rather than on effective procedural accommodations enabling victims to exercise their procedural rights and be active participants in the criminal proceedings, their impact outside the criminal proceedings is quite limited. Many general principles requiring gentle and sensitive communication with the victim adapted to his/her specific needs apply only within the criminal justice system. It is true that the legislation uses a general reference to courts and could be thus interpreted as being applicable also in civil proceedings or administrative court proceedings or any other judicial proceedings, but this interpretation may still not be widely accepted in practice and its implementation may take a lot of time.

However, there are exceptions. One of the most important measures ensuring special protection of victims against secondary or repeat victimisation lies directly in the State compensation mechanism. Victims who were referred with their claim for damages to the civil compensation proceedings may instead apply to the State for financial compensation. In such a case they are subject to written administrative proceedings and do not have to face standard civil proceedings where they would be very probably subjected to repeated interrogation, could meet the perpetrator, etc. However, the cited legislation is limited in scope as financial compensation by the State may be granted only to victims of violent offences. A person with a mental disability who was, for instance, a victim of fraud or another crime against property, thus will not be able to benefit from the provision.

Furthermore, since its adoption, the Victims Act assumes that specialised professional assistance could be available to particularly vulnerable victims also in the post judicial stage of the proceedings in justified cases and upon the victim's request.¹⁷³ Unfortunately, victims with mental disabilities will again face the barrier of the poor network of organisations offering specialised professional assistance that could accommodate them even if they were not victims of domestic violence or gender-based violence (see above chapter 5.).

Finally, since its adoption, the Victims Act also extends the right to legal assistance to civil court proceedings related to criminal proceedings. Initially, the Victims Act mentioned only the civil compensation proceedings but the Amendment in effect since 1 July 2021¹⁷⁴ reformulated the legal provision to cover "civil proceedings which are connected with ensuring the protection and enforcing the victim's rights".¹⁷⁵ The explanatory report makes it clear that the intention was to cover especially those civil proceedings which may be brought in cases of domestic violence, but the formulation is so broad, that theoretically, it could apply also to other civil proceedings.¹⁷⁶ For persons with mental disabilities who may be often victims of frauds due to which they may find themselves in insolvency or debt, it is important that the legal assistance covers also, for instance, civil enforcement proceedings or insolvency proceedings. But again,

¹⁷³ Ibid., § 6 (3).

¹⁷⁴ Act no. 217/2021 Coll.

¹⁷⁵ The Victims Act, new § 7 (1).

¹⁷⁶ The explanatory report is available in Slovak at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=489450> accessed 23 August 2021.

the interpretation of the cited provision may not be so broad in practice since its original intention was slightly different.

Just like specialised professional assistance, the effectiveness of the extended legal assistance depends predominantly on the availability of organisations assisting victims of crime that would be able to accommodate a wide range of victims with mental disabilities.

B) Implementation

To be in contact with a support organisation specialised in victims' rights seems crucial also in the post judicial stage of criminal proceedings. The organisation may assist the victim with filing an application for free legal aid by the Centre for Legal Aid or applying for financial compensation from the State. For victims with mental disabilities, the problem is thus again the poor network of organisations that would be both specialised in victims' rights and in accommodating persons with mental disabilities. As for the provision of information, contact points for victims (information offices for victims) may significantly improve the situation of persons with mental disabilities but they cannot replace the role of victim support organisations.

"It is common for victims to be referred to civil proceedings with their claim for damages. I remember about two times when we said we weren't going to try that civil compensation procedure at all, but we were going to ask the State. We also wrote a justification referring precisely to the inaccessibility of civil compensation proceedings for the victim. The Ministry has always complied."

a lawyer of an organisation providing support to victims of human trafficking

Furthermore, the inability of the criminal justice system to effectively communicate with victims with mental disabilities and adopt the necessary procedural accommodations to enable them to fulfil both of their roles – as a participant in the proceedings and as a witness – making the victim's effort to rely on the criminal justice system fail, may have very serious consequences for the victim in addition to the dismissal of the criminal proceedings. The victim's effort may turn against him/her in terms of focusing on his/her "incapacity". Instead of effectively fighting against the origins of the abusive behaviours, the system accepts these behaviours as a reality and tries to build "a wall" around the victim with a mental disability, usually by adopting various measures restricting the person's rights and freedoms. Restriction of the person's legal capacity is the most common among them.

Case study

Mr. V is a person with an intellectual disability, living independently and using the support of non-residential social service. Unfortunately, he became a victim of several frauds concerning his property. He was robbed by a man he let into his apartment for 3,000 euros, he signed a contract transferring his inherited property to another person for 33,000 euros while in reality he was paid only 3,000 euros, and finally, he was tricked by a fake policeman whom he allowed into his flat and robbed him of his money. Except for the case second case, he always filed a criminal complaint. Unfortunately, in the first case, it was dismissed arguing that the police could do nothing about it when he let the man into his flat voluntarily (see above chapter 6.), in the second case the police stopped the investigation based on Mr. V's expert examination and the fact that Mr. V was not

able to identify the perpetrator on photography (see above chapter 7). All his efforts to deal with the frauds he was a victim to thus meant for him only one thing – that his family learned about these things and initiated civil proceedings on restricting his legal capacity. Mr. V's legal capacity is thus currently restricted what negatively affects his everyday life, including the provision of social service.

“When I argued in court that there were other options like supported decision-making, referring to the UN Convention on the Rights of Persons with Disabilities, the judge laughed at me: “You can keep your Convention.” So now (...) [Mr. V] has a guardian - his cousin, who lives abroad. To us, the service was easier to provide while (...) [Mr. V] didn't have his legal capacity restricted. Now we must balance between what (...) [Mr. V] and what his guardian wants.”

Mr. V's social worker; Mr. V was present at the interview

10. Key findings, Conclusions and Recommendations

Summary of the existing provisions and an assessment of what it means for access to justice for people with disabilities

The implementation of the VRD in the form of the adoption of the Victims Act has undoubtedly brought important changes but it has not been able to overcome the barriers that make this system inaccessible for victims with mental disabilities. These barriers exist because of the traditional concept of the criminal justice system focused on the State-perpetrator relationship with the only marginal role of the victim as a participant in the criminal proceedings. Victims with mental disabilities are further marginalised by the medical model of disability due to which they are subjected to guardianship as parties to the criminal proceedings and to expert examination of their personality, capacities, and credibility as witnesses of the crime. Thus, they often become in both these procedural roles mere objects of the criminal proceedings.

Furthermore, the implementation of the VRD has been understood in Slovakia especially as the need to enact mechanisms of special protection of victims from secondary or repeat victimisation. Its contribution to the practical and effective involvement of a victim as an active party to the criminal proceedings has thus been very limited and took the form of some general principles incorporated especially in the Code of Criminal Procedure. However, the practical implementation of general principles is always dependent on the attitudes of specific professionals who are to apply them, in this case, specific representatives of criminal justice authorities. Concerning victims with mental disabilities, these attitudes come strongly from the medical model of disability.

Although the implementation of the VRD has improved the situation of victim support organisations, it has failed to enact mechanisms that would ensure their availability and accessibility for all victims, regardless of their needs and the type of crime. The professional support seems to be, however, crucial, should the person have a practical opportunity to exercise all his/her rights as a victim of crime. Since many important procedural safeguards, including the right to legal aid, are made conditional upon the victim's previous activity, victims who stay without any professional support do not have a chance to benefit from them. This is often the situation of victims with mental disabilities.

Main gaps and their impact

1) Insufficient access to legal aid, at least in criminal proceedings

As mentioned above, legal aid in criminal proceedings is subject to several conditions that significantly impede its accessibility, especially for particularly vulnerable victims. First, it is not available until the investigation stage of the proceedings although the criminal complaints of victims with mental disabilities are often dismissed even before the criminal proceedings are launched. Second, the victim must first claim damages in criminal proceedings. Third, the victim must prove that his/her financial situation does not allow him/her to pay for an attorney. Victims with mental disabilities are thus fully dependent on the support of other persons when seeking access to legal

aid which is not, however, often available. Fourth, it is still at the discretion of the judge if he/she finds that the appointment of an attorney for free is necessary for the protection of the victim's interests.

Instead of establishing a system of widely available and accessible legal aid for particularly vulnerable victims, concerning victims with mental disabilities, the Slovak legislation strips them as participants in the criminal proceedings of all rights through relying massively on guardianship. It is true that the VRD does not stipulate that every victim should be automatically provided with legal aid. Its Article 13 only requires Member States to ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings under the conditions or procedural rules determined by national law.

Nevertheless, for victims with mental disabilities the access to free legal representation in criminal proceedings may be an indispensable part of their right to access to justice guaranteed under Article 13 of the CRPD. In his Thematic Report on the right to justice under article 13 of the Convention on the Rights of Persons with Disabilities, the UN High Commissioner for Human Rights has underlined the importance of free legal aid for ensuring the equality of arms and equal access to justice for persons with disabilities¹⁷⁷ and recommended to States to “implement laws and policies that ensure (...) that free and affordable legal aid is provided to persons with disabilities in all areas of law”.¹⁷⁸ Similarly, the UN International Principles and Guidelines on Access to Justice for Persons with Disabilities establishes the right to free and affordable legal assistance as one of the ten principles.¹⁷⁹ According to the UN International Principles and Guidelines on Access to Justice for Persons with Disabilities States shall create, fund and implement legal assistance programmes to provide free legal representation to persons who cannot afford to retain legal assistance, including persons with disabilities, at a minimum in matters concerning, *inter alia*, all criminal matters that do not carry the risk of incarceration, small claims and civil cases in which a person with disabilities may be disadvantaged in communicating, understanding or being understood in the process.¹⁸⁰ Furthermore, States shall “ensure easy access to legal assistance, removing all administrative, communication and physical barriers to such access” and “provide free legal assistance and support to all persons with disabilities who have experienced violence, in particular women and girls with disabilities, including professional victim support, advice about legal rights, and assistance in reporting crimes and initiating legal proceedings.”¹⁸¹

The UN International Principles and Guidelines on Access to Justice for Persons with Disabilities show that free legal representation by an attorney acting as the victim's legal agent would be an important measure, together with the abolition of guardianship as required by the CRPD and set out clearly in the Principles when urging States to “repeal or amend all laws, regulations, policies, guidelines and practices that impose substituted 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 the basis of the ‘best interests’ of the persons concerned, as opposed to being based on their own will and

¹⁷⁷ “The absence of free legal aid is one of the most common barriers to equality of arms and equal access to justice, particularly for persons with disabilities, who number disproportionately among the world's poor and face challenges in affording legal advice and representation. The right to legal counsel is a fair trial right and includes the right to free legal aid.” – UN High Commissioner for Human Rights, ‘Thematic Report on the right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (2017), A/HRC/37/25, para. 40.

¹⁷⁸ Ibid., para. 63.

¹⁷⁹ UN International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 6.

¹⁸⁰ Ibid., Principle 6.2 (b) (iii).

¹⁸¹ Ibid., Principles 6.2 (f) and (k).

preferences.”¹⁸² Furthermore, ensuring free legal assistance for victims with disabilities could help to generate a group of attorneys that would specialise in victims’ rights and would also be willing to accommodate victims with mental disabilities.

As the case study (see above chapter 6.) shows, victims with mental disabilities would need legal aid from the very first contact with criminal justice authorities. Their cases may be very specific, often dealing with structural violations of their human rights and freedoms, and they are also likely to face discriminatory attitudes based on the medical model of disability. They need support already in challenging the dismissing decision so that the criminal proceedings do not remain barred to their specific cases.

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

In addition to early and effective access to legal aid in criminal proceedings, victims with mental disabilities need the widening of the existing network of victim support organisations. The availability and accessibility of victim support organisations are important in all stages and even before the reporting stage. Not all victims have to finally decide to report their crime, but their decision should always be based on adequate and understandable information. The availability and accessibility of victim support organisations are also necessary for the access to rehabilitation and adequate psychological and social support, during all stages of criminal proceedings. For particularly vulnerable victims, it may also represent a necessary support in the contact of the victim with his/her attorney.

This is in line with the VRD which in its Article 8 requires Member States to “ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings” (para. 1) and “establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services” (para. 3). These commitments necessarily include the obligation to ensure the availability of these services for all victims of crime on a non-discriminatory basis.

As mentioned above, the availability and accessibility of victim support services are explicitly required also by the UN International Principles and Guidelines on Access to Justice for Persons with Disabilities for victims of violence.¹⁸³ But victim support services may be a crucial element of access to justice and rehabilitation also for other categories of victims. They may play the role of a place where the victim may be provided with adequate accessible and understandable information and the necessary support to be able to participate in the criminal proceedings practically and effectively.¹⁸⁴ They may be also the place of the victim’s rehabilitation which may be necessary also when the victim has not become the victim of violence.

3) Unavailability of procedural accommodations for victims with mental disabilities as parties to criminal proceedings

As mentioned above, the implementation of the VRD in Slovakia has concentrated especially on special measures of protection of the victim as a witness of crime. The perspective of access to justice for victims as parties to criminal proceedings remained without much attention. For victims

¹⁸² Ibid., Principle 6.2 (j).

¹⁸³ Ibid., Principle 6.2 (k).

¹⁸⁴ See also the General Comment of the UN Committee on the Rights of Persons with Disabilities no. 6 in which the UN Committee has listed the “delivery of information in an understandable and accessible manner” among actions that enable participation of persons with disabilities in legal proceedings. See CRPD/C/GC/6, para. 52 (a).

with mental disabilities, the system still denies them their rights by permitting guardianship. In addition to the promotion of availability and accessibility of legal aid to victims with mental disabilities, the system should implement other procedural accommodations to enable these victims to directly participate in criminal proceedings in a safe and respectful way.

Procedural accommodations are an integral part of the prohibition of discrimination in access to justice. The UN Committee on the Rights of Persons with Disabilities has emphasised that contrary to reasonable accommodation, procedural accommodations are not limited by the concept of disproportionality.¹⁸⁵ This shows that it is the obligation of the authorities holding formal proceedings to adapt these proceedings according to the needs of its participants to ensure that these will be able to take part in them practically and effectively. The UN High Commissioner for Human Rights has highlighted that “failure to provide procedural accommodation when required by a particular person with disability thus constitutes a form of discrimination on the basis of disability in connection with the right to access to justice.”¹⁸⁶ Similarly, the UN International Principles and Guidelines on Access to Justice for Persons with Disabilities list the right to procedural accommodations as one of the ten fundamental principles.¹⁸⁷

The UN High Commissioner for Human Rights has further emphasised that “procedural accommodations should be provided on the basis of the ‘free choice and preference’ of the person concerned” and that “the determination of the need for procedural accommodations should not necessarily be based on medical information and cannot be subject to any disability assessment, for example those related to the granting of a disability card or certification”.¹⁸⁸

There is no exhaustive list of procedural accommodations.¹⁸⁹ Indeed, there cannot be since procedural accommodations must be tailored to the individual needs of each victim. The UN International Principles and Guidelines on Access to Justice for Persons with Disabilities stress that procedural accommodations should include (but not be limited to) these categories: i) independent intermediaries and facilitators; ii) procedural adjustments and modifications; iii) communication support; and iv) procedural accommodations for persons accused of crimes, prisoners and detainees. They also require guaranteeing persons with disabilities the right to request and be offered procedural accommodations.¹⁹⁰

Unfortunately, the Slovak legal framework fails to meet these standards.

4) Insufficient approach to the individualized assessment of the victim’s support needs

As described above, the Slovak legislation is built on a very narrow understanding of the individual assessment of the victim’s needs. It reduces its purpose to the identification the victim as particularly vulnerable. Unfortunately, this excludes those victims who are considered particularly vulnerable directly by the law, as victims with disabilities, from any further individual assessment.

¹⁸⁵ Ibid., para. 25 (d).

¹⁸⁶ UN High Commissioner for Human Rights, ‘Thematic Report on the right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (2017), A/HRC/37/25, para. 25.

¹⁸⁷ UN International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 3.

¹⁸⁸ UN High Commissioner for Human Rights, ‘Thematic Report on the right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (2017), A/HRC/37/25, para. 26.

¹⁸⁹ Ibid., para. 24.

¹⁹⁰ UN International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 3.

This legislation may be found inappropriate and insufficient both from the perspective of the VRD and the CRPD. The VRD links the individual assessment with the purpose of identification of the victim's specific protection needs. Although it is not directly pursuing the aim of the victim's practical and effective participation in the criminal proceedings, it is still important for the identification of the specific measures of protection from secondary or repeat victimisation, intimidation, and retaliation that should be adopted in the case of a specific victim. The mere classification of the victim as particularly vulnerable guarantees the victim the opportunity to benefit from those provisions which address particularly vulnerable victims but does not necessarily specify which specific measures of protection should be applied in his/her case. In other words, there is no safeguard that the special measures of protection established by the Victims Act and the Code of Criminal Procedure will be applied in a specific case, although they might be necessary.

Furthermore, the individual assessment is never connected with the purpose of determining the necessary procedural accommodations that would enable the victim to exercise, practically and effectively, his/her procedural rights as a participant to the criminal proceedings. That is a purpose that could be linked with the individual assessment, at least as far as victims with disabilities are concerned, based on the right of persons with disabilities to access to justice under Article 13 of the CRPD, since procedural accommodations should always be determined according to the individual needs of the specific person.

5) Insufficient knowledge and training of criminal justice professionals about the human rights model of disabilities and CRPD commitments

As pointed out above in several places in this report, there is still a strong prevalence of the medical model of disability within the criminal justice system which influences the attitudes of criminal justice professionals towards victims both in their role as witnesses of crime and as participants of criminal proceedings. To ensure that the rights of persons with mental disabilities as victims of crime are fully respected and effectively implemented thus necessarily requires a paradigm shift and the adoption of a new perspective, that would be rooted in the human rights model of disability¹⁹¹ and that would pursue the idea of inclusive equality¹⁹².

The CRPD directly addresses the need to combat stereotypes, prejudices and harmful practices relating to persons with disabilities as the right of persons with disabilities enshrined in Article 8. That's Article also requires the States Parties to adopt immediate, effective and appropriate measures to raise awareness throughout society to foster respect for the rights and dignity of persons with disabilities.

The UN High Commissioner for Human Rights has marked stereotypes of criminal justice professionals as one of the reasons why persons with disabilities still face restrictions to their participation in legal proceedings. He has emphasised that the stereotypical attitudes towards persons with disabilities "discredit the credibility and the capacity of persons with disabilities,

¹⁹¹ The UN CRPD Committee has defined the human rights model of disability as follows: "The human rights model of disability recognizes that disability is a social construct and impairments must 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." – CRPD/C/GC/6, para. 9.

¹⁹² The concept of inclusive equality has been defined by the UN CRPD Committee in its General Comment no. 6 on equality and non-discrimination to extend and elaborate the substantive model of equality and highlight the multidimensional nature of equality. The UN CRPD Committee has determined the four dimensions of equality as follows: "a fair redistributive dimension to address socioeconomic disadvantages; (b) a recognition dimension to combat stigma, stereotyping, prejudice and violence and to recognize the dignity of human beings and their intersectionality; (c) a participative dimension to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion; and (d) an accommodating dimension to make space for difference as a matter of human dignity." The UN CRPD has also emphasised that "the Convention is based on inclusive equality". – CRPD/C/GC/6, para. 11.

particularly women, to effectively contribute to proceedings.” He has further mentioned the positive example from the case-law of the Supreme Court of Canada which “held that people with intellectual disabilities could testify in criminal cases on the basis of a promise to tell the truth, whereas previously they had to prove their competence to testify by explaining the meanings of the concepts of promise, truth and falsehood.”¹⁹³

Similarly, UN International Principles and Guidelines on Access to Justice for Persons with Disabilities list “paternalistic or negative attitudes questioning the abilities of persons with disabilities to participate during all phases of the administration of justice” among barriers which prevent persons with disabilities from accessing justice on an equal basis with others.¹⁹⁴

The importance to address negative stereotypes discrediting the capacity of persons with disabilities to participate in legal proceedings, including criminal proceedings as victims of crime in various roles the victim appears, is thus obvious. This is even more true if the national system is as affected by these negative stereotypes as the Slovak one.

6) Concentration of the provision of information on the moment of the first contact with the criminal justice authorities, inadequate information role of courts

Although the legislative framework enacts the requirement to individualise the information the police give to the victim according to the victim’s age, maturity, health condition, including mental health, and nature of the crime, it still connects the provision of the information with the first contact of the victim with the criminal justice authorities. This is also obvious from the fact that the relevant legal provision mentions only the police and the public prosecution¹⁹⁵, i.e. the criminal justice authorities that are in charge of the reporting and investigating stage of criminal proceedings. It thus happens that the victim receives much information that would be relevant for him/her later only, in the very first contact with the police or the public prosecutor when he/she is usually under acute stress. The information obligation for later stages in the criminal proceedings is formulated only in the form of general principles¹⁹⁶, without any concrete elaboration, and their implementation thus strongly depends on the attitudes of criminal justice authorities and their understanding of the victim’s situation and needs. In a very conservative system as the Slovak criminal justice system is it may be thus very problematic.

The VRD does not explicitly mention the information role of criminal courts. Nevertheless, in Article 4 (2) it requires the victim to be provided with additional details concerning his/her rights in the criminal proceedings „at later stages depending on the needs of the victim and the relevance, at each stage of proceedings, of such details.“ DG Justice reminds us in its guidance document related to the transposition and implementation of the VRD 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”.¹⁹⁷

¹⁹³ UN High Commissioner for Human Rights, ‘Thematic Report on the right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (2017), A/HRC/37/25, para. 56.

¹⁹⁴ UN International Principles and Guidelines on Access to Justice for Persons with Disabilities, Introduction, p. 6.

¹⁹⁵ The Victims Act, § 4 (2) and (3).

¹⁹⁶ The Code of Criminal Procedure, § 2 (21) and § 49.

¹⁹⁷ European Commission, DG Justice, ‘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’ (Ref. Ares(2013)3763804 – 19/12/2013), p.15. <https://e-justice.europa.eu/fileDownload.do?id=05758a3a-9e2e-49a5-a7ec-3737c3ad6876> accessed 11 October 2021.

This is completely in line with the right of persons with disabilities to access to justice guaranteed by Article 13 of the CRPD. The UN High Commissioner for Human Rights has emphasised that “in relation to persons with disabilities, whether with respect to criminal proceedings or in civil matters access to justice is most often denied as a result of”, inter alia, “lack of accessibility of and access to information and procedural accommodations”.¹⁹⁸ The insufficient provision of information about victims' rights and the possible sources of support in later stages of the criminal proceedings, especially in the court stage, is an eloquent example of insufficient accessibility of the information and lack of appropriate procedural accommodations. All criminal justice authorities, including criminal courts, should be responsible for providing the person with all the relevant information connected with his/her status as a victim of crime in a format that is accessible and understandable for the victim. This should also include information that is not directly connected to the court proceedings. The knowledge of available support outside the criminal justice system may be crucial for the victim to be able to understand the proceedings and to be able to formally claim his/her rights. Thus, the victim who is not already in contact with any support organisations or professionals should be repeatedly informed about this opportunity and how support organisations could help him/her in the criminal proceedings and his/her rehabilitation. Criminal justice authorities should furthermore pay much more attention to carefully informing such victim about all his/her procedural rights because he/she may not have anyone else who would inform him/her instead.

7) Unavailability of mechanisms making the official documents understandable for victims

Although victims have the right to be delivered many important decisions and documents adopted in the criminal proceedings and even before the criminal proceedings are launched, there are no mechanisms ensuring that these documents will be understandable for the victim. These documents are formulated in standard legal language. The situation of victims with mental disabilities is even worse regarding the insufficient availability of victim support organisations and legal aid which could support the victim in understanding those documents.

The right to the accessibility of information and communication is guaranteed to persons with disabilities directly by Article 9 of the CRPD. In the context of the criminal justice system and the status of persons with disabilities as victims of crime, it is also an important part of their right to access to justice under Article 13 of the CRPD. In his Thematic Report on the right to access justice under article 13 of the CRPD, the UN High Commissioner for Human Rights has mentioned some examples of good practices of using such formats of official documents that are accessible for persons with disabilities, including persons with mental disabilities: “The Constitutional Court of Colombia and the Supreme Court of Mexico called for the translation of judgments concerning the rights of persons with disabilities into easy read formats for the benefit of the petitioners and other persons with intellectual disabilities. In Finland, the police have designed their website to provide a range of accessible formats, such as plain language, content, and videos in sign language, some of them captioned, and a complaint form in large print.”¹⁹⁹ He has further listed “legal and judicial information in accessible formats for, multiple means of communication, easy read versions of documents” among examples of procedural accommodations for persons with disabilities.²⁰⁰

The right to access legal notices and information in a timely and accessible manner on an equal basis with others is also listed among the UN Principles and Guidelines on Access to Justice for

¹⁹⁸ UN High Commissioner for Human Rights, ‘Thematic Report on the right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities’ (2017), A/HRC/37/25, para. 19.

¹⁹⁹ Ibid., para. 22.

²⁰⁰ Ibid., para. 24.

Persons with Disabilities.²⁰¹ To guarantee this right States should “ensure that all notices that require a response or an action to be taken (e.g. summonses, subpoenas, writs, orders, and sentences) are available by accessible means and in accessible formats, such as (...), inter alia, easy read and plain language, or facilitated communication.”²⁰²

Although not mentioned explicitly by the VRD, these requirements also form an integral part of the States’ commitments deriving from it. DG Justice mentions easy read formats in its guidance document related to the transposition and implementation of the VRD in the connection with the victims’ right to understand and be understood. More concretely, DG Justice invites Member States to consider “setting up national practices and schemes to provide information in simple and accessible language, available both orally and in writing to comply with paragraph 1 [note: Article 3 (1) of the VRD]. Good practice shows that standard basic pieces of information should be readily available in a range of languages, including Easy Read versions.”²⁰³ In this quotation, DG Justice focuses rather on standardised pieces of information. Their further recommendation, however, concerns clearly the individual accessibility of the information for victims in the criminal justice system. Member States are invited “to allow for translation and interpretation as quickly as possible, especially in urgent situations, competent authorities and professionals working with victims should establish an operational network of easily accessible translators and interpreters. The competent police/criminal justice authority should provide such services without the request of the victim. (...)”²⁰⁴ The key to a CPRD-compliant application of the cited recommendation is not to understand the interpretation and translation in narrow terms referring to foreign or minority languages but widely to cover different modes of communication with persons with disabilities, including persons with mental disabilities.

8) Insufficient accessibility of restorative justice solutions, especially for victims with mental disabilities

The influence of restorative justice principles and the use of restorative justice measures remain very limited in the Slovak criminal justice system although this concept of criminal justice significantly promotes the role of the victim of a crime as an active participant in dealing with the consequences of the crime as well as the effective communication about the victim’s needs. Slovakia relies only on mediation which it understands narrowly in terms of the legal institution of settlement between the victim and the offender. Restorative justice measures are thus available only in a limited scope of minor offences which may be resolved by the settlement and only in certain stages of criminal proceedings. And it seems that for victims with mental disabilities restorative justice is not accessible even to this limited extent. It seems that their cases are not much referred to mediation and if they exceptionally are, the system accepts their being represented, typically by a guardian. The practice of restorative justice in Slovakia thus loses its empowering potential with respect to them.

The concept of restorative justice is still a new phenomenon for the traditional European criminal justice system. Nevertheless, it is already reflected by European law, especially in the context of victims’ rights. The VRD admits that restorative justice “can be of great benefit to the victim”²⁰⁵ and

²⁰¹ UN International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 4.

²⁰² Ibid., Principle 4.1 (c) in connection with Principle 4.1 (b) (ix) and (x).

²⁰³ European Commission, DG Justice, ‘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’ (Ref. Ares(2013)3763804 – 19/12/2013), p.13. <https://e-justice.europa.eu/fileDownload.do?id=05758a3a-9e2e-49a5-a7ec-3737c3ad6876> accessed 11 October 2021.

²⁰⁴ Ibid., p. 13.

²⁰⁵ Recital, para. 46.

EU Strategy on victims' rights (2020-2025) inform us that "restorative justice services provide victims with a safe environment to make their voice heard and support their healing process."

The concept of restorative justice is promoted also in Council of Europe documents. In 2018 the Committee of Ministers adopted a new recommendation on restorative justice in criminal matters.²⁰⁶ In the recommendation, the Committee of Ministers connected the concept with the need to enhance the participation of stakeholders, including the victim; the process of identification and satisfaction of the needs and interests of the parties in a balanced, just and collaborative manner; and the legitimate interest of victims to have a stronger voice regarding the response to their victimisation, to communicate with the offender and to obtain reparation and satisfaction within the justice process.²⁰⁷

The recommendation of the Committee of Ministers of the Council of Europe expresses the empowering impact restorative justice may have on victims of crime. It thus should not be surprising that the UN International Principles and Guidelines on Access to Justice for Persons with Disabilities mention restorative justice as part of one of the principles requiring that "all persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on basis of disability".²⁰⁸ According to the cited principle, States shall, inter alia, "establish or support alternative justice mechanisms, such as restorative justice, alternative dispute resolution mechanisms, and cultural and social forms and forums of justice, that are available to persons with disabilities on an equal basis with others, without regard for any construct of capacity to participate."²⁰⁹

All these documents show that Slovakia would need a much more developed network of restorative justice solutions that would be available and accessible also for persons with disabilities, including persons with mental disabilities.

9) Failure to collect appropriate data on victims with disabilities, including victims with mental disabilities, disaggregated by relevant criteria, including the type of disability, and on procedural accommodations provided to these victims

Slovakia fails to collect data systematically 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, Slovakia 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, again sufficiently disaggregated. Due to these failures, Slovakia 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 constraints²¹⁰, and this is surely not less true for the rights classified

²⁰⁶ Recommendation CM/Rec(2018)8 of the Committee of Ministers to Member States concerning restorative justice in criminal matters.

²⁰⁷ Ibid., the Preamble.

²⁰⁸ UN International Principles and Guidelines on Access to Justice for Persons with Disabilities, Principle 1.

²⁰⁹ Ibid., Principle 1.2 (I).

²¹⁰ 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

traditionally as “civil and political”.²¹¹ The CRPD establishes the monitoring explicitly in Article 31 which requires the 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.

Potential practice, policies and resources that could be developed

Although the Slovak legislative framework regulating victims’ rights and criminal justice process contains significant deficiencies, it still enables the development of good practices as demonstrated by, for instance, the State-run Programme of Support and Protection of Victims of Human Trafficking. The availability and accessibility of victim support organisations seem crucial for such a development. A well-functioning victim support organisation may act as a gateway for the victim to effectively exercise their rights, including the right to free legal representation. The victim support organisation may have its cooperative attorneys who are specialised in the matters and motivated to represent particularly vulnerable victims pro bono while the victim support organisation may be able to reimburse them some of their expenses like travel costs. If the legislation enacted the right to free legal representation for all particularly vulnerable victims as it is the case for instance in Czechia, attorneys would have their costs covered by the State. Victim support organisations would, however, remain important since they could recommend the victims the right attorneys who understand victims’ rights and the needs of particularly vulnerable victims.

Also, the project of contact points for victims (information offices for victims) seems to bring very promising practices. Although contact points cannot substitute victim support organisations, they may still constitute an important gateway to the whole system of support for victims. The Ministry of Interior is very keen to expand awareness of these contact points, including through media, which also extends awareness of the situation of particularly vulnerable victims and victims’ rights in general. Contact points for victims have also the potential to cooperate with organisations supporting persons with mental disabilities who are not specialised in criminal law and victims’ rights and provide them and the persons they support with the necessary counselling on these specific issues. They can also mediate a contact between such an organisation and a victim support organisation which may work well for victims with mental disabilities since with the support of an organisation for persons with mental disabilities it is easier for a victim support organisation to accommodate such a victim.

Unfortunately, all these good practices will always have to face one of the most significant barriers in access to justice for victims with mental disabilities which is the medical approach to disability massively prevailing in the attitudes of the criminal justice professionals and thus affecting the way how the criminal justice system works for victims with mental disabilities.

7 December 2021.

²¹¹ 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.

Recommendations with respect to legal matters, policy, and practice

Legal matters

We recommend:

- 1 extending the right to legal aid in criminal proceedings for particularly vulnerable victims, including victims with mental disabilities; ensuring that the right to legal aid for particularly vulnerable victims is not made available only on the condition that they claim damages, and the necessity test, dependent on the judge's discretion, and that it applies from the very first contact with the criminal law authorities, i.e. also in the reporting stage; the availability of legal aid for victims with mental disabilities in post-criminal proceedings arising from the crime e.g. civil damages proceedings or debt proceedings arising from fraud or exploitation should also be independent of the necessity test.

Targeted institution(s): Ministry of Justice

- 2 adopting the necessary legislative amendments to the Code of Criminal Procedure to ensure that procedural accommodations to enable full and effective participation in the entire justice process from the first contact with the authorities are available for victims with mental disabilities not only in their role as witnesses of the crime (source of evidence) but also as parties to the criminal proceedings; adopting the necessary legislative framework for procedural accommodations that may be necessary for direct involvement of victims with mental disabilities in the criminal proceedings as their active participants if victims wish so; eliminating guardianship entirely and ensure that persons with mental disabilities as victims of crime have full legal capacity throughout the process.

Targeted institution(s): Ministry of Justice; the Ministry should consult the Commissioner for Persons with Disabilities

- 3 adopting the necessary legislative amendment to the Code of Criminal Procedure ensuring that the victim is always delivered the final judgment and that the right to its delivery is not conditional upon the victim's claiming damages in criminal proceedings.²¹²

Targeted institution(s): Ministry of Justice

- 4 adopting the necessary legislative changes to the Victims Act to ensure that the victim also has the right to information about suitable social services that do not fall within the scope of persons and bodies assisting victims according to the Victims Act.

Targeted institution(s): Ministry of Justice

- 5 designating on the legislative level the public body that is responsible for ensuring the availability and accessibility of victim support organisations and the development of their network.

Targeted institution(s): Ministry of Justice

²¹² The Code of Criminal Procedure, 173 (1).

- 6 adopting a broader concept of the right to interpretation and translation as enshrined in the Code of Criminal Procedure, § 28, 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 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

Policy

We recommend:

- 7 ensuring that the victim is provided with the relevant information not only in the first contact with the police or the public prosecutor but at every stage of the criminal justice process;²¹³ promoting the information role of criminal justice authorities during the whole criminal proceedings, including its end; strengthening the information role of the courts so that the victim has the chance to obtain information about available support organisations and other supportive mechanisms, including the financial compensation by the State, also during the court proceedings and at its end, and ensure all criminal justice authorities are responsible for providing the victim with all relevant information connected with their status as a victim of crime throughout the proceedings; ensuring that access to information is not conditional upon a request by the victim but is provided automatically and that victims are provided with information, in a format they can understand, on all of their rights in the Code of Criminal Procedure, including their rights to information relating to release or escape of the perpetrator even where they are not in danger.

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

- 8 building on the right of the victim as the injured party in the criminal proceedings to be accompanied by a support person (the Code of Criminal Procedure, § 48a) to make it an effective procedural accommodation for victims with disabilities, including victims with mental disabilities, to overcome barriers in communication; making sure that the support person is freely chosen by the victim himself or herself and that the victim is not required to appoint such a person if he/she does not wish so; ensuring that there is a sufficient network of support to which the victim can turn if he/she wishes to be accompanied by a support person but has no suitable person to take this role among his/her relatives, friends or other close persons.

Targeted institution(s): Ministry of Justice, Ministry of Interior

- 9 preparing and implementing, including by targeted budgetary investments, a plan of development of the network of victim support organisations both accessible and adaptable to victims with mental disabilities.

Targeted institution(s): Ministry of Justice, Ministry of Labour, Social Affairs, and Family, Regions, and municipalities

²¹³ The Victims Act, § 4 (2) and (3).

- 10 continuing to support the establishment of contact points for victims (information offices for victims) in all regions of Slovakia so that they are easily available also for the rural population; including contact points for victims and their development into relevant national strategies.

Targeted institution(s): Ministry of Interior, Government

- 11 promoting the implementation of restorative justice principles within the criminal justice system; not limit the use of restorative justice measures to only specific criminal offences and make them widely available in all stages of the criminal proceedings; developing not only mediation but other restorative justice measures; ensuring that restorative justice solutions are available and accessible also for victims with mental disabilities and that victims with mental disabilities have an effective and practical opportunity to directly participate in them, with the support they need for such participation.

Targeted institution(s): Ministry of Justice

- 12 establishing a system of effective regular collection of data on victims of crime and on procedural accommodations provided to persons with disabilities as victims of crime, disaggregated by relevant criteria, including disability, to enable monitoring of the accessibility of the criminal justice system for victims with disabilities, including victims with mental disabilities.

Targeted institution(s): Ministry of Justice

Practice

We recommend:

- 13 ensuring that all the criminal justice authorities systematically inform victims not only about the organisations assisting victims according to the Victims Act but also about contact points for victims.

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

- 14 building on the good practice of the National Reference Mechanism for victims of human trafficking and exploring the possibility to establish similar supportive network for victims with mental disabilities.

Targeted institution(s): Ministry of Interior, Police Force Presidium, Ministry of Justice, Commissioner for Persons with Disabilities

- 15 adapting the information document for victims and all other documents that victims are entitled to access in an Easy-to-Read format in cooperation with appropriate organisations and especially organisations of persons with intellectual disabilities, and implementing other accessible formats of provision of information to victims with mental disabilities like instructional videos etc.

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

- 16 developing mechanisms for the adaptation of official legal documents issued before, during, and after the criminal proceedings that are delivered to the victims in formats that are accessible and comprehensible for victims with mental disabilities.

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

- 17 including victims with mental disabilities into the main target groups of the contact points for victims and develop cooperation with organisations supporting persons with mental disabilities to develop an effective system of accessibility of information for victims with mental disabilities; implementing targeted activities raising the awareness of contact points for victims and victims' rights specifically among persons with mental disabilities, including those living in institutional settings, and their support organisations, such as seminars designed specifically for those target groups.

Targeted institution(s): Ministry of Interior

- 18 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. Adopt mechanisms to encourage the widest possible participation of criminal justice professionals in these programmes.

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

- 19 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 the basis of the person's medical, psychiatric or other capacity assessment.

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