

Voices for Justice

Victims of crime with disabilities in Bulgaria



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The Voices for Justice project focuses on the rights and experiences of people with disabilities who are victims of crime and how they access justice. It 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 to protect the rights of people with disabilities who are victims of crime. The project references in particular the obligations set out in the European Union Victims' Rights Directive (2012/29/EU) (EU VRD) 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 Association
- Croatia: Victim and Witness Support Service, VWSS
- Czechia and Slovakia: FORUM for Human Rights
- Lithuania: Mental Health Perspectives, PSP
- Romania: Centre for Legal Resources
- Slovenia: PIC – Legal Center for the Protection of Human Rights and the Environment; Social Protection Institute of the Republic of Slovenia, IRRSV; and University of Ljubljana



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

Chance & Support Association

Chance & Support Association is a Bulgarian non-profit organisation which started operating in 2005. Since then, the association has been working intensely in the field of training, support and supervision of professionals in the social work and social services sector. Its activities also focus on providing support and advocacy to persons with different vulnerabilities and on promoting change in the applicable legislation and policies.

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Executive Summary and Recommendations

"She is ill, that's all"

She shared her experiences of sexual abuse with the psychiatrists at the psychiatric hospital where she was hospitalized. They were not able to tell what was a real memory and what was a hallucination. They wrote in her case history: "a victim of physical, psychological and sexual abuse". The doctors did not use any additional methods nor did they even consider other approaches to check if these memories were real. She thinks that they did not believe her.

[...]

She also told her mum about it, but she thought "it was because of the medications as my treatment had been changed". Her mother also blamed the diagnosis "Oh, my illness...I do not make that many excuses out of it as they do", "It is just easier for them - she is ill and that's all".

She never thought of reporting what was happening to the police. [...] she never imagined that this was some kind of crime, "I did not know it was something I should report". She also did not know how she would prove it and she was afraid that they might call her "prostitute", "crazy", "the stigma, you know".¹

"One of the family members of a person who died in a car crash was a child with disabilities. In the first instance court decided that since the child had disabilities he/she could not suffer from the death of his/her parent."²

This report analyses the rights of victims with disabilities to information and to communication throughout the criminal justice process in Bulgaria. Overall, our research shows that the Victims' Rights Directive is poorly transposed, and the rights of victims with disabilities are hardly recognised. As a result, the rights of persons with disabilities who are victims of crime or violence are not respected or protected in practice. Crime against persons with disabilities is often invisible as criminal offences are not reported or investigated. As a result access to justice is rarely granted to the victims or, at best, is insufficiently ensured. Even those who have access to the justice system struggle with enormous obstacles. There is a lack of reasonable accommodation, including procedural accommodation; a lack of understanding of the victims, and in fact a lack of any effort by the investigators, prosecutors and judges to understand the victims; re-victimization is a common consequence of criminal justice processes, as the victims are often required to give testimony in front of the perpetrator(s), to share their stories again and again (sometimes three to six times during the investigation and then again before the court). Support for victims with disabilities is rare at any point during the criminal justice process, including reporting, investigation, and trial.

¹ From an interview with a person with psychosocial disability who was a victim of sexual abuse.

² From an interview with a district judge.

A major problem is that a significant share of crimes against persons with disabilities remain unidentified as crimes in the first place. This lack of sensitivity to the topic seems to be the result of a high level of prejudice against persons with disabilities throughout the country. Such prejudice combines with the commonly applied medical model of disability, and is made worse by the poor training of specialists in the field of criminal justice and other sectors which interact with persons with disabilities on a daily basis.

In addition, the criminal justice legislation and policies suffer from inadequate implementation, none of which are at all disability sensitive. The measures which could help victims report and share their stories do not exist, or if they do, they exist only formally and again are not disability sensitive. This is far from the CRPD concept of procedural accommodation. Communication intermediaries and specialists trained in supporting persons with disabilities in decision-making have not been prioritised. This reduces the possibilities for victims of crime with disabilities to receive acknowledgement of or justice for the crimes they have experienced. In fact, within the Bulgarian context, such practices and specialists do not really exist, and if they do, it is in a very personal capacity rather than a formal role within the system.

The definition of 'victim' in the Bulgarian Criminal Procedure Code, which is in line with what is used in the EU Victims' Rights Directive, creates confusion as to the exact moment from which a person is considered and treated as a victim of crime. According to that definition, the victim receives 'victim status' not immediately after he/she became a victim of crime, but only if the investigation body collects enough evidence to demonstrate that a crime has been committed. The effect of this is to undermine the status and rights of victims within the justice system, so that they may not even be recognised as a 'victim'.

New regulations have been adopted in an attempt at overcoming discrimination against persons with disabilities, but, due to systemic issues, these regulations tend to exist on paper only. Additionally, the new disability rights legislation has no effective link with criminal justice legislation. This is further exacerbated by the lack of coordination between the social and justice systems in Bulgaria. The gaps between these different regulatory and support systems have the effect that the rights of victims with disabilities simply disappear.

The purpose of this report is to provide information to stakeholders at both the national and EU level on the extent to which victims with disabilities in Bulgaria are able to participate in the criminal justice system. All findings and recommendations set out below aim to provoke further consideration and, ultimately, to achieve change.

- Recognition in the legislation of all forms of abuse against persons with disabilities as crime; including:
 - violence;
 - hate crimes and violence based on discrimination;
 - torture;
 - neglect;
 - illegal detention and forced medicalisation;
 - crimes, committed by agents of the State and/or municipalities;
 - violence and neglect in any form of institutional care, including residential institutions and group homes, social care services, schools, hospitals, etc.

- The State authorities must ensure regular trainings for: professionals in the social services sector; other professionals and relatives who are in regular contact with persons with disabilities; and professionals in the justice system. Trainings should include: how to identify crimes against persons with disabilities and how to advise them; how to initiate formal complaints; how to access victims support services; how to access independent legal assistance; how to request protective measures against alleged offenders, etc.
- The State must ensure proper support for victims with disabilities. The range of this support must be understood widely, and should include any possible support relating to reporting a crime, psychological support during each stage of the criminal procedure, as well as rehabilitation during and after any criminal justice procedures. Furthermore the State must put in place measures which guarantee victims access to basic support to meet their everyday needs such as shelter. This is in addition to all the help necessary for the victim to avoid dependency on the perpetrator.
- Mandatory individual assessment which is focused on i) providing the support and accommodations needed; and ii) preventing repeat or secondary victimisation through appropriate adjustments to the system which enable participation rather than exclusion of the victim. This ensures the rights of the victims with disabilities to information and effective communications and to participation in the justice process on the basis of legal capacity and credibility.
- Access to supported decision-making services which are recognised in the justice system;
- The creation of a formal role in the justice system of intermediaries or communication experts who facilitate and validate communication with victims with disabilities.
- Review the definition of 'victim' in the EU Victims' Rights Directive and in the Bulgarian Criminal Procedure Code. This is to ensure that when someone is considered to be a victim of crime or abuse, he or she would be given immediate access to the rights of the victim, including measures for support, protection, procedural accommodation, communication support, etc.
- Ensuring adequate physical access to public infrastructure, including all criminal justice settings. In addition, the State must ensure that every barrier preventing the free reporting and participation in the justice procedures will be removed so that every person with a disability, no matter how serious, will have the knowledge, opportunity and support needed to report violence and/or a crime and will receive full and adequate support during all the procedures. This includes removing all obstacles related to their legal capacity status or because they are living in a residential care facility, and ensuring access to all victim support and other relevant services.
- The State must invest in better understanding violence against persons with disabilities, their experiences in the justice system and the scale of the problems. This means investing in collecting statistical data, as well as exploring and investigating the systemic problems relating to violence and crimes against persons with disabilities, in order to improve understanding of the individual and collective needs of persons with disabilities and to help create the tools needed to address these issues.
- The focal point within government under Article 33(1) of the CRPD is the Integration of People with Disabilities Unit at the Policy for People with Disabilities, Equal Opportunities and Social Benefits Department at the Ministry of Labour and Social Policy. None of these bodies currently show any interest in the situation of the victims with disabilities. This must be changed. These bodies must develop a human rights centred approach to victims with disabilities, and add this issue to their agendas as soon as possible.

- The existing Monitoring Council, established under Article 33(2) of the CRPD must focus its work on the rights of the victims with disabilities and make this issue a priority.
- The academic community must include issues related to access to justice and support for victims in the education programmes of universities and provide specific training for the relevant experts.

1. Introduction

Participation in criminal proceedings is a challenge.

“An extremely long, tiresome, ruthless process, even to those who are highly motivated and with a high capacity to give credible testimony.”

“For them (the persons with disabilities) the challenge is even bigger... in Bulgaria there are no intermediaries in the process.”³

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 her/his psychosocial disability? How can a victim with an intellectual disability report a crime to the police, if the officers cannot communicate properly with him or 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 the justice proceedings?

The European Union Victims’ Rights Directive (2012/29/EU) 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 these rights are about the provision of information, enabling effective communications and the provision of support, and are intended to make sure that victims are informed about their case, understand the criminal process, and are able to participate fully and effectively in investigations and proceedings. The Directive goes on to emphasise 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” (Directive 2012/29/EU of the European Parliament and of the Council)

The Directive is a part of European Union law, and each Member State was required to transpose the Directive 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 law⁴ and to access to justice,⁵ at the same time as asserting the rights to equality and non-discrimination,⁶ 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.”⁷ Together with the Victims’ Rights’ Directive, this means that, in law, persons with disabilities who are victims of crime have

³ From an interview with a director of a victims support organisation.

⁴ UN CRPD Article 12

⁵ UN CRPD Article 13

⁶ UN CRPD Article 5

⁷ UN CRPD Article 4

full and equal access through all stages of the justice process, such that any barriers which might limit access or participation must be removed and accommodations must be made so that they can exercise these rights. The Convention has been ratified by all EU Member States and has been binding on the EU since January 2011.

Exactly what impact the implementation of the Directive and the CRPD has had on the experiences of victims of crime with disabilities has not been studied in any detail. In fact, what we do know indicates that victims with disabilities experience multiple barriers to accessing justice, their rights are not respected, and discrimination is common. This research, together with the six other national reports making up the Voices for Justice project, seeks to highlight the experiences of people with disabilities within the criminal justice system, identify promising practices, and provide information about the development and implementation of the legal and policy framework in Bulgaria.

This research report is presented in seven parts. Chapter 1 introduces the topic and the European Union funded project on information and effective communications for people with disabilities who are victims of crime. Chapter 2 briefly outlines the research methods. Chapter 3 sets out the country context, and in particular the rights and circumstances of people with disabilities in Bulgaria. The substance of our findings is presented in Chapters 4 and 5, focused on how the international legal obligations have been interpreted and implemented at the national level (Chapter 4), and how these then impact on the experiences and stories of people within the criminal justice system (Chapter 5, as well as the case study in Chapter 6). The report concludes with recommendations for law, policy and practice development (Chapter 7).

2. Research methods

Given how little is known about the topic, this 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. For the sake of accuracy, it should be noted that the desk research was carried out between October 2020 and September 2021. It was accompanied by semi-structured interviews with professionals in the criminal justice system, with 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 at support services, however this was not possible because of COVID-19 pandemic restrictions during the period when the research took place.

A total of twelve interviews took place between March and September 2021. Almost half the people interviewed were persons with disabilities who were victims of different types of crime. Another group of interviewees were judges and lawyers who are known to have a sensitivity to the topic and have experience working with persons with disabilities. Interviews also took place with victim support professionals and one investigating police officer. The interviewees were intentionally selected from different regions of the country. The research team knew most of the interviewees through personal and professional acquaintance.

Some requests for interview were indirectly rejected. The biggest challenge was connecting with victims of crimes with disabilities. In practice all the interviews with victims required some sort of specific arrangement. In one case it took months to find the right time to do the interview as the person was going through a severe psychotic crisis. In addition, opportunities for observations and reflections were very limited due to the pandemic, and more than half of the interviews took place online. Needless to say, access to people placed in group homes or institutions was almost impossible, perhaps even more so than usual based on the team's experience. On the one hand this could be explained by fear that residents feel of their caregivers in these settings, given high-levels of dependency. On the other hand, this is also explainable by routine restrictions in institutional settings against the free movement of the residents, especially forbidding them to move out of the facility buildings. There was also a general prohibition of admitting strangers into the premises, and these restrictions were further tightened with the pandemic.

The analysis of the data took place after the desk research and field work, drawing out themes from the relevant international legal frameworks to evaluate the implementation of national legislation, policy, and practice in the country.

3. Bulgarian context for people with disabilities

“And above all, we see hunger, poverty and consequently, more crimes. More crimes mean more victims.”⁸

The rights of persons with disabilities in Bulgaria have been strengthened over the past decade, perhaps most notably by the adoption of the Persons with Disabilities Act in 2019. However, many issues and challenges remain, including physical barriers to entering buildings and transport, prejudice among the general population and in schools, lack of access to employment, and ill-treatment in institutions⁹. In this section we set out an overview of the position of people with disabilities in Bulgaria, and some of the most relevant structures and trends which impact on people with disabilities who are victims of crime.

Population and demographic trends

Bulgaria has a population of around 7 million people¹⁰, which makes it one of the smaller European Union Member States. Around 73% of the people live in urban areas, and the country has an aging population. In fact, 21.8% of the citizens of the Republic of Bulgaria are over 65 years of age, with an average age of 43.8 years¹¹ and an aging index of 56.7% (the ratio of elderly persons aged 65 and older to people between the age of 15 and 64).¹² According to the United Nations Organization (UN) report “Aging of the world population 2009”, Bulgaria ranks among the top ten countries with the most aging populations in the world¹³. While this trend has profound implications for the economy as a whole in terms of the labour market and the system of social retirement, it also has implications for the increasing numbers of people with age-related impairments and the resulting demands on social welfare and health services.¹⁴

Definitions and statistics on people with disabilities

The legal definition for disability is given in the Persons with Disabilities Act, effective as of 01.01.2019:

“Persons with disabilities are individuals with physical, psychological, intellectual or sensory deficiency which might while in contact with the outside environment hinder their full and effective participation in the social life.”¹⁵

The Persons with Disabilities Act aims at creating a more concrete and thorough regulation of the main rights of persons with disabilities in Bulgaria and, practically, the definition is applied in order

⁸ From an interview with a director of a victims support organization.

⁹ October 22, 2018. Committee on the Rights of Persons with Disabilities, ‘Concluding observations on the initial report of Bulgaria’

¹⁰ 10 April 12, 2021, The National Statistical Institute of the Republic of Bulgaria: <https://nsi.bg/en/content/18746/прессъобщение/population-and-demographic-processes-2020> 11 2020 r.

¹¹ The National Statistical Institute of the Republic of Bulgaria: <https://nsi.bg/en/content/2991/residence-structure-sex-ratio-and-age-dependency-rates> 13 2020 r.

¹² The National Statistical Institute of the Republic of Bulgaria: https://nsi.bg/sites/default/files/files/pressreleases/Population2020_IVGTQG5.pdf

¹³ December 29, 2019, EURYDICE, European Commission, https://eacea.ec.europa.eu/national-policies/eurydice/bulgaria/population-demographic-situation-languages-and-religions_en

¹⁴ Detailed information about Bulgaria is available in the COE CEPEJ Committee report, available at: <https://rm.coe.int/en-bulgaria-2018/16809fe337>. The report includes information not only about demographic and economical situation in Bulgaria, but also about judicial system.

¹⁵ Item 1 of § 1 of the Additional provisions of the Persons with Disabilities Act, available in Bulgarian language at: <https://www.lex.bg/bg/laws/ldoc/2137189213>

to specify the persons subject to this particular law. It is the only full and straightforward definition in Bulgarian legislation stating who should be considered as persons with disabilities. Thus, other laws are expected to refer to this definition in relation to persons with disabilities.

No up-to-date statistical data is available on the number of persons with disabilities. The last available data is from 2011 by the National Statistical Institute according to which the number of persons with disabilities, over the age of 16, is 465 228.¹⁶ This data covers only the number of people who are officially certified as having a disability, and therefore does not necessarily accurately reflect the real number of persons with disabilities in the country.

Some statistics¹⁷ are also available on persons with disabilities in long-term residential care: 13,224 adults of whom 10,839 are in big institutions and 2,385 are in small group homes. These numbers refer to the capacity of the settings, whereas in reality most of these institutions accommodate residents in excess of their capacity. It should also be noted that these figures do not include people who are long-term patients in psychiatric hospitals, who may have been placed there for years without any real options for integration into society as there are no community or social support networks in place.

Though specific crimes are rarely reported or detected, conditions in institutions are recognised as inhuman and degrading. The United Nations Committee against Torture recently issued a public statement in which they expressed disappointment at the lack of any real measures against the long-lasting inhuman and degrading conditions in institutions in Bulgaria and at the pretence of de-institutionalisation (DI), which the report defines as ‘trans-institutionalisation’.¹⁸ In 2019, the international non-governmental organization Disability Rights International published the report “A Dead End for Children – Bulgaria’s Group Homes”.¹⁹ The report revealed evidence of ill-treatment and violence in new group homes for children with disabilities in Bulgaria and concluded that in practice the new system serves to maintain the institutionalisation of these children. In 2021, Validity Foundation, published a report criticising the de-institutionalisation process in Bulgaria.²⁰ The report reviewed the history of de-institutionalisation and showed that the idea of de-institutionalisation was in reality ‘trans-institutionalisation’, meaning that people are simply being moved from one institutional setting to another.

Instead of recognising that the practices described above are harmful and wrong, the Bulgarian State Authorities continue to invest in the construction of more and more group homes. The practice of trans-institutionalisation creates conditions for the continuing violation of the human rights of persons with disabilities. In such institutionalised conditions, violence and abuse never end, while victims are unable to access justice or rehabilitation.

Social care and support

To understand the support infrastructure for persons with disabilities it is important to take account of the historical development of the social support system in Bulgaria. It is beyond the scope of

¹⁶ https://www.nsi.bg/sites/default/files/files/pressreleases/Census_Disability2011.pdf

¹⁷ September, 2020, The Social Protection Agency, <https://asp.government.bg/bg/deynosti/sotsialni-uslugi/sotsialni-uslugi-za-palnoletnitsa/registar-na-vidovete-sotsialni-uslugi-finansirani-ot-darzhavniya-byudzhet> (see the excel files)

¹⁸ The statement is available in Bulgarian language at: <https://rm.coe.int/1680a465f9> and in English here: <https://rm.coe.int/1680a465fa>

¹⁹ The report is available both in Bulgarian and English language at: <https://www.driadvocacy.org/bulgaria-report-2019/>. The report is based on a thorough field research on the group homes in Bulgaria in 2019.

²⁰ Validity Foundation report “De-institutionalization and life in the community in Bulgaria – a three-dimensional illusion”: <https://validity.ngo/wp-content/uploads/2021/09/Deinstitutionalisation-and-Life-in-the-Community-in-Bulgaria-FINAL.pdf>

this research to address the whole history, but it is crucial to note that during socialism persons with disabilities were completely missing from the public life. Parents who had a child with a disability were convinced that they did not have the proper skills to take care of the child and the best decision was to “give” the child to “the state” – in other words, to place them in an institution. Adults with disabilities were also very easily placed in institutions. This meant that all persons with disabilities were kept apart from society, exposed to terrible conditions, described later as inhuman and degrading²¹. Apart from this, the care provided by the State consisted of very limited financial aid to those struggling with minimum incomes, as well as operating a few specialised factories for people with vision or hearing/speech impairments. After the end of socialism and with the arrival of democracy, the State started slowly to move away from this model to a more humane approach. Yet, the attitude towards persons with disabilities remained very paternalistic, based on the understanding that the care providers know what is best for the person. At the same time, these are care providers who are low paid and poorly trained.

“Social services are hampered by low quality, limited accessibility and the lack of an integrated approach. An evaluation conducted in 2017 identified insufficient provision of most types of social services across the territory, which calls for further investment. This is an issue especially in smaller and rural municipalities where there is a serious shortage of services for both children and adults, particularly for homebased care, day-care, mobile and integrated services. Based on a centralised planning system, services are provided mostly based on the availability of resources instead of the needs of the vulnerable person. The fragmentation of the provision of services impairs the effectiveness of the support they give, since integrated services can address multiple issues among vulnerable populations simultaneously. At the same time, the social services sector suffers from high staff turnover, limited training and the low qualification standards of social workers.”

“People with disabilities receive limited support to help them live independently. In 2016, the rate of poverty and social exclusion among people with disabilities stood at 55.9 %, 18.4 pp. higher than the rate for those without disabilities. More than half of the people with disabilities drop out of education early and only 34 % have jobs. Their tertiary education attainment rate of 13.5 % is also very low.”²²

As of today, social services in Bulgaria are usually provided by the municipalities which are allowed to further delegate the operation and management of these services to private service providers, including NGOs.²³ In social care, the share of services provided by NGOs and private companies is 20-25% of the overall provision.²⁴ The financial stability of NGOs in Bulgaria remains a huge problem. They have been subject to increasing stigmatisation and neglect by government.²⁵ A new Law on Social Services entered into force on July 1, 2020 and is expected

²¹ BBC’s movie “Bulgaria’s Abandoned Children”: <https://topdocumentaryfilms.com/bulgarias-abandoned-children/>

²² 2019, European Commission, Country Report Bulgaria 2019 Including an In-Depth Review on the prevention and correction of macroeconomic imbalances (27.2.2019), p. 39 and p. 40: https://ec.europa.eu/info/sites/info/files/file_import/2019-european-semester-country-report-bulgaria_en.pdf

²³ Persons with Disabilities Act, promulgated in State Gazette No. 105 dated December 18, 2018, effective as of January 1, 2019 publicly available in Bulgarian language only at: <https://www.lex.bg/bg/laws/ldoc/2137189213>; Social Services Act, promulgated in State Gazette No. 24 dated March 22, 2019, effective as of July 1, 2020 publicly available in Bulgarian language only at: <https://www.lex.bg/bg/laws/ldoc/2137191914>; Personal Assistance Act, promulgated in State Gazette No. 105 dated December 18, 2018, effective as of January 1, 2019 publicly available in Bulgarian language only at: <https://www.lex.bg/bg/laws/ldoc/2137189250>

²⁴ June 2018, The Bulgarian Center for Not-for-Profit Law (article dated November 1, 2019): <http://bcnl.org/news/zashto-grazhdanski-organizatsii-sa-dostavchitsi-na-sotsialni-uslugi.html> (available in Bulgarian language only); December 5, 2019, Mediapool (media) article: <https://www.mediapool.bg/uspeshnite-sotsialni-uslugi-sazdadeni-s-mnogo-trud-za-da-gi-zacherknem-s-leka-raka-news301046.html> (available in Bulgarian language only)

²⁵ October 6, 2020, The Bulgarian Center for Not-for-Profit Law (article): http://bcnl.org/news/finansovoto-otselyavane-na-grazhdanskite-organizatsii.html?fbclid=IwAR2S3xzwtdtK-RDGpTrNhPsYmzAdFjkwoRSm8J3I9SUmSk1H05U-K_6uPdYM (available in Bulgarian language only)

to improve the availability and quality of services by establishing the Social Services Quality Agency and the Social Services National Map. This new regulation brings into focus, for the first time, the individual needs of each and every person. Its implementation, however, is yet to be seen, but from what we have observed of the process so far, the key policy makers have not changed their understanding of the matter much.

Taxonomy and statistics on crime and criminal offences

The annual statistics of the police and the prosecution authorities are publicly available.²⁶ They give a general picture of the share of crimes by type and location as well as the number of victims by gender and age. The data on perpetrators is more detailed, such as their education, employment status, etc.

In 2020, the number of victims where investigations were newly started was 57,890; of these 34,510 victims were male and 23,380 female. The largest share were victims of property crimes – 35,566. This was followed by those who were victims of crimes against the person – 10,240.

A report by an NGO on trends in crimes in Bulgaria from 2010 to 2020 showed that in 2019 the crimes registered by the police were almost half the real number of crimes committed in the country. A record number of unreported crimes seems to be the main reason for this phenomenon, where almost 60% of the victims did not report the crime. Research shows that most people did not report a crime because of lack of trust in the police. While this report refers to the general population, and not to persons with disabilities specifically,²⁷ based on our own experience and research, people with disabilities are even less likely to report a crime.²⁸

No statistical data is kept with regard to crimes and criminal offences against persons with disabilities.

“In order to get to the idea of reporting a crime there must be recognition that there is a crime at all.”²⁹

Impact of COVID

When COVID-19 hit Bulgaria for the first time in March 2020, there was a short period when courts stopped working. After that, and until now, they all have been working almost at the same capacity as before. The courts have also been providing opportunities for both physical and virtual participation in proceedings.³⁰ Technical arrangements for virtual attendance, however, have not always been what is required. In some court rooms there is only one camera and one microphone which makes it a struggle for the person attending virtually to hear what

²⁶ The annual statistics of the police can be found in Bulgarian language at: https://www.mvr.bg/министерството/programni-dokumenti-otcheti-analizi/статистика/годишен-бюлетин-полицейска-статистика?fbclid=IwAR1x8ow233oyjRGsZMSFq69MywliZ4bBowZ-ITCVX_4zVL1UXtOOa7xMHYQ The annual statistics of the prosecution authorities can be found in Bulgarian language at: https://prb.bg/bg/pub_info/dokladi-i-analizi

²⁷ The report by the Center for the Study of Democracy “Crime trends in Bulgaria 2010-2020”, available at: <https://csd.bg/publications/publication/crime-trends-in-bulgaria-2010-2020/>

²⁸ See more in Section 5 of this report.

²⁹ From an interview with a psychologist working in a victims support organization.

³⁰ The Anti-Pandemic Measures Act, available in Bulgarian language at: <https://www.lex.bg/bg/laws/ldoc/2137201253> The weekly anti-pandemic orders by the Minister of Healthcare, available for download at: <https://www.mh.government.bg/bg/normativni-aktove/zapovedi-pravilnitsi-instruktsii/>

everybody in the room is saying. In addition, the camera usually remains pointing in one direction and the only persons that can be seen are usually the judges. Other courts have managed to make better arrangements for virtual participation, but in our experience, these are the exception rather than the rule.

Inevitably, especially in the beginning of the pandemic, there were delays and postponements for all proceedings.

Here is an example of a court hearing in Bulgaria during the pandemic:³¹The case concerned involuntary psychiatric treatment, which in Bulgaria is formally administrated as a criminal case and is assigned to a criminal court panel. The psychiatric hospital in which our client, a person with disability, was placed, was quarantined soon after his hospitalisation. At the court hearing in which the ruling was delivered, the expert psychiatrist participated virtually as he was COVID positive while our client did not attend at all because he was not called by the court. No justification was provided as to why he was not called. He was under quarantine with the rest of the hospital, yet he was not sick and he could also have attended the hearing virtually. On top of that, the court ruled that the hospitalisation of our client should be prolonged alongside the period of quarantine. The reasons for this decision were that the psychiatrist who was taking care of our client was sick with COVID and only upon his return could treatment be properly carried out. In effect, no measures were put in place to enable our client to access justice.

Interview³² with a director of a victims’ support organization:

The interviewee shares a recent story with one of the centre’s residents who used to work as a kitchen worker in a restaurant and kept that job for years. The restaurant closed because of Covid-19 and the woman was laid off, had trouble paying her rent, etc. The person mentioned was a victim of trafficking with a psycho-social disability. This work was a part of her way to recovery and helped her to find a way to the integration back into the society after she survived from the crime.

The same goes to people who need to be transferred to another social service – during COVID-19 the acceptance of new residents in the social services was stopped.

Criminal prosecution was delayed by months. Court sessions were cancelled.

The investigation procedures were further delayed bearing in mind that many of the cases with regard to human trafficking were carried out abroad and the victim was prohibited to travel.

“And above all, we see hunger, poverty and consequently, more crimes. More crimes equal more victims”

³¹ Maria Krasteva, a researcher in the project, was one of the lawyers in this case.

³² All interview boxes in this report include only excerpts from the real interviews.

Interview with a district judge:

“This happened when the Persons with Disabilities Act was already in force, in which the supported decision making is regulated...the court ordered this as a service (the supported decision making) in order for the interview to happen. At this moment though, the pandemic had just started and the institutions got all closed and the actual difficult was that although it was written in an order of the court, the supported decision making could not actually happen due to the pandemic, because the work cannot be done online in such situation, a relationship cannot be built”

No specific regulations whatsoever were adopted to help overcome the extra isolation and difficulties for persons with disabilities. Those, for example, who were placed in residential care settings have been highly restricted and have rarely been allowed to leave the premises since the start of the pandemic. Guests and other visitors were also forbidden, and exceptions could only be made at the discretion of the director of the institution. These rules had applied more or less before the pandemic.

According to an order issued by the Minister of Health³³, it is at the discretion of the director to decide what kind of extra anti-pandemic measures to impose, additional to those adopted for the general population. In effect, and with the excuse that these are a life protecting measures, in many cases the directors of residential care settings isolated the residents completely from the outside world. This has been the practice even when the infection rates were very low.

Such overprotection and restrictions not only create an environment of increased risk of violence but are a form of abuse themselves. Reporting an abuse or crime, on the other hand, is additionally hindered by the isolation and lack of contact with the outside world.

In conclusion, this very complicated pandemic situation opened the door to new possibilities but at the same time exposed the persons with disabilities to new forms of exclusion and abuse.

On one hand, the pandemic has increased the intensity of online communications and created new opportunities for persons with disabilities to connect with others and be included socially. For some people with disabilities, online communication has fewer barriers than in-person contact – there are no additional accommodations needed, no need to struggle with inaccessible public transport and buildings.

In the context of accessing the justice system, the pandemic created a path to online hearings and other remote communications which in some ways made justice more accessible and accommodating for some persons with disabilities. And this has created opportunities to think more about integrating technologies and building on some current 'pandemic practices' as ways of supporting persons with disabilities to access justice. This might include remote access to court files, and using special technologies to overcome communication difficulties.

However, increasing the use of communication technologies should not be taken without serious consideration. Levels of poverty mean that many people with disabilities have not had any experience with modern technologies. In other cases, the problem is that commonly held prejudices

³³ Available in Bulgarian language at: <https://www.mh.government.bg/bg/normativni-aktove/zapovedi-pravilnitsi-instruktsii>

mean that people with disabilities are often not considered able to operate new technologies nor can be taught to use them. Furthermore, using new technologies in a naïve way and without proper training and information can make persons with disabilities an easy target for new forms of online abuse, fraud and even life-threatening schemes.³⁴

³⁴ One of the interviewees was a victim of the said schemes and in our practice as lawyers we had other cases of persons with disabilities who were victims of violence and abuse, and the offenders reached them first through online platforms.

4. Legal and policy framework

“One colleague from a court in the country (a judge) stood up and said «sorry, but what legally binding will can express a person under plenary guardianship”...”³⁵

The legal and policy framework is outlined and analysed in this section of the report. First, the relationship between the international and national level legislation is reviewed, and an assessment made of the progress that has been made in Bulgaria in implementing the international obligations of the State in national law and policy. We then review the implications for persons with disabilities who are victims of crime and discuss the disconnect between the legal obligations and what happens in practice. In the second part, we focus on the details of the relevant criminal justice processes and procedures, and we examine the extent to which the rights of victims with disabilities are upheld within the system.

The intersection of the international legal framework and national legislation

The intersection between the international legal framework, as set out in the UN CRPD and the EU VRD, and the national legislation is fundamental to establishing the rights of victims with disabilities and the obligations of the State in meeting those rights. We found that, while there has been progress in implementing disability rights in the national laws of Bulgaria, it is clear that progress is slow. Overall, there is very limited recognition of the specific rights of victims with disabilities and what is required of the justice system to meet those rights.

Ratification of the UN CRPD

The UN Convention on the Rights of Persons with Disabilities (CRPD) was ratified by Bulgaria on 26 January 2012 and entered into force on 21 April 2012.³⁶ The optional protocol has not yet been ratified. According to Article 5, paragraph 4 of the Constitution of the Republic of Bulgaria, all conventions ratified and entered into force become part of the domestic legislation. If any national legislation contradicts a convention, it is international law that prevails.³⁷

The focal point within government under Article 33(1) of the CRPD is the Integration of People with Disabilities Unit at the Policy for People with Disabilities, Equal Opportunities and Social Benefits Department at the Ministry of Labour and Social Policy (*in Bulgarian language: Министерство на труда и социалната политика, дирекция “Политика за хората с увреждания, равни възможности и социални помощи”, отдел “Интеграция на хората с увреждания”*) for matters relating to the implementation of the CRPD, and the Minister of Labour and Social Policy (*in Bulgarian language: Министъра на труда и социалната политика*) as the coordination mechanism. Regarding Article 33(2) of the CRPD, a Monitoring Council (*in Bulgarian language: Съвет за наблюдение*) was established in 2019 under the newly adopted Persons with Disabilities Act. It is composed of 9 members – two representatives from the Office of the Ombudswoman of the Republic of Bulgaria, two representatives from the Equality Body, four representatives from organizations of persons with disabilities, and one representative from academia.³⁸

³⁵ From an interview with a district judge.

³⁶ The CRPD is available in Bulgarian language at: <https://www.lex.bg/bg/laws/ldoc/2135791921>

³⁷ The Constitution of the Republic of Bulgaria is available in English language at: <https://www.parliament.bg/en/const>

³⁸ 2020 FRA table of bodies set up for the implementation and monitoring of CRPD at: https://fra.europa.eu/sites/default/files/fra_uploads/table-bodies-article-33-crpd-2020_en.docx which can be downloaded from: <https://fra.europa.eu/bg/content/mrezha-na-es-za-prilagane-na-konvenciyata-na-oon-za-pravata-na-horata-s-uvrezhdaniya>

Transposition of the EU Victims' Rights Directive

The deadline for transposition of the Directive into national law was 16 November 2015. So far, there are 24 laws and other legislative acts into which the Directive has been transposed³⁹.

In January 2016, the European Commission launched infringement proceedings against 16 Member States that had not communicated their transposition measures by that date, including Bulgaria. A later report of 11th May 2020 issued by the European Commission to the European Parliament and Council states that, as of the date of the report, most Member States have not completely transposed the Victims' Rights Directive. This included Bulgaria. Infringement proceedings for these countries are on-going.⁴⁰

“Regardless of the formal process of alignment of legislation with the EU standards, practice has not been significantly affected: legal proceedings are still lengthy; training for the relevant professionals is poor; there is no individual assessment to identify the protection needs of the victims; no special attention for specific groups of victims (children and those with disabilities). Therefore, it still is a challenge to ensure maximum safeguards and the protection of victims within the criminal justice. Some of the Directive’s requirements are written into legislation as general principles without the development of detailed legal tools and mechanisms for their implementation. Most of the terms and the concepts of the Directive are new for the Bulgarian criminal justice. Whilst transposing the directive into law, it was necessary to consider how these new ideas should be implemented in practice and how they will fit within the existing criminal legal procedures: unfortunately, this aim has not been achieved.”⁴¹

Implementation into national laws and structures

Under the Persons with Disabilities Act (2019), new administrative structures were established to ensure compliance with all applicable laws and policies regarding persons with disabilities in Bulgaria. These are the Persons with Disabilities Agency, the Monitoring Council and the Persons with Disabilities National Council. The Persons with Disabilities Agency has a central role in the development, drafting and implementation of the various state policies and programs concerning persons with disabilities. The Monitoring Council was created as a separate body which is specifically assigned to monitor compliance with the CRPD, as already mentioned above. And finally, there is the Persons with Disabilities National Council which was created to support and consult with other authorities during the process of drafting and further implementing laws and policies concerning persons with disabilities. This council is composed of various groups including national organisations of/for persons with disabilities, organisations of employees, and organisations of employers, etc.⁴²

The main document created to ensure compliance and consistency is the recently adopted National Strategy for Persons with Disabilities 2021-2030. The strategy’s declared aim is to establish such an environment for persons with disabilities in Bulgaria so that they can fully exercise their rights and live independently, integrated into society.⁴³

³⁹ The list of transposition legislation is available at: <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32012L0029>

⁴⁰ The report of the European Commission of 11/05/2020 available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:188:FIN>

⁴¹ A quote from the VOciare National Report on EU Victims' Rights Directive based on a research conducted between June 2018 and March 2019, available in English language at: <https://victim-support.eu/publications/vociare-national-report-bulgaria/>

⁴² The Persons with Disabilities Act (Art. 7 – 19) available in Bulgarian language at: <https://www.lex.bg/bg/laws/ldoc/2137189213>

⁴³ The National Strategy for the Persons with Disability 2021-2030 can be downloaded from: <https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=1342>

However, none of these new bodies or agencies have the mandate to focus on crimes against persons with disabilities or the situation of victims with disabilities.

Given how recent these developments are, the implementation and operation of the Persons with Disabilities Act and the National Strategy for Persons with Disabilities are yet to be observed and analysed. Nevertheless, it is already clear that supplements will be needed in order to provide the necessary guarantees and protection for victims of crimes with disabilities.

What is missing for victims with disabilities?

As a general comment, effective and systematic coordination is missing between the social care and disability related legislation and criminal justice legislation in Bulgaria. This results in a fragmented system, such that people with disabilities who are victims of crime fall through the gaps.

One of the main principles of our Criminal Procedure Code is that all people should be treated equally throughout criminal proceedings. The particular provision⁴⁴ lists various discrimination grounds like race, religion, education, etc. but it does not include “disability”. And although there are other general rules regarding non-discrimination towards persons with disabilities as set forth in the Equality Act⁴⁵ and the Persons with Disabilities Act, this simple omission could be considered one reason for the lack of connection and consistency between the criminal justice and the disability related legislation and policies in Bulgaria.

Another similar example is the case of the guidance provided by the Ministry of the Interior⁴⁶ on how to provide accommodation and support for people who are reporting a crime or might be the victim of a crime. In short, these instructions establish rules on how police officers must interact with persons who come to report crimes. There are a few provisions which may be interpreted as related to the rights of victims with disabilities, even if only on the surface. One of these provisions⁴⁷ sets out the obligations of the police to take into account the physical and psychological condition of the victim. Another provision⁴⁸ might be considered as a rule related to the physical accessibility of the police premises. The instructions, however, do not provide any specific requirements in case the victim is a person with disabilities. It should also be noted that, in terms of physical accessibility there are very good and rich regulations at the national level⁴⁹, yet the links between these regulations and the Ministry guidance are missing, and these gaps are what victims with disabilities experience in practice.

Interview with an investigating police officer:

He explains that the area is hardly accessible for a person with disability and in such cases they carry out the interview at the parking lot.

⁴⁴ Art. 11 of the Criminal Procedure Code, available in Bulgarian language at: <https://www.lex.bg/laws/ldoc/2135512224>

⁴⁵ Available in Bulgarian language at: <https://www.lex.bg/laws/ldoc/2135472223>

⁴⁶ See the full name and content of the Instruction No. Із-507 dated 26 March 2008 (available in Bulgarian language) at: https://www.mvr.bg/docs/librariesprovider20/инструкции/инструкция-із-507-от-26-март-2008-г-за-осъществяване-на.pdf?sfvrsn=5cd07763_2

⁴⁷ Art. 15, item 2 of the Instruction No. Із-507 dated 26 March 2008, available in Bulgarian language at: https://www.mvr.bg/docs/librariesprovider20/инструкции/инструкция-із-507-от-26-март-2008-г-за-осъществяване-на.pdf?sfvrsn=5cd07763_2

⁴⁸ Art. 19, item 8 of the Instruction No. Із-507 dated 26 March 2008, available in Bulgarian language at: https://www.mvr.bg/docs/librariesprovider20/инструкции/инструкция-із-507-от-26-март-2008-г-за-осъществяване-на.pdf?sfvrsn=5cd07763_2

⁴⁹ Ordinance No. 4 dated 1 July 2009 on accessibility of the buildings. See full name and content of the ordinance (available in Bulgarian language) at: <https://www.lex.bg/laws/ldoc/2135639181>

Another case of missing coordination could be seen with regard to individual assessments on the support needs of persons with disabilities. According to the new Persons with Disabilities Act, individual assessment is based primarily on the self-assessment carried out by the person with disability of the difficulties this person meets in and outside his or her home and of the objective barriers identified in their daily life. The assessment is intended to set out the kind of support, social services and personal assistance that the person concerned needs.⁵⁰ However, social workers, investigators, prosecutors and judges do not consider this assessment as a way of implementing Art. 22 of the EU Victims' Rights Directive at the domestic level. This is one notable example of how the lack of proper coordination between experts in different areas can be extremely harmful. The existing individual assessments do not take account of the needs of the person during the potential criminal procedures, neither do the experts making these assessments have an idea of what a criminal procedure looks like and what support the person may need during such a procedure. At the same time, experts in the justice system are generally not aware of the needs that a person with disabilities might have and cannot even imagine, for example, the impact of an interview on the understanding and experience of the victim and the potential for re-victimisation. The gap in knowledge and understanding is so deep that assessing a victim's need for support during criminal procedures is not even considered. Psychiatrists are the experts usually appointed in criminal proceedings, but their role is to assess the psychiatric condition of the victim and whether he or she could be considered a credible witness. Psychiatric assessments are not in any way focused on how the person's participation could be supported, validated and made credible, to enable the exercise of their legal capacity in criminal proceedings. Such approaches by their nature further exclude victims with disabilities from participating in the justice proceedings.

The new Persons with Disabilities Act establishes general rules on reasonable accommodation and accessibility for persons with disabilities in various aspects of social life, from the physical accessibility of public buildings to access to justice, employment, education, etc. Through this Act, the State essentially undertakes to ensure that these rights are upheld in every relevant aspect. However, sufficient legislative connections have not yet been made to ensure that the criminal justice system would respect these rights when interacting with persons with disabilities.

⁵⁰ Chapter three of the Persons with Disabilities Act, available in Bulgarian language at: <https://www.lex.bg/bg/laws/ldoc/2137189213>

5. The experiences of victims with disabilities in the criminal justice system

What legal frameworks, policies and practical supports exist for victims with disabilities in order for them to overcome the barriers they face – from reporting a crime, to being interviewed by the police, to attending a court hearing and participating in a trial? The experiences of victims with disabilities are at the very heart of this research and in this section we seek to give insight into these experiences.

General provisions

Victims of crime in Bulgaria have the right to participate in all stages of the criminal justice proceedings. To what extent this right is respected and their participation facilitated is another thing.

According to the law,⁵¹ all victims of crime have the right to receive information about their rights and possibilities in the criminal proceedings upon their first contact with competent authorities, for example the police or a victim support organisation. In practice, this usually happens upon reporting the crime by handing a paper template form with all the victim's rights to the victim. The paper lists all the victims' rights, including the right to medical, psychological and legal help and to compensation.⁵² In most cases, the authority with which first contact is made is the police. The police are obliged also to explain orally the contents of the form, taking into account the age and characteristics of the victim.⁵³ A crime can be reported by the victim who has personally experienced the crime, or by a person who witnessed it or has information about it. Anonymous reporting is explicitly prohibited.⁵⁴

However, in order for victims to be able to participate in the investigation phase and exercise their rights, including their right to be notified about the start of the investigation, they must give an email or postal address within the country and explicitly declare that they wish to participate in the criminal proceedings. Once the criminal proceedings begin, victims should then receive information about progress in the case but only if they have explicitly stated that they want to receive such information and have provided the authorities with a correspondence address within the country.⁵⁵

During court proceedings, a victim may participate as a legitimate party to the proceedings with all corresponding rights, only following prior request to the court. The victim may take part in the court proceedings in one of three ways, as: a civil claimant who can claim compensation for damages suffered; or a private prosecutor who has the same rights as a prosecutor to ask for evidence and to appeal the court decision etc; or a private complainant when a case can only be prosecuted before the court following a complaint by a victim. Victims are notified about these rights with the same paper template notification given at the start of the criminal proceedings. The

⁵¹ Art. 6 of the Assistance and Financial Compensation for Victims of Crime Act, available in Bulgarian language at: <https://www.lex.bg/bg/laws/ldoc/2135540550> and a bilingual version at: <https://bsr-trm.com/wp-content/uploads/2019/10/Crime-Victim-Assistance-and-Financial-Compensation-Act.pdf>

⁵² The template form is available in Bulgarian language at: <http://www.compensation.bg/sites/default/files/formularzpp.pdf>

⁵³ Art. 6a of the Assistance and Financial Compensation for Victims of Crime Act, available in Bulgarian language at: <https://www.lex.bg/bg/laws/ldoc/2135540550> and a bilingual version at: <https://bsr-trm.com/wp-content/uploads/2019/10/Crime-Victim-Assistance-and-Financial-Compensation-Act.pdf>

⁵⁴ Art. 208, para 1 and Art. 209, para 1 of the Criminal Procedure Code, available in Bulgarian language at: <https://www.lex.bg/laws/ldoc/2135512224>

⁵⁵ Art. 75 of the Criminal Procedure Code, available in Bulgarian language at: <https://www.lex.bg/laws/ldoc/2135512224>

options for the victim to express their will to participate in one of the three procedural roles is strictly time limited. After that, their participation is not possible. Basically, unless they file an application to participate in one of the possible procedural roles, or if they are summoned by the court as a witness, victims have no right to participate in the trial solely on the grounds that they are the victim of the crime in question.⁵⁶

Interview with a lawyer working with persons with disabilities:

The victim had reported the crime to the police herself. The perpetrator was arrested right then. The crime was identified as a crime of passion but according to the interviewee it should have been categorised differently. The authorities did not inform the victim of her option to file a private claim and she missed the deadline to pursue that. Basically, the prosecution pressed charges and there was a court case for a crime of passion, but as the crime was wrongly categorised, it ended unsuccessfully for the victim.

Specific measures and support

Special protecting measures: There are several ways to ensure the protection of victims. Either upon the victim's request or upon a request made by the prosecutor with the victim's consent, the court may order certain restrictions on the accused so that he or she is not allowed to contact or come close to the victim. It should be noted that the victim does not have this right during the earlier stages of the investigation. These protecting measures can only be applied after the suspect is "accused" as part of the proceedings, apparently only after the accusations are found to be credible.⁵⁷

There are other mechanisms for protection, available at the beginning of the proceedings, but they apply specifically to witnesses rather than victims. In case of a threat to their life and safety, the witnesses, members of their families, or others close to them may be provided with personal bodyguards and their identity may be kept confidential. If the crime is more severe, the witness might join a special witness protection programme with a higher level of security.⁵⁸ As long as a victim participates in the proceedings as a witness, it can be assumed that these protection measures would apply also to the victim. Yet, this imperfection of the law is one of the many flaws that highlight the need for clearer regulation on the exact moment when a person who experienced a crime is considered a "victim" and from which moment the victim may exercise their rights as a witness, if applicable.

Interview with an investigating police officer:

He makes an assumption as to whether the witness is also a victim from the report of the crime and from information that he gathers before the meeting with the witness.

"The victim should be a separate category, not a witness/victim."

⁵⁶ Art. 75-88 of the Criminal Procedure Code, available in Bulgarian language at: <https://www.lex.bg/laws/ldoc/2135512224> regarding the rules on how a victim may participate in the criminal court proceedings as a private prosecutor, private complainant or a civil claimant.

⁵⁷ Art. 67 of the Criminal Procedure Code, available in Bulgarian language at: <https://www.lex.bg/laws/ldoc/2135512224>

⁵⁸ Art. 123 of the Criminal Procedure Code, available in Bulgarian language at: <https://www.lex.bg/laws/ldoc/2135512224>

Special protection is provided also to victims with “specific needs for protection”. These are the victims who may be subject to secondary victimisation and/or re-victimisation, intimidation and retaliation, emotional or mental suffering, or whose dignity might be harmed during the interview. The “specific needs for protection” status is granted by a forensic expert, which can be ordered by the court or the investigating bodies. As already commented above, Article 22 of the EU VRD is poorly transposed. The special protection needs of victims are identified not by means of an assessment but by forensic expertise. Moreover, the expertise is not mandatory but the court or the competent bodies of the pre-trial phase can decide at their own discretion whether the victim is at risk of secondary and re-victimisation, etc. and if such expertise is needed in the first place. By definition, a victim has specific protection needs when “extra measures for protection” are needed against secondary or re-victimisation of the victim, intimidation, etc. No explicit regulation is provided on what kind of measures should or might be available.⁵⁹

Interview with an investigating police officer:

Upon providing the investigation reports to the accused (*which is a mandatory procedure*) the accused is able to see the full information about the victim, including an address, phone number, etc. *“There must be rules for the data of the victim. It is not enough to protect them only physically because nowadays there are all kinds of means of communications and victims can be reached in many ways.”*

“It is a problem of the legislation because according to the law, the accused have the right to attend everything, including meeting with the victim, for example when the accused requests a cross-examination.”⁶⁰

Interview with a district judge:

Answering the question of the judge on why the victim hid the truth from her the first time, he answered *“You want to find out the truth but I am going back again with these people there (the staff from the psychiatric hospital, one of whom was the perpetrator)”*

Then (*when he found that there was an investigation*), at first, the victim was angry because he thought that when he would be back in the hospital they would *“finish”* him.

“Many times the fear and horror (of the victim) from potential retaliation remains...when it is a small community the chance that the perpetrator and the victim will meet again is very high.”

Legal advice and legal aid: All victims have the right to legal advice in any phase of the criminal proceedings. It could be free of charge, meaning legal aid, but only if certain requirements are met, such as when a victim is placed in residential care or has a lower financial status.⁶¹

⁵⁹ § 1, para 4 of the Additional provisions in relation with Art. 144, para 3 of the Criminal Procedure Code, available in Bulgarian language at: <https://www.lex.bg/laws/ldoc/2135512224>

⁶⁰ It is to be noted that this is something the interviewee experienced in his practice but that certain regulation does exist with regard to confidentiality of the witness/victim when in risk of a greater threat – Art. 123, para 2, item 2 in relation with Art. 141 of the Criminal Procedure Code, available in Bulgarian language at: <https://www.lex.bg/laws/ldoc/2135512224>

⁶¹ See the template form for the rights of the victims, available in Bulgarian language at: <http://www.compensation.bg/sites/default/files/formularzpp.pdf>, also Art. 22-23 of the Legal Aid Act, available in Bulgarian language at: <https://www.lex.bg/laws/ldoc/2135511185>

Interview with an investigating police officer:

“The victims are afraid to fill out an application for a lawyer as they are afraid that they will have to pay.”

“The procedure for appointment of a lawyer is easier for the accused, at the discretion of the district prosecutor, while for victims there are more documents required.”

Compensation: Victims are entitled to compensation from the State for material damages suffered as a result of a crime. Compensation is limited to BGN 10 000 and is provided in cases of more severe crimes such as trafficking, rape, murder, etc. The compensation is provided to the victim upon her or his request. Victims can also seek compensation for their suffering, both material and emotional, under the general civil law, by filing a claim against the defendant.

Victims also have the right to have any expenses incurred during the criminal proceedings reimbursed, as do witnesses.

Victims are to be informed about all these rights upon their first contact with a competent authority through the template form outlined above.⁶²

Mediation and restorative justice: Mediation is the only officially recognised alternative justice mechanism in Bulgaria. Still, the legislation on criminal procedure does not regulate cases of mediation. Restorative justice mechanisms are not formally regulated in Bulgaria thus restorative justice services are neither official nor common. They are rather regarded as a philosophy and can rarely be seen being implemented in practice. Maybe only few judges and lawyers in Bulgaria are known to share this philosophy and to apply any such practices.⁶³

Other support: Victim support organisations provide free of charge psychological support before, throughout and after the criminal proceedings for as long as is necessary. They also provide victims with practical support which by law includes providing information about victims’ rights, creating a peaceful and facilitating environment when communicating with victims, providing information and advice about how to prevent secondary and re-victimisation, intimidation and retaliation, as well as helping with access to shelter or other temporary accommodation for those at risk.⁶⁴ A report on the implementation of the Victims’ Rights Directive in Bulgaria speaks of the insufficient funding of these services and of their limited coverage both in terms of physical locations and of meeting needs of the victims.⁶⁵

⁶² See the template form for the rights of the victims, available in Bulgarian language at: <http://www.compensation.bg/sites/default/files/formularzpp.pdf>

⁶³ See the Mediation Act (Art. 3, para 2 specifically) available in Bulgarian language at: <https://www.lex.bg/laws/ldoc/2135496713>, Criminal Procedure Code /no provision refers to mediation or restorative justice mechanisms/, Other links and articles: https://e-justice.europa.eu/content_mediation_in_member_states-64-bg-bg.do?member=1; <https://restorativejusticebg.com/2020/02/14/съдържание/>

⁶⁴ Art. 8-11 of the Assistance and Financial Compensation for Victims of Crime Act, available in Bulgarian language at: <https://www.lex.bg/bg/laws/ldoc/2135540550> and a bilingual version at: <https://bsr-trm.com/wp-content/uploads/2019/10/Crime-Victim-Assistance-and-Financial-Compensation-Act.pdf>

⁶⁵ The VOIARE National Report on EU Victims’ Rights Directive, p. 34-35, available in English language at: https://victimsupport.eu/activeapp/wp-content/uploads/2021/01/VOIARE_National_Report_Bulgaria.pdf

Interview with an investigating police officer:

He (*the interviewee*) does not have contact with victim support organisations, he does not even know which are the organisations operating in his region and cannot recommend one if a victim asks. He also noted as a negative that there was no feedback from the victim support organisations when they worked with a victim, as such feedback could improve the communication between the police and the victim.

Interview with a district judge:

"In the district there is no programme for working (such as social support work) either with perpetrators, or with victims"

When asked about her impressions of the work of victim support organisations, she replied: *"I do not know any."*

Disability rights related provisions

From a legislation and policy perspective, there are no special rules for victims with disabilities. In general, the laws which transpose the Victims' Rights Directive do not specifically regulate the situation of victims with disabilities. There are not any specific procedural accommodations in place to ensure their participation. The only explicit disability-oriented provisions are about persons with hearing/speech impairments, in which cases a sign language interpreter is to be appointed. Yet, to be precise, these provisions refer to the accused or to witnesses, but not to victims in particular.⁶⁶

There are some general provisions implying disability rights-related obligations, for example, the obligation of the investigating bodies and victim support organisations to take into account "the condition" of the victims, to clarify the information where necessary and create a "peaceful and facilitating" environment when in contact with the victim. Others regulate, as a general rule, the access of victims to medical, psychological and practical support.⁶⁷ There are no provisions relating to easy-to-read formats for written information, or for communicating with a person with disabilities.

Interview with a district judge:

"I have noticed that there is a serious factual barrier at first meeting (when reporting a crime) a person (with disabilities). Often due to stress and...poverty...and so I am not sure whether it is even understood what the legal help actually is...I found out that the officers have been telling them "you need a lawyer, you have to fill in an application form, go and find a lawyer". This way people were practically sent back... out of inertness".

Interview with a director of a victims support organization:

"Girls and women with disabilities who are victims of human trafficking are particularly scared of the police. They do not recognise it as an authority that is there to support them, on the contrary they recognize it as a repressive authority."

⁶⁶ Art. 142, para 2 and Art. 395z of the Criminal Procedure Code, available in Bulgarian language at: <https://www.lex.bg/laws/ldoc/2135512224>

⁶⁷ Already commented above.

There are even fewer concrete provisions with regard to the work of the court. Besides the requirement for a sign language interpreter, the only provisions which refer to any obligations of the court are broadly about guaranteeing equality and non-discrimination, explaining their rights to victims, and providing all procedural measures necessary so that the victims are able to exercise and protect these rights.⁶⁸

Needless to say, with such general rules and no specific mention of disability, we can only rely on the level of professionalism of the people working in the system and providing support in the hope that the support they provide would be tailored to any disability the victim might have, and even that they would recognise that there is a disability in the first place. In other words, we depend on wishful thinking.

Interview with a victim with psychosocial disability who is a victim of fraud and physical and psychological abuse:

One afternoon she found the inner strength and went to the police station. She came across a young police officer who was very polite and helped her report the crime. The first thing that the police officer said to her was *“J., what is happening? You are a child of a colleague of ours!”* *“He always took the time to hear me out when I went to the police station.”*

The case reached court but was returned to the police where it was handled by another police officer who was absolutely untrained to deal with such cases.

Interview with a psychologist working in a victim support organization:

“In order to get to the idea of reporting a crime there must be recognition that there is a crime at all.”

“We have a person, a woman without disabilities, a victim of violence who has been in and out of our centre for years and there is no result. In this case the person herself is not ready.” (Referring to the readiness of the victim to seek justice in general and that it is even more difficult for persons with disabilities)

When asked if there is somebody who is responsible for making sure a person with disability is properly informed about the processes, the only thing that came to the interviewee’s mind was the sign language interpreter, for the court proceedings especially. Nothing with regard to people with special communication needs.

The interviewee additionally shared that the victims with disabilities were not usually understood by the investigating authorities. On the contrary, they were often accused, for example of forging evidence. The authorities relied on the fact that persons with disabilities could not defend themselves and that nobody believed what they said even if they were able to communicate in a conventional way.

⁶⁸ Art. 11 and Art. 15 of the Criminal Procedure Code, available in Bulgarian language at: <https://www.lex.bg/laws/ldoc/2135512224>

Interview with a director of a victim support organisation:

Another challenge is participation in the criminal proceedings.

“An extremely long, tiresome, ruthless process, even to those who are highly motivated and with have the capacity to give credible testimony.”

“For them (the persons with disabilities) the challenge is even greater... in Bulgaria there are no intermediaries in the process.”

Guardianship and residential care

“In her practice she (a judge) found a lot of information about crimes against persons with disabilities where no investigation took place.”⁶⁹

The information and communication gap compromises the access to justice of persons with disabilities in Bulgaria in different ways. Persons with disabilities, for example, who are placed under guardianship are highly dependent on their guardians. The same applies to the relationship between persons placed in residential care and the caregivers in these settings. The voices of persons with disabilities in these cases are silenced by abusive legislation and an even more abusive reality.

The guardianship system in Bulgaria is very old. It was established with the Persons and Family Act in 1949 and has remained unchanged since then⁷⁰. The system allows the guardian to take decisions concerning the person’s life, effectively taking over his or her freedom to express and follow his or her own decisions. But every human has their own wishes, preferences, feelings and unique experiences. In cases of abuse and crime, the person’s experience may be very different from the guardian’s understanding of the situation. For example, the guardian may think it is in the person’s interest to be sterilised and to never have children, but the person may dream of having children and may oppose losing his/her reproductive abilities. The guardian may decide to place the person in an institution against the person’s will, even if the person has a property and a home.⁷¹ The guardian may sell this property following prior approval by the court⁷², approval which has always been rather easy to obtain. The guardian then has the obligation to use the money in the best interest of the person⁷³ but in the end it is the guardian again who decides what is best for the person. And in many cases, due to the lack of control, the original owner does not benefit at all from any of the money. These actions are possible and legal because of the guardianship legislation, but imagine what it would be like if guardianship did not exist, would not all these actions be recognised as crimes against the person with disability? So, in practice it is the existence of guardianship which gives the guardians “immunity” against criminal liability and which “legalizes”

⁶⁹ From an interview with a judge.

⁷⁰ Art. 5 of the Persons and Family Act, available in Bulgarian language at: <https://www.lex.bg/index.php/mobile/ldoc/2121624577>

⁷¹ Formally, placement in an institution is possible only on the ground of a court decision followed by an administrative order. This procedure is regulated in Art. 95-101 of the Social Services Act (SSA). Article 91 of the SSA requires that if a person under guardianship needs a social service, the wishes and preferences of that person have priority when taking the final decision. However, such choice in a system where there is no real alternatives of the residential care, and the person faces the risk of literally dying on the street, is not much of a choice indeed. In addition, the lack of supporting measures which to ensure valid communication with the person with disability throughout the process makes these provisions empty and incapable of really respecting the rights of the person with disability. The SSA is available in Bulgarian language at: <https://www.lex.bg/en/laws/ldoc/2137191914>

⁷² Art. 165, p. 4 in conjunction with Art. 130, p. 3 and 4 of the Family Code, available in Bulgarian language at: <https://www.lex.bg/laws/ldoc/2135637484>

⁷³ Art. 165, p. 1 of the Family Code, available in Bulgarian language at: <https://www.lex.bg/laws/ldoc/2135637484>

abuse and crime. And this comes together with our and societal prejudices that persons with disabilities cannot think for themselves, or take decisions in their own interests, or take responsibility for their own money.

Interview with a district judge:

“One colleague from a court in the country stood up and said “sorry, but what legally binding will can express a person under plenary guardianship” ...I think it will take time to forget about this medical model.”

Some might say that there are adequate controls over guardianship. There is the guardianship body which by law are the mayors of each municipality and in this role they have the obligation to supervise the actions of all guardians living in the territory of their municipality.⁷⁴ In reality, however, their control tends to be rather formalistic. They often choose to distance themselves from the relationship between the guardian and the person with disability, and have no actual training on how to intervene. Sometimes there is a conflict of interest which compromises their oversight role. This happens, for example, when the municipality runs the group home or institution where a person with disabilities lives, and the director of the home is appointed as guardian of that person. And it is the mayor of that municipality which runs the home, who is also expected to regulate the guardian.⁷⁵

Notwithstanding any of the issues raised, the very fact of guardianship contradicts the principles set out in the UN CRPD, most notably Art. 12 of the Convention.

Interview with a district judge:

“The interesting thing for me was that throughout the whole pre-trial phase the victim was neither interviewed, not even as a witness, nor he was personally informed about any rights. Information about the rights was given in the standard way by means of a notification addressed to his guardian who was a person without any emotional or any other relationship with the patient, this was an employee of a social care home at which the victim used to reside, thus he was not interested in any way...it was formally noted that someone was informed but there was sufficient information that this person has not been in any contact with the victim”

In terms of institutional care, there are also various forms of abuse and crimes which remain invisible to society. Many of them are the result of the very nature of the institutional care: that there is a group of people with or without disabilities, not knowing each other, gathered in a closed place against their will, locked and isolated from the outside world. Such conditions foster an environment of tension and violence which was exacerbated by the increased restrictions and isolation enforced during the pandemic⁷⁶.

⁷⁴ Art. 170 and Art. 171 of the Family Code, available in Bulgarian language at: <https://www.lex.bg/laws/ldoc/2135637484>

⁷⁵ See more about the conflict of interest in Section 6 of this report.

⁷⁶ See more about this process in Section 3 above, “Impact of COVID”.

Here are several examples of violence in institutional care:

- Violence against children and young people in a group home in Gabrovo;⁷⁷
- Violence against elderly people in an institution;⁷⁸
- Violence against one resident who is in helpless condition from another resident in the same residential institution;⁷⁹
- Fire in a home for elderly people.⁸⁰

Dealing with the violence in these places often comes down to simple actions which solve the problem in the short-term. For example, an abusive resident is transferred to another setting and separated from the victim, or a caregiver who uses slapping and shouting to discipline is dismissed and has a small sanction imposed on him or her. Opportunities to report a crime are highly compromised by the multiple conflicts of interest where the victim is probably the least able to make a report. The poverty and segregation in which the residents live for years in these settings make them wholly dependent on the care they receive there and on their caregivers, both physically and emotionally. Situations where there is abuse by a caregiver, can make it almost impossible for the victim to report the crime. It can also be that the resident and victim is under guardianship, and the guardian is the director of the group home or institution. Will the director report a crime or abuse that took place in the institution that he or she is responsible for and liable for? Often violence and abuse in institutional settings are not even recognized as crimes, perhaps not even acknowledged as something wrong by the residents or the caregivers, and often not even by the victims themselves. In such cases, abuse has been normalised.

Preventing violence and crimes in these residential settings, both in the big old institutions and the new small group homes, is practically impossible. This is because of how these settings are organised and how they operate. Their institutional nature fosters an environment of abuse and a lack of any real protection for the victims behind the walls. The prevention of violence in institutional care is the prevention of institutionalisation itself.

In order to prevent the discrimination and victimisation of persons with disabilities who currently live in institutional settings, the State must ensure that residents have access to support from their friends, family and professionals from outside, who have no conflicts of interest and who can independently and objectively stand up for the rights and interests of the person.

⁷⁷ The violence became public in 2018 and became public only because of a conflict between members of the personnel in the group home. All national medias covered the scandal. Here is one link: <https://www.mediapool.bg/potresavashto-nasilie-v-dom-za-detsa-i-mladezhi-s-uvrezhdaniya-v-gabrovo-news274594.html>. At the end, none of the victims were constituted in any of the proceedings, none received justice, compensation or even excuse. See more in Section 6 below.

⁷⁸ The case became public because of the proactive relatives of the victims. Information for the case is available at: <https://nova.bg/news/view/2021/10/08/342217/сьмнения-за-насилие-в-дом-за-възрастни-хора-в-софия-видео/>. No information is available whether any criminal procedure was started after all.

⁷⁹ In this case the victim was a 9 year-old boy with disability bounded to the bed by another resident at the same group home. He was left bounded to the bed for a whole night, although when later interviewed, the personnel stated that they did not see anything. The medical experts concluded that there was a high chance that the fingers of the boy were amputated due to the incident. Information about the case is available at: <https://btvnovinite.bg/predavanja/tazi-sutrin/v-socialen-dom-dete-e-s-tezhki-naranjavaniya-sled-vrazvane.html>. No information is available whether any criminal procedure was started.

⁸⁰ On 22 November 2021 there was a big fire in an institution for elderly people. 9 of the residents died. Information about the case is available at: https://nova.bg/news/view/2021/11/22/347505/голям-пожар-в-старчески-дом-жертвите-са-девет-видео/?fbclid=IwAR06pye19iSznfZRHcJ10e_PxR5LN78XbD_q1Q2rBhD5sGNtVpweh34dJs4

Interview with two victims of abuse living in a residential care setting:

After they moved to the protected home they had a problem with one of the residents there. *“He was totally like our shadow... He went too far and this place was not a protected place anymore.”*

This went on for a year. The staff knew what was going on but nobody did anything. The interviewees told the staff about it, but they just replied that this man is ill, so they cannot do anything about it. They remembered what the staff said: “He has a mental illness and he doesn’t understand things”...and that we are being intolerant. “You need to be more patient”

The interviewer asked if they have filed a report with the police and they said that they didn’t think of doing that and that they just reported all incidents to the staff.

They repeated several times that there was a lack of support (*by the staff*) in developing a sense of independence and that if they (*the interviewees*) had any such sense, it was because of their own personality.

Medical model and prejudice

In other cases, victims with any kind of mental disability are not considered credible witnesses. So, what often happens is that an expert opinion is given at an early stage of the police investigation by a psychiatrist who usually comes to the conclusion that because of his or her disability the person is incapable of an objective perception of what happened. The expert opinion is most often grounded in the medical records of the person and on what is theoretically known about the diagnosis and the extent to which it is compatible with being a witness. Once an expert confirms that the victim cannot be a credible witness, this person is no longer relied upon as a source of evidence at any stage of the criminal proceedings. And perhaps even more significantly, the person is also automatically excluded from personal participation in all stages of the criminal proceedings, not only as a witness but also as a victim.⁸¹ At the same time, no mechanism exists to allow for the victim to appeal his or her exclusion. Our research reveals that sometimes victims with disabilities are excluded without even an expert psychiatric opinion, but on the basis of a passing suggestion by a policeman during the investigation that the person ‘looks unreliable’.

Interview with a district judge:

“but he reacts adequately...he can make a conversation and it corresponds to the actual situation...I am saying this because there was an opinion that he would not be interviewed because of his illness, that he could not give credible testimony to what happened. This was a priori concluded by one of the doctors from the hospital who was interviewed as a witness... Q: There was not even an expert opinion you say? A: Yes., Q: Only a suggestion? A: Yes...He (the victim with disabilities) was excluded as a source of information.”

⁸¹ From the practice of the authors as lawyers, see also the case study below in Section 6.

Interview with a criminal lawyer:

When it comes to witnesses the exclusion may happen even without an expert report – the police decide on the spot not to include a person in the proceedings. They begin to establish who the witnesses are – if they see a person with disabilities, they automatically assume that this person is unreliable and may cause them inconvenience so they just decide not to interview that person. Unless another witness mentions the person and says that he or she (*the person with disabilities*) was there (*at the scene of the crime*). Then the police must do the interview.

The interviewee gave an example of a traffic accident: the police came to the scene, there was a person with disabilities wandering around – the police did not mention him anywhere in the protocol because he *“didn’t see, didn’t hear anything, it looks like this person is not ok (using police slang)”*.

“I am saying this in order to stress the fact that there may be some difficulties to include persons with disabilities in the criminal proceedings, as victims or otherwise. And maybe that was the reason we haven’t ever needed an interpreter.”

“I cannot think of a special regulation in the law where it states that the court and pre-court procedures need to take account of support needs if there is a person with disabilities involved.”

Another even more disturbing phenomenon is that the ability of victims with disabilities to witness or to experience something is questioned in such a way that it can automatically mean that any further opinion on or investigation into the suffering of the victim as a consequence of the crime would be highly presumptuous.

Interview with a district judge:

“One of the family members of a person who died in a car crash was a child with disabilities. The first instance court decided that since the child had disabilities he/her could not suffer damages (emotional) from the death of his/her parent.”

The most significant of all problems is based on similarly deeply held misconceptions, concerning the significant number of crimes against persons with disabilities which remain unidentified. Not only by the professionals in the system but also by the victims and their families.

Interview with a person with psychosocial disability and victim of sexual abuse:

She shared her experiences of sexual abuse with the psychiatrists at the psychiatric hospital where she was hospitalised. They were not able to tell what was a real memory and what was a hallucination. They wrote in her case history: “a victim of physical, psychological and sexual abuse”. The doctors did not use any additional methods nor did they even consider other approaches to check if these memories were real. She thinks that they did not believe her.

“He told me how they turned me into a prostitute without me knowing and how they made money of it.”

Some of the things they made her do happened while she was in a psychiatric hospital. Nobody in the hospital even suspected that any of these things was happening to her.

She also told her mum about it, but she thought “it was because of the medications as my treatment had been changed”. Her mother also blamed the diagnosis “Oh, my illness...I do not make that many excuses out of it as they do”, “It is just easier for them - she is ill and that’s all”.

She never thought of reporting what was happening to the police. [...] she never imagined that this was some kind of crime, “I did not know it was something I should report”. She also did not know how she would prove it and she was afraid that they might call her “prostitute”, “crazy”, “the stigma, you know”.⁸²

Supporting specialists

We could say there was a kind of breakthrough in the legislation recently. With the adoption of the Persons with Disabilities Act in 2019, supported decision making was introduced for the first time in our legislation and it is particularly linked to access to justice of persons with disabilities. According to the new provisions, any person with disabilities who experiences difficulties in making legally binding decisions, including in court proceedings or in any legal proceedings, is entitled to measures for supported decision making. The measures involve the intervention of social services where, according to the law, the professional making the intervention must have a relationship of trust with the person in need.⁸³

The new act establishes, for a first time, an obligation to provide trainings for the professionals in the judicial system, including police officers, on how to work with persons with disabilities. We found no information on whether any trainings have already been conducted or are planned.

It is far from clear how these new provisions will be put into practice. As yet, there is insufficient guidance, nor is there any case law on implementation. The justice system, including the courts, seem not to have had any training or be otherwise prepared for how to apply these regulations on supported decision making. In the course of our work we have met several organisations focused on gender based violence⁸⁴ which follow the practice of ensuring a support person accompanies

⁸² From an interview with a person with psychosocial disability who was a victim of sexual abuse.

⁸³ Art. 65-67 of the Persons with Disabilities Act available in Bulgarian language at: <https://www.lex.bg/bg/laws/ldoc/2137189213>

⁸⁴ The director of one of these organizations was interviewed for the project.

the victim throughout all the interviews. As a rule, the support person is an expert, usually a psychologist, who has established a trusting relationship with the victim and whose aim is to help the victim feel more confident and stronger during the proceedings. There may be more organisations with similar practices but given there is no publicly available information, and we have heard about such services during our work as lawyers in the field, we assume that if there are in such other organisations, they probably work with small numbers of victims in limited locations.

Effective communication with a person with disabilities is crucial if they are to be heard, understood and access justice, and the role of intermediaries/communication specialists is fundamental to this. Such communication specialists are able to establish and validate communication with persons with disabilities. Their role needs to be independent and distinct from the role of the support person. Whereas the communication specialist has a duty to the court and to facilitating effective communications between victims and legal professionals, the support person rather creates a trusting relationships with the person with disabilities who is a victim of crime, and helps them to exercise their rights in more consistent and successful way. The support person should not take on more obligations than building and maintaining a trusting and supportive relationship with the victim. The idea behind this kind of supportive relationship was developed in the Draft Law on Persons and Supporting Measures⁸⁵ although to date this law has not been adopted by the parliament.

Interview with a director of a victims support organization:

The professionals from the Crisis Centre try to help by being present during interviews. They ask the investigators to let them in, in most cases they manage to attend even though they are not welcomed. The interviewee remembered one interview where the process was impossible – the questions were being asked in an incomprehensive manner, which required the interviewee to act as an interpreter.

“There is no legal regulation for this.” (for support in the communication with the authorities)

“... the probability of reaching a fair ending, a retribution in these cases is really low because these are cases that concern persons with disabilities (more often mental disabilities) and the latter are not considered reliable witnesses – they can give statements during the pre-trial phase but when it comes to the court proceedings – there are usually big shark lawyers working for the perpetrator who discredit the credibility of the victims and in the end their statements are being rejected.”

“This is a lack of access to justice.” (with regard to sex crimes, human trafficking and women with disabilities)

The interviewer shared a conversation she had with a police representative who said that if they were having a witness with disability, they were assuming that this statement was not of worth and dismissed it all along. Sometimes they did not even bother to take the statement unless there was an organisation that was advocating or supporting the person.

⁸⁵ The draft of the Persons and Supporting Measures Act is available in Bulgarian language at: <https://www.parliament.bg/bg/bills/ID/44032>

The interviewer asked if there was a practice for persons with disabilities with regard to questioning them which was similar to the so called “blue rooms” for questioning children in a safe place. The answer was that there was not such practice in Bulgaria for adults.

The interviewer shared an observation that many specialists usually said *“the person didn’t understand (with regard to persons with communication difficulties)”*. *“Here the question is – the person doesn’t understand or we don’t understand him/her? And the next step – what do we do in order to understand each other’s languages?”*

Interview with an investigating police officer:

About involving other specialists in the communication, he could think of *“one case of a deaf person when they used a communication specialist, psychologists for children and an interpreter for foreigners”*. He explains the need of intermediaries as they would help a lot and the investigating bodies *“would not wonder if something specific is needed for that person or not”*.

In addition to the support roles outlined, and based on our experience working with people with disabilities who are victims of crime, we tend to believe, that the presence of someone chosen personally by the person with disability would be another useful accommodation. This person could be a friend or relative or someone else in whose presence the person with disability feels safe and supported, relaxed and eager to talk. The way we would envisage this working, is that the victim of crime with a disability would be free to choose someone to accompany him or her during any of the criminal proceedings. This role is something the EU Victims' Rights Directive speaks of in Article 3(3) with regard to the victims' right to understand and to be understood. For victims with disabilities the accompanying 'person of choice' needs to be considered as someone of even greater importance.

6. Denied their day in court: A short case study of how the victims of a crime with disabilities are invisible and unheard

At the beginning of 2018 a public scandal was caused after some videos showing violence against persons with disabilities were leaked in the media.⁸⁶ The persons in these videos were verbally and physically abused by the staff of the group home where they were residents. Among the various proceedings that were initiated on the basis of the videos, there was also a case brought for discrimination. The Equality Body was actually the first authority to publicly announce that there was indeed a violation and soon started a legal case for discrimination under its own initiative. The proceedings went faster than usual and the Equality Body found the perpetrators guilty of discrimination, together with the director of the group home as the one responsible for the management of the setting. A small monetary sanction was imposed on each of them.

However, none of the victims were involved or represented during the proceedings, despite their obvious interest in the case as the victims and residents of the home against which the case was pursued. In addition, some of the victims were under the guardianship of the same director who was accused and later found guilty of the discrimination. In effect, the victims of these crimes were denied their 'day in court' and were unable to participate in the proceedings or present their side of what happened. If their rights had been respected, they should have been able to do this.

The team of lawyers working on the case, amongst whom were the authors of this report,⁸⁷ decided to file a separate claim before the Equality Body, demanding access to justice for the victims by ensuring their direct participation in the proceedings and appointing special representatives as the law requires in cases of such conflict of interest.⁸⁸

In their claim they also demanded that a broader investigation should be carried out involving the alleged perpetrators and the direct victims as well as those who witnessed the violence. The Equality Body rejected the claim due to lack of legal standing, and the courts rejected a further appeal on the same grounds.

In the following years, the team of lawyers went before every possible institution in Bulgaria - including courts, prosecutors, child protection services, social assistance departments, municipalities, and so on - to demand that the victims receive real justice. In 2021, as a final effort, they requested personal access to the victims in order to explain their rights to them, asking permission for this directly from the directors of the residential settings where the victims were living. The team were seeking to be granted a power of attorney, and eventually become their lawyers. The point was to provide a way for the voices of the victims to be heard in the justice

⁸⁶ More about the media scandal and the facts revealed in the various media investigations and reports:

<https://btvnovinite.bg/bulgaria/kmetat-na-gabrovo-uvolnena-e-direktorkata-na-dom-hrizantema.html>

<https://bntnews.bg/bg/a/nasilie-nad-detsa-s-uvrezhdaniya-v-dom-khrizantema-v-gabrovo>

<https://nova.bg/news/view/2018/01/25/205099/първият-сигнал-за-насилие-над-деца-в-дом-хризантема-е-от-октомври>

⁸⁷ The names of the other lawyers: Tsvetelina Marinova, Miroslav Moravski and Vladimir Mirchev. In 2022 they established a NGO together with other experts, named "Network of Independent Experts – NIE", based in Sofia, Bulgaria.

⁸⁸ The conflict of interest is generally understood as a situation in which the interests of a person are conflicting in a way that this conflict may impact the objective outcome of the situation.

system, so that they had access to justice, in compliance with their rights as victims. As a result, the lawyers were permitted access to one victim, who had been transferred to a different institution after the media scandal. The team was promised the opportunity to meet with the victim for as long as needed to establish a good communication with her and receive a power of attorney. Yet, after only two meetings the lawyers were again denied access to the victim, with the justification that the municipality did not want to become involved in a political conflict⁸⁹.

The psychiatric-psychological forensic examinations which were carried out as part of the police investigations, concluded that all three victims were not credible witnesses because of their disabilities. Because of this they were officially excluded from the criminal proceedings. Or, more precisely, they were not allowed to participate personally in the criminal proceedings, their opinions and feelings were not taken into account or even considered to exist in the first place.

It is in this way that persons with disabilities are made 'invisible' in the criminal justice system, even though justice is being sought to right the wrongs committed against them as victims.

⁸⁹ This was told by the deputy mayor to one of the lawyers in person.

7. Key findings, Conclusions and Recommendations

As a general comment, the criminal justice system in Bulgaria seems to invalidate the specific needs and rights of persons with disabilities, and especially when the person is a crime victim. To start with, the word “disability” is not included in any of the national criminal justice regulations.

In the context of the project, we would say that there is barely any legislation or policy, which recognises the specific communication needs of a victim with disability. And, as our research shows, the practice is no different. Professionals in the criminal justice system, and even those who interact with persons with disabilities on a regular basis, lack both understanding and training on how to support the rights of persons with disabilities who are victims of crime. There are a small number of exceptions, such as some centres providing support to victims of trafficking where the victims often have a psycho-social or intellectual difficulty and supporting these individuals is part of the everyday work of these centres. But these are the exception, and even such good practices struggle to make an impact given the reality in the country.

The most disturbing phenomenon is that many crimes against persons with disabilities remain unreported. One reason for that is that the crimes against persons with disabilities are often not recognised as criminal acts. Sometimes practices that are abusive, inhuman and segregating are regarded as the only possible for a person with disabilities. For example, persons with disabilities are often denied their right to work or to live independently. They are deprived of their liberty in residential care settings or psychiatric hospitals, or are subjected to medicalisation, etc. Prejudice and poor training of professionals involved are one side of the problem.

Another issue is the lack of real community-based services. This results in the high number of persons with disabilities in the country who are highly dependent on their caregivers, and especially those who are placed in residential care settings. There are also persons under guardianship and those who live in the community and are taken care of by a relative. In all these cases, the lack of alternative support makes these caregivers/guardians a life-maintaining factor for the person with disabilities, someone without whom they would not be able to do anything, practically and legally. This level of co-existence often results in abusive relationships, which may be hard to recognize as such, at times with the caregiver/guardian as the perpetrators themselves, giving rise to conflicts of interest. All these issues create an environment for abusive, inhuman and degrading treatment, and these circumstances and factors must be part of the discussion about how to create disability-friendly criminal justice.

The barriers to interaction with the outside world must also not be neglected. Persons with disability struggle with the inaccessibility of public infrastructure, including police and court premises, along with the lack of procedural accommodations. Persons placed in residential care need to overcome the additional barrier of having to obtain permission from their caregivers to leave the setting, while they are usually made to justify where they go, with whom and why.

In these cases, reporting a crime basically depends, for one reason or the other, on the caregiver or guardian. Even if they are not the perpetrator of the crime, they generally do not have the

training and information on how to recognize a crime, how to report it, and what consequences they might expect. Ineffective mechanisms for avoiding re-victimization and retaliation make the victim's fear of the perpetrator another factor for the high number of unreported crimes.

The medical approach to the disability also plays its role in the problem. Many times, any change in the behaviour of a victim with a disability, which might well be their reaction to the crime they experienced, is attributed to their disability or diagnosis, and, in many cases, is treated medically. The same approach further impacts the investigation if the crime gets reported at all. Victims with disabilities are more often than not excluded from criminal justice proceedings, as they are believed to be unreliable sources of information and a burden to the justice process rather than essential participants. The evaluation of their reliability and credibility is usually carried out by a psychiatrist as part of a forensic expert examination. The ability of the victim to witness and experience the crime is often assessed in a presumptive manner, based in most part on the theoretical knowledge (and in many cases, more on the prejudices) of the diagnosis and the medical reports of the person. The assessment of the amount of trauma and emotional damage suffered by a victim with disabilities follows the exact same pattern, which may even automatically compromise the identification of the incident as a crime. And what is more, even where an official assessment takes place, the specific support needs of victims with disabilities, including in terms of communications, are not part of the process.

Gaps can be identified on various levels. From a legislative perspective, maybe the most significant deficit of all is that "disability" is not mentioned anywhere in the Bulgarian criminal justice legislation. Although there is already a good level of regulations with regard to the rights of persons with disabilities, yet the criminal justice legislation does not connect with these regulations in a way that recognises the specific needs of the victims with disabilities. On the other hand, new legislation, for the first time regulates supported decision-making as a tool for facilitating access to justice for persons with disabilities. Nevertheless, such rules may remain on paper, as they have done so far, unless policy makers realise that supported decision-making requires a good system of community-based services or at least the proper understanding of such services. Training specialists who are able to specifically provide services for supported decision-making can also be a start.

Given all these misconceptions and deficiencies in the regulations, it is effective communications with persons with disabilities that serve such a key function in the justice process. Thus, the key finding and recommendation from our research is that our criminal justice system primarily needs justice intermediaries/communication specialists who would facilitate and validate communications with victims with disabilities. These would be experts who could "translate" what the victim with disabilities really experienced and suffered.

It is however to be noted that meeting the special communication needs of victims with disabilities is only a part of the process aiming at their inclusion in the criminal justice proceedings. In this regard, we would also recommend that every victim with disabilities is subject to an individual assessment of his or her support needs to facilitate the effective participation of the victim in all court and out-of-court procedures. It goes without saying that along with the above, professionals in the justice system must receive proper training in order that they are able to recognise when an intermediary and individual assessment are needed in the first place.

In the end, we would like to share an additional observation with regard to a particular deficiency of the Victims' Rights Directive, that has an impact on the rights of victims in general. This is the ambiguous definition of a "victim" which has been copied into the Bulgarian criminal justice legislation. The way the definition is worded creates confusion as to the moment from which a person who has experienced a crime is to be considered a "victim". It can be interpreted in a way that victim status is only given once the act is proven to be a crime. If so, there would be a period when the essential rights of the victim would be disrespected. Therefore, what appears to be crucial is a revision of the definition such that the victim is guaranteed access to their rights as a victim from the moment of the suspected crime.