

Voices for Justice

Victims of crime with disabilities in Croatia



Voices for Justice: Victims of crime with disabilities in Croatia

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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) and the United Nations Convention on the Rights of Persons with Disabilities (CRPD). The project has the following partners:

- Coordinator: Validity Foundation
- Bulgaria: Chance and Support
- Croatia: Victim and Witness Support Service, VWSSC
- 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)

Victim and Witness Support Service

Victim and Witness Support Service Croatia (VWSSC) was founded in 2006, and since that time it has been transforming the situation for victims and witnesses regarding their rights and their role at the trial by providing comprehensive support and information. VWSSC provides emotional support, practical information, and legal and psychosocial services to victims and witnesses of crimes, at the same time it seeks to improve the quality of services for victims and witnesses more widely. In 2015, VWSSC was granted the authority to provide primary legal aid and has been providing it ever since. Our beneficiaries are people who are victims of crime, including many who are vulnerable. We work today through offices in four Croatian cities, and provide emotional support and legal information via a 24-hour toll-free EU-mandated 116 006 number.

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Executive Summary

Persons with disabilities who are victims of crime have limited awareness of their rights and what support and protection is available to them. At the EU level, the Victims' Rights Directive¹ (hereinafter 'VRD') provides minimum standards on the rights of all victims. The access to these rights is, however, difficult for persons with disabilities as they need specialist support combined with reasonable and procedural accommodation² to be able to exercise their rights. Public institutions, such as the police, state attorneys' offices and courts, should be responsible for ensuring that proper accommodation for persons with disabilities is made available. However, the need for such adjustments is often overlooked which renders their equal participation in criminal proceedings impossible. The project findings show that police officers and other stakeholders have little knowledge of how to approach persons with disabilities or how to adapt their actions to their needs. Training for police officers on this issue exists, but unfortunately it is not a general practice and only provided sparsely in Croatia.

Individual needs assessment is a necessary and appropriate tool to ensure the proper participation of persons with disabilities in criminal proceedings. In theory, all institutions that come in contact with the victim must carry out an individual needs assessment to identify the appropriate accommodation and protective measures for ensuring their right of participation. Even though this assessment would serve the purpose of personalising the treatment that victims receive from the legal system, it is rarely used in practice and it is not recognised as a tool for guaranteeing the participation of people with disabilities in criminal proceedings. The main reason behind this might be the current way in which individual assessment is framed; it is not primarily focused on support, communication and information needs, but rather on protection needs and on preventing intimidation and secondary victimisation during the procedure.

Apart from the lack of individual needs assessment, the physical accessibility of buildings for persons with disabilities constitutes another obstacle and a primary issue in exercising their rights. While the Ombudsman for Persons with Disabilities received a significant number of complaints, and some adopted regulations have led to minor positive developments, many public institutions remain architecturally inaccessible.

Safe houses for victims of domestic violence are also problematic. They are not properly equipped, their staff are usually not or insufficiently qualified to work with persons with disabilities, and therefore they often refuse to provide them with shelter. This is especially the case for persons with physical disabilities and intellectual impairments. Authorities often refer these victims to other institutions, mainly to nursing homes, in the false belief that these institutions are better suited for victims with disabilities.

The aforementioned list of shortcomings is not exhaustive. In this respect, it must be emphasised that due to the lack of available public information and data, it was difficult to gain a comprehensive

¹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

² 'Reasonable accommodation' refers to necessary and appropriate modifications and adjustments so that a person with disability can exercise their rights on an equal basis with others. Similarly, 'procedural accommodation' refers to modifications and adjustments to procedures in trials and court hearings, so that a person with disability can exercise their rights without experiencing any obstacles or barriers.

picture of the problem. In Croatia there is no centralised database and different data and statistics are held separately by different institutions. According to the Ombudsman for Persons with Disabilities, the lack of statistical data on persons with disabilities is a major problem in the country, resulting in a lack of basic knowledge and insight into their circumstances.

Finally, it must be emphasised that Croatia signed the United Nations Convention on the Rights of Persons with Disabilities (hereinafter CRPD) and the Optional Protocol to the Convention on the Rights of Persons with Disabilities in 2006 and ratified them in 2007.³ The Law on their ratification was adopted in 2007,⁴ and its implementation is planned for through the National Strategy of Providing Equal Opportunities for Persons with Disabilities. It is important to note that the National Strategy from 2017 to 2020 is already completed. In 2020, a draft of the new Strategy was drawn up, but it had not yet been adopted at the time of preparing this report.

³ <https://ijrcenter.org/country-factsheets/country-factsheets-europe/croatia-human-rights-factsheet/>

⁴ *ibidem*

1. Introduction

Persons with disabilities face systemic, multifaceted, and discriminatory barriers to accessing justice. What does justice look like for a victim of sexual violence, whose credibility is questioned based on her psychosocial disability? How can a victim with an intellectual disability report a crime to the police, if the officers cannot communicate properly with him 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 the rights are about the provision of information, effective communications and 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 now 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 law⁵ and to access to justice,⁶ at the same time as asserting the rights to equality and non-discrimination,⁷ 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."⁸ Together with the Victims' Rights' Directive, this means that, in law, persons with disabilities who are victims of crime have 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 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 how the implementation of the Directive and the CRPD has impacted 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

⁵ UN CRPD Article 12.

⁶ UN CRPD Article 13.

⁷ UN CRPD Article 5.

⁸ UN CRPD Article 4.

reports making up the Voices for Justice project, seeks to highlight the main experiences of people within the criminal justice system, identify promising practices, and inform the development and implementation of the legal and policy framework in Croatia.

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

2. Research methods

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

A total of 17 interviews took place between 1st of April and 14th of June 2021. Interviews were conducted with professionals (lawyers, police officers, specialists in educational rehabilitation, social educators, psychologists, sociologists, social workers) working in civil society organisations or institutions and the semi-structured interview method was used.

During the research, Victim and Witness Support Service Croatia focused on working with and informing several key organisations in the field, in particular the Human Rights House in Zagreb, the Ombudsman for People with Disabilities and the Ombudsman office in general, the Ministry of Justice and Administration and the Ministry of Social Politics, the Croatian Legal Centre, and the Alliance of NGO's for Persons with Disabilities. The research was focused on the obstacles experienced by people with disabilities in the justice system, including physical accessibility, lack of information, inadequate access to information, and the lack of interpreters.

Furthermore, VWSSC also reached out to people with disabilities to hear directly about their experiences in the criminal justice system. However, we encountered a lot of difficulties in this aspect, and were not able to find people with disabilities who had experience in the criminal justice system and were willing to participate in the research. The research took place during the COVID-19 pandemic which also made it harder to carry out interviews.

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

3. Context for people with disabilities in Croatia

The Republic of Croatia has a total population of 4,284,889 according to the most recent census of 2011, with 48.2% male inhabitants and 51.8% female⁹. In Croatia, as of 9th September 2021, there were 586,153 persons with disabilities, of which 335,050 are male (57%) and 251,103 female (43%). Persons with disabilities therefore make up about 14.4% of the total population.¹⁰ The largest number of persons with disabilities, 263,526 (45%), is between the age of 20 and 64 years and are considered of working age, while 258,564 (44%) persons are in the age group 65+. Disability is also present in children, 0-19 years, as a share of 11%.¹¹

Definitions of disability

Unfortunately, in Croatia, legal and other documents do not provide a unified definition for “disability.” It is also problematic that different sectors (e.g., social and justice systems) use different terms. Furthermore, definitions are vague and mostly based on the out-dated medical model which focuses on diagnosis and treatment, and often the assumption that a person with disabilities will not be able to function as an equal member of society. In line with this overall approach, some of the definitions continue to use derogatory language such as “mental disorder”, which is offensive and stigmatising to people with disabilities. Aspects of the social or human rights model promoted by international law emphasising that “disability is a natural part of human diversity that must be respected and supported in all forms”¹² are rarely covered by Croatian definitions.

A rare Croatian example of compliance with international law (specifically with the CRPD), is the Law on protection from domestic violence. The Republic of Croatia was among the first to ratify the CRPD in 2007¹³. According to the Law on protection from domestic violence - in line with the CRPD - a person with disabilities is “*a person who has long-term physical, mental, intellectual, or sensory impairments that, in interaction with various barriers, may prevent his or her full and effective participation in society on an equal basis with others.*”¹⁴

The previously mentioned lack of clarity and inconsistencies are, however, generally reflected in Croatian laws. For instance, the constitution, without providing a definition of disability, only declares that the state shall devote special care to the protection of persons with disabilities and their inclusion in social life.¹⁵ Under the Law on the Croatian Register of Persons with Disabilities,

⁹ See the https://www.dzs.hr/hrv/censuses/census2011/results/htm/H01_01_01/H01_01_01.html for additional information on specific counties and more.

¹⁰ Croatian Institute of Public Health: Report on Persons with Disabilities in the Republic of Croatia, available at: <https://www.hzjz.hr/periodicne-publikacije/izvjesce-o-osobama-s-invaliditetom-u-republici-hrvatskoj-stanje-05-2019/>

¹¹ *ibid*, see the source for more detailed information on the prevalence, and general statistic.

¹² Disability Advocacy Resource Unit: Introducing the human rights model of disability, available at: <http://www.daru.org.au/how-we-talk-about-disability-matters/introducing-the-human-rights-model-of-disability>

¹³ Decision on the promulgation of the Law Acknowledging The Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities, available at: https://narodne-novine.nn.hr/clanci/medunarodni/2007_06_6_80.html

¹⁴ Law on Protection from Domestic Violence (Zakon o zaštiti od nasilja u obitelji), Art. 8 (9), available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2017_07_70_1660.html

¹⁵ Constitution of the Republic of Croatia, Art. 58, 22 December 1990, available at: https://www.sabor.hr/sites/default/files/uploads/inline-files/CONSTITUTION_CROATIA.pdf

a person with disabilities¹⁶ “is every person that, because of physical and/or mental disability, temporary or permanent, former, current, or future, made at birth or later in life for any reason, lost or is diverging from expected physical or physiological structure and is in limited or inadequate capabilities in activities and range that would be considered regular for people in certain areas.” The terms for adults and children with disabilities also differ. The term used in the case of adults is “a person with disabilities”, while in the case of children the term is “a child with developmental difficulties”.

The Law on the Protection of Persons with Mental Disabilities defines “mental disorder.” Based on the relevant provisions, “mental disorder” falls within the valid internationally recognised classifications of mental illness. “Severe mental disorder” is a “disorder” referred to in the previous definition that by its nature or intensity, limits or aggravates the mental functions of a person to the extent that he or she needs psychiatric assistance.

Where criminal law is concerned, neither the Croatian Criminal Code (hereinafter CC) nor the Criminal Procedure Code (hereinafter CPC) defines “disability” or “a person with disabilities or identifies them as a specific group of victims” The term disability is generally used and persons with disabilities are considered as “an additional vulnerable group”. Disability, however, can still have an impact in criminal proceedings; for example (i) when a crime is committed against a person with disabilities, disability may be assessed as a particular vulnerability¹⁷ or (ii) if a person with a severe disability is subject to coercion, prosecution can be initiated ex officio, not only by the person subjected to the offence.¹⁸ Although the CPC contains no explicit reference to the rights of people with disabilities, who in this situation are grouped with older people, it still allows for some specific rights, such as, the right to be examined at home.¹⁹

Categories and rights of persons with disabilities set out by law can be found in a document called “Registry of Persons with Disabilities”. It consists of the following areas: social welfare, health, pensions funds, education, professional rehabilitation, employment and work, accessibility, mobility, culture, tourism, political and public life, tax funds, customs, veteran’s system. From March 13th, 2020, access to the registry is available online, and it provides access to documents necessary for employment, approval of credit for housing, and various other needs.

Taxonomy and statistics on crime and criminal offences

The Ministry of Interior²⁰ and the State Attorney Office are the bodies responsible for publishing annual reports including information on crimes. Their reports, however, solely indicate the number of criminal complaints received by the police (53,000 criminal complaints in 2020)²¹, and

¹⁶ Law on the Croatian Register of Persons with Disabilities (*Zakon o registru osoba s invaliditetom*), Art. 2, 11 July 2001, available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2001_07_64_1049.html

¹⁷ Serious crimes against sexual freedom Article 154 „2. to a victim who is particularly vulnerable due to his or her age, illness, addiction, pregnancy, disability, severe physical or mental impairment...”

¹⁸ See article 138.sub.2.of Penal Code – criminal offense of coercion.

¹⁹ Criminal Procedure Code (*Zakon o kaznenom postupku*), available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2011_10_121_2386.html

²⁰ According to our VWSSC official inquiry on 27/5/2021 through official Ministry of Interior channel: pitanja@mup.hr.

²¹ Annual Report of Ministry of Interior 2020, available at: https://www.sabor.hr/sites/default/files/uploads/sabor/2021-06-24/134504/IZVJ_RAD_POLICIJE_2020.pdf

prosecutors (39,000 complaints in 2020).²² Additionally, there are some police statistics in relation to domestic violence. Unfortunately their scope is also very limited therefore cannot be used for proper analytical assessment.

The incidence of domestic violence among people with disabilities is routinely reported in the Ombudsman for Persons with Disabilities Annual Reports, under the headline “Freedom from exploitation, violence and abuse”, drawing on the official figures recorded by the Ministry of the Interior²³. From 2017 to 2020, the reported cases of domestic violence have been around 10,000 a year, with reports of between 90 and 140 people with disabilities affected annually. It is likely, however, that these figures are a significant underestimate of reality, given how hard it is to report these crimes and the dependent position of so many victims.

Table 1

Year	Reported cases of domestic violence			Reported cases of domestic violence against people with disabilities		
	Total	Female	Male	Total	Female	Male
2020*	9,888	6,271 (63%)	3,617 (37%)	124	71 (55%)	53 (45%)
2019*	10,674	6,929 (65%)	3,745 (35%)	137	76 (55%)	61 (45%)
2018*	11,271			133	74 (55%)	59 (45%)
2017*	12,432			92	52 (56%)	40 (44%)

* Figures are taken from the following reports:

- Ombudsman for Persons with Disabilities’ Annual Report for 2020
- Ombudsman for Persons with Disabilities’ Annual Report for 2019
- Ombudsman for Persons with Disabilities’ Annual Report for 2018

With respect to hate crimes against people with disabilities, similar issues emerge, i.e., there are either no statistics or they are very limited. For instance, the 2020 Annual Report of the Ministry of Interior contains no data regarding disability as a protected characteristic in case of hate crimes.²⁴ The same goes for the State Attorney Office’s Annual Report of 2020. The “Hate crime in Croatia - Empirical research of cases from the period 2013 – 2018” report, produced by the Croatian Legal Centre within the framework of the IRIS project reports that only 1.6% of the victims of hate crimes covered by the project were persons with disabilities. However, successful prosecutions of hate crimes were difficult to pursue as it could be hard to establish the victims had been targeted because of their language, disability or gender identity.²⁵ The low official figures and findings concerning victims with disabilities in the IRIS project are in line with the Fundamental Rights Agency’s findings of 2015,²⁶ i.e., “victims of disability hate crime are often reluctant to report their experience” and “if incidents of disability hate crime are reported, the bias motivation is seldom recorded, making investigation and prosecution less likely.”

²² Annual Report of State Attorney 2020, available at: <http://www.dorh.hr/dorh29042021>

²³ Report of Ministry of the Interior, the Police Directorate, on the recorded situation and evidence related to domestic violence offenses during 2020

²⁴ Art. 87 (21) of ‘CC’

²⁵ Croatian Legal Center: Hate Crime in Croatia – Empirical Research of Cases from the period 2013 – 2018, p.32, available at: http://www.hpc.hr/wp-content/uploads/2021/03/Research-Report-Hate-Crime-in-Croatia_EN.pdf

²⁶ FRA: *Equal protection for all victims of hate crime - The case of people with disabilities* (30 March 2015), p. 1.

As mentioned previously, concrete statistics on victims and witnesses with disabilities are missing and there is no information available on specific offences involving victims with disabilities. As a result, it is highly difficult to classify crimes in relation to people with disabilities or to make clear conclusions. In addition, the lack of detailed and diverse statistical information concerning people with disabilities is a significant issue as it prevents the development of appropriate protection measures and specialised support in criminal proceedings, including services supporting communications and information.

Existing services and benefits regarding access to information and communication

The Ombudsman for Persons with Disabilities²⁷ (hereinafter ‘the Ombudsman’) is an independent institution. Its key role is to protect, monitor and promote the rights and interests of persons with disabilities set out in the Constitution of the Republic of Croatia, international treaties and national laws. The Ombudsman has offices in Zagreb, Osijek, Rijeka and Split. Citizens of Croatia can contact the Ombudsman offices - by phone, written letter, online and in person - and submit a “proposal” for consideration on important issues which concern the protection of the rights and interests of adults and children with disabilities. In 2020, the Ombudsman received 2,266 submissions²⁸ from citizens including complaints concerning access to information and communication as well as victims’ rights. Unfortunately, data specifically concerning victims of crime with disabilities is not indicated in the report, but it is stated that:

“The largest number of violations of legally guaranteed rights was in the areas of social protection, employment and labour, and pension insurance.

*Violations of rights under the Convention on the Rights of Persons with Disabilities were most common in the area of accessibility and mobility. When we talk about the violation of rights due to the length of the procedure, it was most often in the areas of social protection and pension insurance. A significant number of violations of the right, i.e., suspicion of discrimination, related to the areas of employment and work, upbringing and education, as well as accessibility and mobility”.*²⁹

In the civil sector in Croatia, many NGOs specialise in working with persons with disabilities. Services provided by these NGOs are often limited due to lack of funds or because they work on a voluntary basis. Unfortunately, there are no official statistical data on how many organisations provide services for persons with disabilities on a voluntary basis, neither on how these organisations are funded. According to the Regulation on criteria, conditions and procedures of financing and contracting programs receive funds for their work³⁰ as any other NGO, they could receive funds from various public sources (e.g., from state administration bodies, Government

²⁷ Disability Ombudsman Act, available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2007_10_107_3127.html

²⁸ Ombudsman Office divides the complaints in the 16 areas; social welfare, employments, social security, accessibility, education, family, health, multiply complaints, property law complaints, life in community, guardianship, justice, prevention of violence, sport, NGO's, others : see <https://posi.hr/wp-content/uploads/2021/04/Izvjescje-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-za-2020.-godinu.pdf> page 6.

²⁹ Annual Report of Ombudswoman for Persons with Disabilities 2020, p.5, available at: <https://posi.hr/wp-content/uploads/2021/04/Izvjescje-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-za-2020.-godinu.pdf>

³⁰ https://narodne-novine.nn.hr/clanci/sluzbeni/2015_03_26_546.html

or local and regional offices and other public institutions). Public sources include state budget funds, which include earmarked funds from state lottery, budgets of counties, cities and municipalities, as well as public funds and revenues from public companies and other public institutions, European Union funds and foreign public sources. In addition, the National Foundation has an annual call to fund organisations' capacity and development, in the third quarter of the year.

The main organisation is an umbrella organisation - **Organisation of Associations of Persons with Disabilities** (hereinafter: 'OSVIT', or 'SOIH' in Croatian). Their network consists of 16 national associations and associations of institutions, including other legal entities and citizens conducting professional rehabilitation or employing persons with disabilities. OSVIT, as a network of protection, gathers over 250 local associations of persons of all types of disabilities throughout the Republic. Since its establishment, it has continuously acted and implemented measures to promote and ensure equal opportunities for persons with disabilities. It assists and coordinates the work of its members in order to improve the quality of life and create conditions for full implementation of the CRPD. OSVIT also provides legal assistance, but they are not specialised in dealing with victims of crime. They coordinate an **SOS hotline for victims of violence with disabilities**. On this hotline, they provide counselling, information and psychological support through a multi-disciplinary professional team, including psychologists, social workers, doctors and lawyers. It should be noted that the helpline works for 2 hours on one day a week and is aimed at helping only female victims of violence. In 2020, OSVIT SOS hotline received 247 calls, provided support through 19 e-mail contacts and 13 live sessions.

In the public sector, the **Service for Victim and Witness Support** of the Ministry of Justice and Public Administration deals with victims and witnesses of crimes.³¹ It must be mentioned that this office does not provide actual support for victims, since they are mostly focusing on informing victims about the release of the perpetrators from prison, as well as on the coordination of the system of service support. With respect to providing information, the police also provide a written notice on victims' rights (a letter of rights) as well as information on available victim support services. This form contains the contact information of seven **Victim and Witness Support Departments**, non-government organisations of every county, and of the **National Call Centre for Victims of Crime 116006**.³² In addition to the above, victims and witnesses can obtain support, information on their rights and on procedures from the court's Victim and Witness Support Department. Such departments have been set up at seven county courts (Zagreb, Osijek, Vukovar, Split, Rijeka, Zadar, Sisak). These departments also provide emotional support, practical information (e.g. on the course of the hearing), and information on the rights of witnesses, victims and the persons accompanying them. Support is also provided by departments of competent municipal courts and courts dealing with misdemeanours. Victims and witnesses can directly contact these departments or - if such department in a county does not exist - civil society organisations. Apart from the right to access general support services³³, victims also have the right to effective psychological and other professional assistance and support provided by specialised organisations and institutions (e.g., victim and courts' witness support departments of courts, social welfare centres, polyclinics, hospitals, and other healthcare institutions). To expand victim and witness support services in Croatia, the Ministry of Justice decided to

³¹ <https://mpu.gov.hr/o-ministarstvu/djelokrug-6366/iz-pravosudnog-sustava-6372/podrska-zrtvama-i-svjedocima/6156>

³² <https://mup.gov.hr/ostalo-48/online-prijave/zastita-djece-i-obitelji/prava-zrtve/281680>

³³ Criminal Procedure Code (*Zakon o kaznenom postupku*), Art.43(1(2)), available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2011_10_121_2386.html

encourage and finance the establishment of a partner network "**Network of Support and Cooperation for Victims and Witnesses of Criminal Offenses**"³⁴, in the 13 counties where victim and witness support departments have not been established.³⁵

Given that state institutions focus mostly on general victim support without having specialised teams or departments dedicated to deal with victims with disabilities, civil society organisations are stepping in to fill this gap. NGOs, within the framework of several projects, provide personal assistance for people with intellectual and/or severe disabilities.³⁶ A prominent project aims, for example, to employ qualified Croatian Sign Language Translators to provide proper assistance for people who are deaf or hearing-impaired. Unfortunately, due to lack of specific information, it is unclear how effective these services are.

Impact of covid on people with disabilities

“Due to the pandemic, all citizens were forced to change their way of life in 2020. The introduced measures such as travel restrictions, lockdowns, and curfews had a significant impact for many people on access to and exercise of their rights in general, but the effects were even more injurious to people with disabilities during this period”.

In order to prevent the spread of COVID 19, lockdown measures were introduced, leading to people's complete isolation. This often rendered impossible for people with disability to receive the necessary services, as most of them require direct and in-person contacts. Already existing problems, such as, among others, the lack of sufficient human resources, e.g., experts, employees of public institutions, insufficient IT knowledge and lack of adequate computerization in the workplace, decreased availability to various services and transportation have become even more tangible for people with disabilities in the past year. Isolation, suspension of rehabilitation and specialised social and educational programs for distinct categories of children and adults with disabilities already have shown their physical, psychological, social and health consequences. Everyday health needs of people with disabilities were side-lined. Medical and physical therapies carried out at home or in health care facilities were interrupted. Due to the serious workload of health professionals, the specific needs of persons with disabilities were neglected during their hospitalisation and/or treatments leading to deterioration of health. The pandemic also made it difficult or impossible to provide support through counselling and empowerment.

The pandemic has also exacerbated persons with disabilities' pre-existing employment problems. The largest number of complaints to the Ombudsperson for Persons with Disabilities concerned rights related to employment, mostly the right and/or need to work from home. The report of the Ombudsman for Persons with Disabilities states that, according to the data provided by the Croatian Institute of Public Health on January 26, 2021, in Croatia there were a total of 225,648 infected persons, of which 26.811 were persons with disabilities. Of the 4,684 people who died because of COVID-19, 1,766 were persons with disabilities. The epidemic caused by the COVID-19 virus also affected the position of women with disabilities by exposing them to greater risk of

³⁴ <https://mrezapodrskeisuradnje.com/en/>

³⁵ <https://mpu.gov.hr/o-ministarstvu/djelokrug-6366/iz-pravosudnog-sustava-6372/podrska-zrtvama-i-svjedocima/mreza-podrske-i-suradnje-za-zrtve-i-svjedoke-kaznenih-djela/19859>

³⁶ <http://europski-fondovi.eu/tags/osobe-s-invaliditetom>

domestic violence. The Autonomous Women's House (AWH) conducted research on partner violence during the COVID-19 pandemic in Croatia. An AWH psychologist, Professor Anita Lauri-Korajlija, stated that this is the first research in Croatia that gives a more detailed insight into what was happening behind closed doors. In her presentation, she pointed out that the research was conducted on a small sample of people (152 women), however results showed that one out of three of woman during the pandemic was subject to some form of violence which was more frequent and intense than usual. Moreover, physical violence manifested in relationships where it had not existed before.

In November 2020, Value Development Centre published an online survey, which was completed by 78 persons with disabilities from different parts of Croatia. 92.3% of them did not have problems with social interactions with other people, but 7.7% of them has not left their home for 9 months. A larger number of respondents (64.1%) experienced certain signs of anxiety and restlessness. 62.9% stated that the epidemic had a negative impact on the availability of medical services, in the sense that their access to such services is now much more limited. While 73.1% of the respondents stated that they had not completely lost the service of a personal assistant, it should be noted that 26.9% of them lost the service gradually. The research found that 47.1% of the respondents were exposed to emotional abuse, 66.7% were exposed to social violence in the form of social isolation, 20.8% experienced some form of neglect, while others stated that they were victims of physical violence.

Moreover, according to the report of the Ombudsman for Persons with Disabilities women with disabilities were victims of about 2% of the reported cases of domestic violence in 2020. It is reasonable to assume that due to underreporting, the real number is much higher. OSVIT's SOS helpline reported a noticeable increase in the number of calls in 2020. In May 2020, the UNICEF Office for Croatia, and the Women's Room - Centre for Sexual Rights, a civil society organisation, has started to implement the program called "Protection of Women and Children Victims of Gender-Based Violence during the COVID-19 Pandemic". The program aimed to develop "Recommendations for people working with women and child victims of violence during the COVID-19 pandemic." The organisations and institutions that participated in the research state that "women with disabilities who are victims of domestic violence cannot turn to them at all and ask for help because the perpetrator is constantly with them."

The introduced measures affected the area of access to justice as well. Where judicial proceedings were concerned, the Ministry of Justice and Administration authorised that some hearings, based on the court's discretion, can be held remotely over an audio-video link. The defence, prosecution and the injured party can participate in such hearing. Evidentiary hearings and the hearing of experts and witnesses can also be held remotely if both sides agree. Witnesses who are old, sick or have disabilities can participate over audio-video link. During the COVID crisis, from February until September 2020, this option was used 1,491 times, furthermore 361 court hearings were held remotely. This proves the usefulness of modern technology, however it also shows that the Croatian judicial system is not yet appropriately prepared for holding online hearings. For instance, not all courts are equally equipped for complying with such measures. On the side of courts, there was also some reluctance to implement the idea of "online courtrooms." In addition, having a fully online functioning court would require significant changes in the existing law. As a consequence, the Ministry of Justice and Administration confirmed that changes to the criminal procedure law will be made in the near future. It must be pointed out that while remote hearings could improve access to courts

for people with disabilities, there are issues in relation to this area which need to be addressed by law. Remote hearings create a greater risk for intimidation and/or influencing the testimony of victims and ensuring their safety and/or the required emotional or psychological support is much more problematic than in case of “in-person” hearings.

The fact that the parties were facing challenges of unequal access to communication with the court as well as the problem of the prompt discontinuance of criminal proceedings led the Croatian Bar Association to draft the Bill on Intervention Measures introduced in the Field of Judicial and Administrative Proceedings due to the COVID-19 Epidemic. It was sent to the Minister of Justice for urgent adoption on 18 March 2020:

“The purpose of the draft is to provide an appropriate and general legal source for application in judicial and administrative proceedings, to enable the retention of procedural deadlines in proceedings that cannot be conducted due to coronavirus and to maintain the course of all material preclusive deadlines because effective exercise of their rights is prevented, as well as taking measures to protect prisoners and employees in the prison system. Although the explanation states that the Act follows the principle of protection of human health and life, it would actually achieve even broader effects: legal certainty and predictability, i.e., equal level of legal protection of all parties and participants in court proceedings. These are, of course, temporary measures that would be limited.”

4. Legal and policy framework

Concerning the relevant national laws, the new Criminal Procedure Code (CPC) entered into force on 27 July 2017. According to the CPC, the Republic of Croatia has implemented the provisions of the Victims' Rights Directive (VRD). By implementing the Directive, national legislation has granted broader and better-defined rights for victims in criminal proceedings (Articles 43-51).

According to the research³⁷ carried out in 2017 and 2018 by Documenta (The Centre for Dealing with the Past) although an appropriate legal and institutional framework is in place in relation to victims' rights, especially since the implementation of the VRD, there are still shortcomings that need to be addressed, with particular regard to the field of information and communication. Documenta used empirical research (interviews with victims) in order to map out deficiencies of the system.

The research³⁸ found that first contact with the judiciary and the police are crucial for the victim, as this early interaction determines whether victims could exercise their rights and to what extent. Of course, this also depends on the victims themselves, assuming they are fully informed of their rights and are willing to participate. However, the problem is that victims are often lacking sufficient information. Another problem is that information and instructions are not provided to victims in an accessible and simple language. Almost half of the interviewees indicated that the provided texts and instructions were unclear to them. This highlights the need for education in communication and for improving human resources and technical conditions of the stakeholders working with victims. Awareness raising for judicial and police officials dealing with victims is an important task for Croatia to resolve.

Where international law is concerned, the CRPD and its Optional Protocol was ratified in 2007 which should have been implemented through the National Strategy for Providing Equal Opportunities for Persons with Disabilities (hereinafter 'National Strategy' or 'the Strategy').

The goal of the National Strategy is to make Croatian society as sensitive and adapted to the necessary changes in favour of equal opportunities for people with disabilities, and to create conditions for their active inclusion and equal participation in society by preventing any discrimination and strengthening all forms of social solidarity. It also seeks to harmonize all policies in the field of disability rights and in aligning them with the international standards. Ultimately, it aims to ensure full social integration and accessibility for persons with disabilities through universal design and reasonable accommodation.³⁹

The preparatory documents of the National Strategy provide guidance to the implementation of the Strategy in accordance with the CRPD. The results of the implementation of the CRPD can be monitored through annual reporting on the implementation of the Strategy's measures. The most

³⁷ Documenta – Centre for dealing with the past: *Positions and Rights of Victims of Crime*, available at: <https://documenta.hr/wp-content/uploads/2020/09/polozaj-i-prava-zrtava-kaznenih-djela-2017-web.pdf>

³⁸ When it comes to first contact with the victim and the fundamental right to receive information, from 149 respondents who answered the question "Did you receive an instruction on the rights of the victim?", 79 of them (53%) answered in the affirmative. There were 60 respondents who answered that they did not receive the instruction (40%), while 10 respondents (7%) answered "I DON'T KNOW". 25 respondents did not respond to this question. -page 77. of the mentioned Report.

³⁹ <https://mrosp.gov.hr/istaknute-teme/obitelj-i-socijalna-politika/socijalna-politika-11977/osobe-s-invaliditetom-11998/11998>, paragraph 3.

recent report, published in 2019⁴⁰, found that there is visible progress concerning the exercise of disability rights especially in the fields of inclusive education, developing non-institutional forms of care for children with disabilities, employment of people with disabilities and general accessibility. State administration bodies are also improving cooperation with local and regional self-government units with respect to the implementation of measures, as well as with associations of persons with disabilities by announcing public calls. Moreover, each year more funds are provided for the implementation of projects aimed to improve the living conditions for persons with disabilities. However, there is still room for improvement, particularly in the field of access to justice.

There has been some progress in the field of victims' and disability rights. The 2019⁴¹ Annual Report of the Ombudsman for the Rights of Persons with Disabilities had a positive impact on the legal framework concerning effective protection against violence, abuse, and discrimination as well as the right of access to the justice for persons with disabilities on an equal footing with other citizens. In addition, provisions of the Criminal Procedure Act and the Law on Combating Domestic Violence guarantee the principle of equal treatment of women and men, the prohibition of discrimination and legal protection for victims. By ratifying the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Croatia has also shown commitment to ensure equal participation of women in all areas of life. Apart from refining the legal framework, special attention is paid to the promotion of the protection of rights and practical aspects as well, such as carrying out training sessions to judicial officials on how to ensure an effective social response to various forms of violence. It must be noted that despite all activities that have been undertaken so far in the field of legal protection and protection against abuse, key challenges remain the same, such as the lack of or insufficient information and communication and insufficient or inefficient measures ensuring proper participation in criminal proceedings, especially concerning people with disabilities.

Roles in criminal procedure – victim, injured party or witness?

According to Article 87 sub.art. 25 of the Croatian Criminal Code victims of a criminal offense are persons who suffer physical and mental consequences, property damage or significant violation of fundamental rights and freedoms as a result of the criminal offense. Where a crime has resulted in a death, the victim of the criminal offense is considered to be the spouse or extramarital partner, life partner or informal life partner, children or descendants, or siblings of the person who died.

Basic provisions regulating the position of victims are those of Article 43-50 of the Croatian Criminal Procedure Act (CPA) Art 43 para. The first lists basic rights of all victims of crime. These rights include, among others: access to victim support services, effective psychological and other professional help, protection from intimidation and retaliation, protection of his/her dignity during his/her interrogation as a witness, company of a person of trust when he/she is participating in procedural actions. Besides rights that are legally guaranteed to all victims of crime, specific rights are guaranteed to specific victim groups. Apart from the CPA, there are other statutes that represent an important legal source for the position of victim of crime in Croatian legal system. These include,

⁴⁰ <https://vlada.gov.hr/UserDocsImages//2016/Sjednice/2020/ProsinaC/29%20sjednica%20VRH//29%20-%2016%20Izvje%C5%A1%C4%87e.pdf>

⁴¹ Annual Report of Ombudswoman for Persons with Disabilities 2019, available at: <https://posi.hr/wp-content/uploads/2020/04/Izvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>

among others, Act on Financial Compensation to Victims of Criminal Offences, Act on Police Work and Authorities, Act on Protection from Family Violence, Act on Rights of Victims of Sexual Violence during the Time of Armed Aggression on the Republic of Croatia in Homeland War, Act on Free Legal Assistance and Act on Courts. In Croatia, there are also many by-laws that touch upon questions relevant to the position of victims of crime.

According to Article 238 of Croatian Criminal Procedure Act Persons who are likely to be able to give information about the crime and the perpetrator or about other important circumstances are considered as witnesses. Every witness is obliged to respond to the call and is obliged to testify.

The term ‘injured person’ or ‘injured party’ is applied to a person whose personal and/or property right is violated or threatened by a criminal offence and participates as a party in criminal proceedings. The definition of indirect victims can also be found in the Law on Compensation: ‘When the offense causes the death of the direct victim, indirect victims are entitled to receive compensation (Article 5 paragraph 5). Indirect victims are the loved ones of victims or the witnesses i.e., family members, spouses, common-law spouse, partner, their children, or even the persons living in the same household as the direct victim.

An injured party has traditionally held a very strong position in the Croatian criminal justice system, with the possibility to act as by-prosecutor in cases which were prosecuted by the State and to take over the prosecution and act as the main prosecutor in cases where the State Prosecutor has declined to act or has decided to give up the prosecution.⁴²

Concerning the procedural safeguards of “injured parties”, an injured party has the right to be informed about his/her rights, about what help is available, and about the progress of their case. They have the right to participate in criminal proceedings by drawing attention to the facts that are important for determining the criminal offense, identifying the perpetrator and the property or determining the compensation claim. They also have the right to use their own language, and to propose evidence at the hearing, ask questions to witnesses and experts, and make remarks and explanations on their testimonies. The injured party has the right, at the end of the evidentiary proceedings, to give closing arguments. They have the right to make statements and to examine documents and objects that serve as evidence. The injured party also has the right to physical protection in certain cases regulated by the Witness Protection Act, as well as the right to privacy and protection from secondary victimization. During the interrogation, the injured party has the right to refuse to answer questions if it is probable that he or she would expose himself or his close relative to severe shame, significant material damage or criminal prosecution. The injured party has the right to undertake and continue criminal prosecution if the State Attorney waives it. The injured party has the right to claim damages from the perpetrator, i.e. the right to file a property claim, and the right for compensation for the costs of the proceedings. A property claim may be filed during criminal proceedings until the end of the hearing or, separately from criminal proceedings, in civil litigation. The right to legal advice and free legal aid are also the rights of the injured party, if they meet the conditions prescribed by the Free Legal Aid Act.⁴³

⁴² VICATIS – Victim-centered approach to improving support services Croatian research report.

⁴³ <https://mpu.gov.hr/UserDocImages/24889>

Summary of shortcomings concerning information and communications for victims of crime with disabilities

- 1 Insensitivity of experts in contact with victims with disabilities – most notably in their lack of expertise and experience in carrying out needs assessments.
- 2 Lack of specialised trainings for stakeholders and/or officials interacting and communicating with people with disabilities in criminal proceedings.
- 3 There is no legal prescription on how information should be provided to victims with disabilities. Even when information is provided, the quality of information varies according to police officer's or state attorney's personal approach to victims with disabilities. It must be noted that based on the general assessment, the quality of information provided to victims is inadequate.
- 4 The victim's individual needs assessment is not conducted as often as it should be. The individual needs of victims are often not identified and are overlooked. Procedural accommodation is rarely provided by the criminal justice system for victims with disabilities.

Within the framework of research titled “Experiences of experts on violence against persons with disabilities”⁴⁴, experts working with people with disabilities reported that people with disabilities often experience various forms of violence (e.g., physical, psychological, sexual, even financial) and discrimination against them. Based on the research findings, violence against people with disabilities occurs most frequently within the family or is committed by professionals (e.g., doctors, police officers and health or social care workers) who come into contact with them. This is generally because of their lack of knowledge concerning disability, insensitivity, lack of empathy, or having no training on how to communicate effectively with persons with disabilities. The findings also showed that experts choose different responses when they encounter violence against people with disabilities, such as consulting the competent institutions/authorities, turning to the media for help or trying to handle the situation themselves by using their own skills and knowledge. All stakeholders, including people with and without disabilities, authorities' staff members, members of the relevant social communities and other professionals need to be better trained on violence against people with disabilities.

Projects dealing with the implementation of the victims' rights directive

VICATIS is an international project⁴⁵ carried out from 2017 to 2019 and aimed at improving the implementation the Victims' Rights Directive with special regard to the aspect of information and communication.

⁴⁴ Published by City of Zagreb, City Office for Social Protection and Persons with Disabilities and University of Zagreb, Faculty of Law, Study Centre for Social Work, Zagreb, Croatia, available at: <https://hrcak.srce.hr/file/230856>

⁴⁵ The project coordinator is the Croatian Legal Centre, and the partners are the following organisations and institutions: the Ministry of Justice of the Republic of Croatia and the Office for Human Rights and the Rights of National Minorities of the Government of the Republic of Croatia; Patent Association (Hungary); Centre for Legal Research (Romania); Association for Nonviolent Communication (Slovenia) and Peace Institute (Slovenia). The project description is available at: <https://www.hpc.hr/wp-content/uploads/2018/02/Komparativno-izvje%C5%A1%C4%87e.pdf>

“The results of comparative research had the following conclusions:

- Information on rights should be provided to victims verbally and in writing (“letter of rights”);
- The “letter of rights” should be a brochure, which should not contain inaccessible, technical language (e.g. purely legal texts), but clear explanations of each right, followed by concrete and precise instructions on how to exercise them, including who could provide help and assistance. This way a victim who may not have been able to fully understand his or her rights when he or she was orally informed, will be able to consult the brochure later if needed.
- Providing information verbally about rights (i) enables the victim to pose additional questions in order to fully understand his or her rights, and (ii) enables the person informing the victim to check whether the victim understood his/her rights and the information given.”⁴⁶

A project titled Rights, Support, Protection and Compensation carried out in 2017-2018⁴⁷ aimed to contribute to the implementation of the VDR and the Directive 2004/80/EC on compensation to victims of crime. The aim of the project is to establish a Central Information Point, a system for data collection and analysis with regard to criminal matters. The system would help to identify the issues faced by victims and would also serve as a tool for producing relevant and up-to-date statistics. In addition, the project’s other objectives - similarly to the VICATIS project - are to improve the implementation of relevant legal frameworks and the knowledge and work of experts meeting with victims. It also aims to enhance capacity building of civil society organisations (CSOs), develop the cooperation and coordination between organisations, strengthen the mutual trust between legal entities and to promote the development of EU policies related to victims' rights.

Targeted Early Victim Needs Assessment and Support – TEVNAS.⁴⁸ The project called "**Targeted Early Victim Needs Assessment and Support**" (TEVNAS)⁴⁹ carried out in 2016-2017 also dealt with the improvement of the implementation of the VDR. Furthermore, it aimed to develop instruments for early and individual need assessment for protection and support, as well as a protocol for cooperation between relevant services and institutions working with victims.

The most important recommendations of TEVNAS have overlapping findings with the previously mentioned projects:

- Information on victims’ rights and available support services must be provided both in a verbal and written form;
- Translation of information on victims’ rights and support services into foreign languages is necessary;
- The information that is provided should be in an accessible and simple form, taking into account the special characteristics of victims which can render difficult to understand the information (e.g., current psychological state of the victim, age, disability, level of education/legal knowledge, troubles when reading/writing);

⁴⁶ Croatian Law Centre: VICATIS – *Victim-centred approach to improving support services: Comparative report*, p. , available at: <https://www.hpc.hr/wp-content/uploads/2018/02/Summary-document.pdf>

⁴⁷ Partners of the project: Documenta - The Center for Dealing with the Past, the Center for Peace, Nonviolence and Human Rights from Osijek, the White Circle of Croatia from Split and the Victim and Witness Support Croatia

⁴⁸ <http://www.hpc.hr/2016/01/27/ciljana-i-rana-procjena-potreba-i-podrska-zrtvama-kaznenih-djela-targeted-early-victim-needs-assessment-and-support-tevnas/>

⁴⁹ The project is implemented by the Croatian Legal Center in partnership with the Ministry of Justice of the Republic of Croatia and the Office for Human Rights and Rights of National Minorities of the Government of the Republic of Croatia.

- Public organisations and institutions should develop a better understanding of the relevant civil society organisations' work at a local level and improve the cooperation and coordination with them;
- A registration system of support services provided by organisations and authorities dealing with victims should be established and uniform statistical data management should be introduced;
- Education should be provided to all stakeholders on victims' rights and needs and on forms of appropriate communication with victims with disabilities in order to help develop better and more systematic support services.

Furthermore, a project titled **“ARVID - Better access for to the rights of the Victims Directive for persons with disabilities”**⁵⁰ has been implemented in Croatia and Slovenia in 2020 and 2021. It is important to note that The Ombudsman for People with Disabilities also took part in the project.⁵¹ The project aimed to explore the level of participation of victims and witnesses with disabilities in criminal proceedings and to map out the obstacles limiting the exercise of their right to full and equal participation. The results of the research will be used for (i) advocating for better support services for people with disabilities, including all necessary adaptations, (ii) developing knowledge and tools that will directly serve victims with disabilities, professionals and institutions providing assistance in exercising the rights guaranteed by the VDR.

Description of the criminal justice procedures:

Criminal proceedings are usually initiated ex-officio when the public authorities become aware of a potential criminal offense. In Croatia, criminal proceedings have 5 stages: 1) reporting, 2) investigation, 3) hearing, 4) trial/decision, 5) appeal. It must be noted that as soon as a victim reports a crime, they are entitled to the rights of victims under the VRD.

After reporting a criminal offense, the investigation phase begins which aims to determine whether a criminal offense has been committed, identify potential suspects, and find and collect evidence through interviewing suspects, witnesses, and victims and/or examining the crime scene. This stage can last from a few weeks to several months, depending on the amount of evidence collected and the complexity of the case. After gathering enough evidence, the state attorney will decide on whether to send the indictment before the court or it falls within the scope of a “private accusation” i.e., the victim can decide on initiating the procedure. After the decision on the indictment is made by the state attorney or the investigating judge, the case is transferred to the first instance court, and the accused will be tried according to the indictment. As a principle, trial hearings are open to the public. There are only a few exceptions when the judge can exclude the public, for example in cases where it is necessary to protect the victim. The trial has 3 main phases: 1) preparatory hearing, 2) hearing, and 3) sentencing. This final phase ends with the verdict i.e., with a judgment on dismissal, acquittal, or conviction. After the verdict is given, parties have the right to challenge the decision.

⁵⁰ <https://www.hpc.hr/category/arvid/>

⁵¹ The project coordinator is the Croatian Legal Center, and the partners are the Ministry of Justice and Administration of the Republic of Croatia, the Ombudsman for Persons with Disabilities (HR), the Victims and Witnesses Support Association (HR), the Peace Institute (SI) and the Altra Association (SI).

General and systematic problems faced by people with disabilities

In order to participate in everyday activities on an equal basis with others, persons with disabilities require support such as personal assistance and other forms of support. Due to lack of social services for persons with disabilities in Croatia, they must rely on support of family or friends or be institutionalized. This need for individual support occurs in several areas of their life, such as in health care, education, social services and in criminal proceedings. With respect to intersectionality, it must be pointed out that older people are facing similar problems as people with disabilities and may have similar needs for support and assistance. They often have low income or no income at all, live in poorly equipped homes, and have problems in accessing public institutions and other service providers.⁵² Many of them are people with visual or hearing impairments which render difficult to properly exercise their rights in any area of life. Police statistics show that people over 65 regularly become victims of fraud, theft, and violence.⁵³ Moreover, based on the interviews conducted for this research, and the experience of organisations providing support to victims of domestic violence,⁵⁴ crimes often happen in the home of the victim with disabilities.

In this context, the identified general problems concerning the Croatian criminal justice system are the following:

- Lack of recognition of certain disabilities,
- Lack of adaptation of the justice system to people with disabilities, e.g., lack of appropriate measures helping victims with disabilities in expressing themselves therefore officials often do not understand what happened/is happening to them,
- The State focuses on the rights of the suspects and accused to avoid wrongful convictions,
- The judicial system often ignores the victims' needs,
- Lack of organisations that could provide support for free to victims who do not have sufficient financial resources.

It must be mentioned that other vulnerable groups, such as child victims, victims of trafficking or sexual violence are in a better position during the criminal proceedings. The legislator, when transposing the VRD, conferred more extensive rights and a greater protection on them. In addition, case law shows that the system makes fewer mistakes when a victim belongs to these categories.⁵⁵

Needs in the criminal justice processes (particular focus on victim's perspective)

In accordance with Article 43a of Criminal Procedure Code⁵⁶ prior to the examination of the victim, the body conducting the examination shall in cooperation with other bodies, organisations or

⁵² Jedvaj S., Štambuk A., Rusac S. (2014). Demographic aging of the population and care for the elderly in Croatia. *Socijalne teme*, 1(1), 135-154. Available at: <https://hrcak.srce.hr/file/261747>

⁵³ Ministry of the Interior: *Statistical overview basic safety indicators and results of work in 2020*, available at: https://mup.gov.hr/UserDocsImages/statistika/2021/Statisticki_pregled_2020_web.pdf

⁵⁴ B.a.B.e is an organisation founded in 1994 with the purpose of promoting and protecting women's human rights, which today focuses on promoting gender equality and ensuring equal opportunities for all genders in all spheres of social life. <https://babe.hr/trebas-pomoc/>

⁵⁵ Procedural aspects of examination of children of victims And recent judicial practice in the light Directives 2012/29 / eu by Mr. sc. Ljiljana Stipišić, judge of the County Court in Split

⁵⁶ Article 43a of Criminal Procedure Code

institutions providing support to victims conduct an individual assessment of the victim. If the victim has a guardian, this person can be his/her person of trust, but victims must give their statement in person. It must be noted that the guardian does not take the role of the victim in the procedure but is entitled to take certain actions on behalf of the victim. It is also important to highlight that the decision as regards the appropriate action to be taken by the guardian is decided by the judge and not by the guardian him/herself.

The individual needs assessment of victims includes determining whether there is a need for special protection measures and, if so, which measures should be applied (e.g., special methods of examination, use of different means of communication to avoid visual contact with the perpetrator). When the victim is a child, it is assumed that there is a need to apply specific protection measures. When making an individual assessment of the victim, particular attention must be paid to the personal characteristics of the victim, the type and nature of the offense and the circumstances of the case. In this respect, attention needs to be paid to victims who

- have suffered significant damage due to the gravity of the crime,
- are victims of a crime committed due to a personal characteristic of the victim, and
- whose relationship with the perpetrator makes them particularly vulnerable.

The individual assessment of victims shall be applied to victims of terrorism, organised crime, human trafficking, gender-based violence, sexual violence and exploitation or hate crimes, and to victims with disabilities.

According to Article 43a sub.4. of Criminal Procedure Code, the individual assessment shall be carried out with the participation of the victim and his/her wishes must be considered, including the refusal of special protection measures prescribed by law. The body conducting the procedure shall reduce the number of examinations of the victim in cases where the need for special protection has been determined to a minimum.

The other relevant document is the Ordinance on the Manner of Conducting the Individual Assessment of the Victim (hereinafter 'Ordinance').⁵⁷ It sets out minimum requirements for the assessment of the application of special protection measures but does not affect the application of other recognised methods of need assessment (e.g., expertise). The victim's needs are assessed by each body of the criminal justice system from the start of the investigation until the end of the proceedings (i.e., police officers, state attorneys and judges).

Article 3 of the Ordinance states that “for the purpose of individual assessment of the victim’s needs, the body carrying out the assessment may obtain the necessary information from the social welfare centre and other bodies, such as organisations and institutions providing assistance and support to victims, especially from the Victim and Witness Support Department in the county courts in which they are established.” The bodies carrying out the assessments shall consider the recommendations⁵⁸ provided by the aforementioned bodies as well as by civil society organisations helping victims. Such recommendations can be, for example, the use of special methods of interrogation, special means of communication to avoid visual contact with the perpetrator, the public’s exclusion from the hearing, interrogation by a person of the same sex, ensuring the presence of a person of trust, and protection of personal data.

⁵⁷ Ordinance on the manner of conducting the individual assessment of the victim, available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2017_10_106_2426.html

⁵⁸ Ordinance on the manner of conducting the individual assessment of the victim, Art. 3(3)(4)

The assessment of a victims' needs must be carried out in a way that minimises inconvenience for the victim, while respecting his or her dignity, psychological condition and considering all circumstances of the case.

When conducting an individual needs assessment, the following factors are considered:

- 1 personal characteristics of the victim, and
- 2 risks and/or fear of harm, which includes the circumstances, the gravity and nature of the crime committed.

Personal characteristics⁵⁹ include circumstances of vulnerability, such as age, pregnancy, recent birth, disability, communication difficulties (speaking, reading, or writing), state of health, alcohol or drug addiction, post-traumatic stress disorder. The victim shall be considered particularly vulnerable if he/she has previously been a victim of a criminal offense or misdemeanour with characteristics of violence, regardless of whether the conduct was reported and/or prosecuted.⁶⁰ Special attention must be paid if the proceedings also affect a person connected to the victim (his/her child, people under the care of the victim or dependent on the victim). In this case the competent social welfare centre must be notified to take measures to protect them.

In assessing the circumstances of the committed criminal offense, special consideration shall be given to:

- whether the victim is personally related to the suspect or defendant as a close person (for example, a family member, persons living in the same household, etc.) or as persons in close relations (for example, persons in an intimate relationship who do not live in the same household)
- whether the victim is afraid that the suspect or the defendant will harm her,
- whether the suspect or the defendant has previously treated the victim in a similar manner, and especially recently (regardless of whether this treatment was reported and prosecuted as a criminal offense or not),
- whether the offense was committed in a particularly cruel and / or degrading manner,
- whether the victim is economically dependent on the suspect or defendant (for example, the victim's parent, partner, employer, etc.),
- whether there are any other circumstances of the commission of the criminal offense from which it follows that there is a serious risk of harm to the victim.

Special protection measures, as it was indicated above, include procedural protection measures (for example, a special method of interrogation, use of communication technologies to avoid visual contact with the perpetrator, public's exclusion from the hearing, interrogation by a person of the same sex, providing an advisor financed by the State etc.).

Specific measures for protecting the victim may, if necessary, also be imposed on the spouse, partner, descendant, siblings of the person whose death was directly caused by a criminal offense and on a person supported by the victim due to legal obligations. Each authority is obliged to fill in a form on the conducted individual assessment concerning protection measures. The Form is defined in the Ordinance.

⁵⁹ Article 5, item 1 of the Ordinance

⁶⁰ According to Ordinance on the manner of conducting the individual assessment of the victim the https://narodne-novine.nn.hr/clanci/sluzbeni/2017_10_106_2426.html

Even though an individual needs assessment is a legal obligation⁶¹, in many cases institutions involved in the criminal procedure do not carry it out. In practice, if applied well, the needs assessment could be used to adapt the criminal procedure to the victims' needs, especially for victims with disabilities.⁶²

The umbrella organisation called the Network of Support and Cooperation for Victims and Witnesses of Crime has found that individual needs assessments are rarely carried out and often not in accordance with the legal and regulatory provisions.⁶³ For instance, the County Prosecution Office uses the local organisation for support (which is part of the Network) for carrying out the individual needs assessment concerning victims of sexual violence, informing them on their rights and making recommendations for the Prosecution Office. However, the law states that the individual needs assessment should be carried out by the Prosecution itself. Another example is that when judges use Offices for Victims and Witness Support Service to conduct the individual assessment for the judges, although the law stipulates that it should be done by the investigative body.

Many victims, including those with disabilities never have their individual needs assessed and because of that they are unable to participate in the proceedings fully and equally. It is important to recognise that persons with disabilities should enjoy legal capacity on an equal basis with others in all aspects of life, as required by the CRPD and in particular to uphold Articles 12⁶⁴ and 13⁶⁵. In cases when persons with disabilities who are victims of crime have a guardian, this means that persons with disabilities themselves should be supported to participate in all legal processes, and the guardian should not act or be treated as a 'substitute' for the victim.

Although the individual needs assessment could and should be used to assess the needs of victims, it is not recognised as a tool serving a better inclusion of persons with disabilities in the criminal procedures. Furthermore, it mostly focuses on determining the required protection measures to prevent additional intimidation and secondary victimisation during the procedure, but not on ensuring the right to information and effective communication.

The right to be accompanied during the proceedings

The victims' right to be accompanied by a person of trust during the proceedings could be particularly beneficial for persons with disabilities, especially in the area of communications. This person can be with the victim from the first step until the end of the proceedings. The role of a person of trust is to provide emotional and moral support to the victim and facilitate his/her participation in the procedure.

⁶¹ Criminal Procedure Code (Zakon o kaznenom postupku), Art.43.a(1)

⁶² J.S. – judge in the County court, quotation from one of the interviews given during the implementation of this project

⁶³ Article 43a "Prior to the examination of the victim, the body conducting the examination shall, in cooperation with the bodies, organisations or institutions for assistance and support to victims of criminal offenses, conduct an individual assessment of the victim."

⁶⁴ Article 43a "Prior to the examination of the victim, the body conducting the examination shall, in cooperation with the bodies, organisations or institutions for assistance and support to victims of criminal offenses, conduct an individual assessment of the victim."

⁶⁵ Article 12b "States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life."

Since 2018, the Network of Support and Cooperation for Victims and Witnesses of Criminal Offenses, consisting of 10 civil society organisations, with the Women's Room Center for Sexual Rights providing a service of accompaniment on an every-day basis in 13 Croatian counties (out of 20) and in the city of Zagreb. Based on the relevant organisations' experiences, it is particularly useful if the accompanying person has some knowledge of the criminal procedure and victims' rights. Therefore, the victim can, besides the people she knows and trusts personally, ask an expert working in an NGOs in this field to be his or her person of trust. Concerning persons with disabilities, it could be useful if the accompanying person is an expert at working with people with disabilities and familiar with the criminal proceedings and victims' rights as well. That way the accompanying person can provide the appropriate support to victims with disabilities during the procedure and will be able to monitor whether the relevant bodies ensure their full and equal participation⁶⁶. Unfortunately, we have not found any practical example of this during the research period.

Even though this right is set out in law, there are still cases reported in which state attorneys or judges did not allow a person of trust to accompany the victim. Denying the participation of accompanying persons mostly occurred during the pandemic when institutions often had a limited number of staff present therefore, and they refused entry to a person of trust.

Needs regarding access to information and communication in general and specifically in criminal proceedings

*"It is crucial to ensure appropriate communication for victims with disabilities of violence and to make all necessary information accessible to them. Under national provisions, in cases of sensory impairments, means of communication must include text display, braille, tactile communication, enlarged printing and multimedia content, audio recordings, plain language, personal readers, and augmentative and alternative forms, means, and formats."*⁶⁷

Moreover, if the victim has intellectual disabilities, the information must be provided in simplified language, while in cases of mental disability, the person should be supported according to the gravity of his or her impairment.

The Ombudsman for Persons with Disabilities recommended⁶⁸ contacting an appropriate civil society organisation dealing with types of disability. Not every police station or judicial institutions have an interpreter or a guide, and in such cases, it is necessary to communicate with a relevant NGO. The Croatian Association of Deaf and Hearing Impairments is a network of organisations which can provide support and translators in most counties in Croatia freely upon contacting them.⁶⁹

⁶⁶ Article 13a "States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages."

⁶⁷ Zaštita osoba s invaliditetom preko predstavki: stečena iskustva https://www.europarl.europa.eu/doceo/document/TA-9-2021-10-07_HR.html, no 49.

⁶⁸ <https://posi.hr/strucni-sastanak-o-ostvarivanju-prava-na-pomoc-u-slucaju-nastanka-invalidnosti/>

⁶⁹ National strategy for protection against domestic violence for the period from 2017 to 2022 - Report on the implementation of measures in 2019 and 2020, available at: <https://vlada.gov.hr/UserDocsImages//2016/Sjednice/2021/Kolovoz/73%20sjednica%20VRH//73%20-%2017%20Izvje%C5%A1%C4%87e.doc>

After reporting a crime, the victim should be handed a document called “Victims' Rights Notice.”⁷⁰ It contains the rights of victims and the contact information of institutions and NGOs which can provide additional information and support. If victims report a crime to the police, the police have the obligation to give them a Victims’ Rights Notice and to make sure that victims understand their rights and how to exercise them. Based on reports of public events held by organisations of victim support services, and on the experience of staff working at the National Call Centre for Victims of Crime, there are still cases in which the police do not comply with this obligation, and even when they do, often they do not explain anything to the victims.⁷¹

It would be necessary to adapt the Victims’ Rights Notice to the needs of persons with disabilities, with special regard to different types of disabilities. Currently, it is provided in a written form and not followed by proper explanation of rights, therefore persons with disabilities have little to no knowledge of their rights.

According to the Law on protection of people with “emotional disturbance”⁷², persons with “emotional disturbance” have a right to a lawyer. If they cannot afford one, the court will provide one for them, taking into consideration the knowledge of such lawyers concerning forensic psychiatry. The Law does not specify if the person concerned is a victim, offender or witness, therefore it is applicable to all positions in the criminal proceedings. This measure intends to support the right to effective participation of persons with disabilities, though in practice relying on such a stereotype of disability and on psychiatric intervention risks stigmatising the individual.

According to Article 206 of the Criminal Procedure Act, the victim and the injured party have the right to request information from the State Attorney on the actions taken in connection with the investigation/criminal proceedings after two months from reporting a crime. The State Attorney shall inform them about the actions within a reasonable time, but no later than thirty days from the request’s receipt, except if providing information would jeopardize the effectiveness of the proceedings. The State Attorney is also obliged to inform them about the denial of providing information. The police have no such legal obligation. If the State Attorney has not informed the victim or the injured party or they are not satisfied with the information given or the actions taken, they can submit a complaint to the Senior State Attorney. The Senior State Attorney will examine the complaint and if he finds that the complaint is well founded, he orders the lower State Attorney to send the requested notification to the complainant or to take appropriate actions within a reasonable time. If the Senior State Attorney finds that the lower State Attorney's actions have violated the complainant's rights, he shall inform him thereof, stating exactly the rights that have been violated.

Apart from the Office of State Attorney, victims often contact the police, the 116006 line, NGOs from the Network for Support for Victim and Witnesses or the county court offices for victim support, for additional information on their rights, on the stages of the procedure and on their participation in the proceedings. A particular problem of communication concerning people with disabilities is that investigative bodies do not have available support on the spot, and they often need to wait for professional interpreters, Sign Language interpreters or for the guardian or legal representative of the victim with disabilities, which slows down the exchange of information.

⁷⁰ Criminal Procedure Code (Zakon o kaznenom postupku), Art.43(4).

⁷¹ e.g. <https://dalmatinskiportal.hr/hrvatska/zakljucci-okruglog-stola-nuzne-su-edukacije-i-usavršavanje-strucnjaka-koji-rade-s-manje-poznatim-oblicima-nasilja/110409> or <https://mobbing.hr/virtualni-okrugli-stol-medusektorskom-suradnjom-do-zastite-od-nasilja/>

⁷² Article 14. sub.art.1./10 and Art.15.

In addition, the findings of this project show that there are insufficient personnel within social, police and judicial bodies with special education on communicating with people with disabilities. In some cases, they are only trained to recognise disability, but unable to communicate adequately, unable to carry out individual needs assessments and they often need an additional expert with appropriate knowledge and skills or support for dealing with people with intellectual or psychosocial disabilities. Thus, the right to information and effective communication of people with disabilities is not fully granted in practice and it depends on the initiative of the victim in finding solutions.

There are some training programmes for police officers on how to approach persons with disabilities, but unfortunately such practices can be only found only sparsely in Croatia.

5. Stage 1: Reporting the crime

In Croatia, criminal proceedings develop as follows:

Fig. 2 - Phases of the criminal proceedings in Croatia



There are several ways of reporting a crime. The victim can report it in writing, orally or by other means to the State Attorney or the Police.⁷³ In Croatia, victims mostly report crimes to the police. Based on the Annual Report of Ministry of Interior of 2020,⁷⁴ the police receive around 53,000 criminal complaints, while the Annual Report of State Attorney⁷⁵ of 2020 refers to 39,000 complaints. Unfortunately, there is no statistical data about how many of the criminal complaints were reported by persons with disabilities. Therefore, it is difficult to draw any conclusion on the accessibility of reporting for people with disabilities. In this regard, the Ombudswoman warns that people with disabilities using wheelchairs may have difficulties in or are prevented from accessing police stations, and court buildings can be even more difficult to access. In addition, as it was mentioned above, not every police station or court has an interpreter and a guide which can hamper the exercise of the rights to information, communication and to be understood.

With respect to giving information on victims' rights, the police provide information in writing, while the State Attorney's office and judges inform victims orally. It is, however, a major problem that written information on victim's rights is often copy-pasted articles from the Criminal Procedure Act, which prevents people with non-legal background from properly understanding their rights. To make sure that the victims do not forget their rights and information on potential support services, the police introduced a third page of the written notice ("letter of rights") containing the names and contact details of public institutions and NGOs working at the local level. Those service providers can support victims in relation to criminal proceedings, but they also may provide social and medical services e.g., the Red Cross. The "letter of rights" also indicates the number 116006 of the National Call Centre for Victims of Crime which is a free and anonymous line, available 24/7.

Where reporting a crime, persons with disabilities sometimes feel that they are not taken seriously.⁷⁶ The main issue is that police officers do not know how to communicate with them. The Act on Police Affairs and Powers (Article 38a) provides the opportunity for police officers to request professional assistance to help communicating with people with disabilities. The Act states that „When collecting information from a person with disabilities, the police officer will, when he deems it necessary, seek the help of a person who has knowledge of the correct way of communication

⁷³ Criminal Procedure Act (https://www.imolin.org/doc/amlid/Croatia_Criminal%20Procedure%20Act%20combined.pdf)

⁷⁴ Annual Report of Ministry of Interior 2020, Available at: https://www.sabor.hr/sites/default/files/uploads/sabor/2021-06-24/134504/IZVJ_RAD_POLICIJE_2020.pdf

⁷⁵ Annual Report of State Attorney 2020, Available at: <http://www.dorh.hr/dorh29042021>

⁷⁶ Annual Report of Ombudswoman for Persons with Disabilities 2019, Available at: <https://posi.hr/wp-content/uploads/2020/04/Izvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>

and treatment of persons with disabilities, depending on the specifics of each individual case.”⁷⁷ They usually contact NGOs or other organisations who have the appropriate expertise. The shortage of experts is, however, problematic. This service should be provided in every county of Croatia and a list of experts should be available in each police jurisdiction.

A trusted person accompanying the victim can facilitate communications. Moreover, it is important that the police inform the trusted person about victims’ rights and the procedure as well. The support of a person of trust can enhance the equal participation of people with disabilities in criminal proceedings. The person of trust can be with a victim during any part of the process, including court hearings, from the moment of filing the report at the police station until the end of the proceeding. However, it must be mentioned that during the COVID-19 pandemic, courts often did not allow persons of trust to enter the courtrooms due to the insufficient capacity of space.

Based on the authors' experience in the field and interviews conducted, efforts are made to provide victims with information on their rights, but it is not clear that this is effective because it is not always accessible, understandable information.

It should be emphasised that many crimes against people with disabilities, especially crimes committed against women, are not followed by any legal actions, as it does not even reach the reporting phase of the procedure.

On this note, the Gender Equality Ombudswoman emphasized in 2018⁷⁸ that women with disabilities are exposed to domestic violence (psychological/economic violence, social isolation), community violence (stereotypes) and violence in the workplace (sexual harassment). However, women with disabilities are reluctant to report violence for the following reasons: dependence on another person, distrust of the system, difficulties in accessibility, lack of education, and social exclusion. Where dependence concerns, persons with disabilities do not report violence because the perpetrator is often the person taking care of them (a family member or a member of the staff of a facility they are living in).⁷⁹

Furthermore, people with intellectual disabilities are in a particularly difficult position, as they often do not understand what is happening to them, do not identify the action as violence and are unaware that it is punishable. Whether a crime is reported often depends on the victim’s ability to understand the crime and act independently.

Experts working with persons with disabilities noted, when mentioning their clients’ experience with domestic violence that their clients needed extensive emotional support and required detailed explanation that what had happened to them is a form of abuse and why it is not allowed for someone to behave that way. Sometimes persons with disabilities internalise some of the abuse they experience and do not understand that abusive and violent behaviour is wrong.

Based on the experience gained in the past 12 years, the Ombudsman for Persons with Disabilities has concluded that women with disabilities rarely choose to report violence. Interestingly, when

⁷⁷ The Act on Police Affairs and Powers, Art.38.a, available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2009_07_76_1835.html

⁷⁸ Gender Equality Committee report from the meeting „Violence against women with disabilities - specifics and possibilities of suppression“, 2018. Available at: <https://www.sabor.hr/hr/radna-tijela/odbori-i-povjerenstva/izvjesce-odbora-za-ravnopravnost-spolova-sa-sjednice-o-temi>

⁷⁹ Gender Equality Committee report from the meeting „Violence against women with disabilities - specifics and possibilities of suppression“, 2018. Available at: <https://www.sabor.hr/hr/radna-tijela/odbori-i-povjerenstva/izvjesce-odbora-za-ravnopravnost-spolova-sa-sjednice-o-temi>

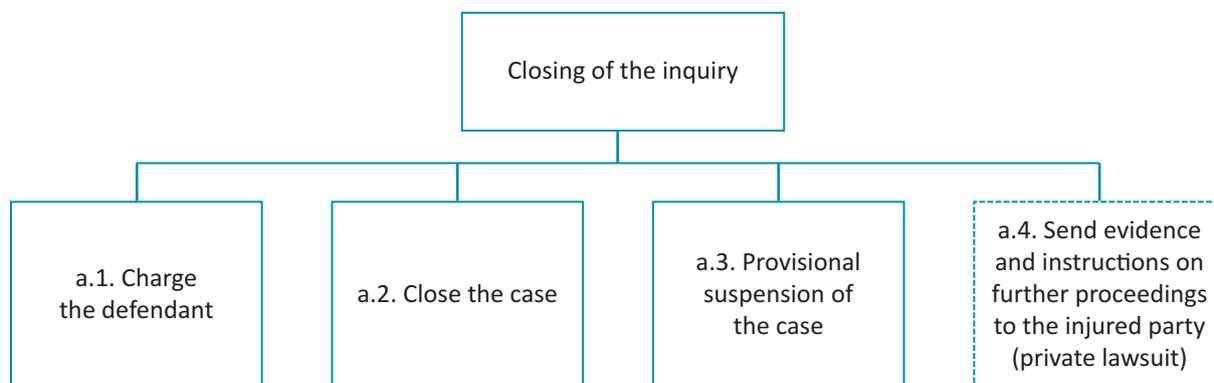
women reported violence, most of the complaints were submitted by women with sensory impairment. In recent years however, there is a noticeable increase in reporting by women with intellectual and psycho-social disabilities.⁸⁰

It must be noted, that in cases which persons with disabilities report violence committed by a family member or a staff member of the social care institution they live in, they often withdraw their complaint later during the proceedings. When they realise that they might be separated from their family and/or taken to another facility where it is uncertain whether they would receive the same level of care they had previously received, they decide to discontinue the proceedings. This shows the importance of the requirements laid down in Article 19 of the CRPD, namely living in the community, having options and not being dependent on one specific support, but having access to a range of general and disability-specific services.

⁸⁰ Annual Report of Ombudswoman for Persons with Disabilities 2019, p.77, Available at: <https://posi.hr/wp-content/uploads/2020/04/Izvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>

6. Stage 2: Pre-trial and investigation

Fig. 3 - Options for closing the inquiry



Once the crime is reported or the complaint is filed, an inquiry is launched starting the investigation. The criminal investigation encompasses all the actions aimed at ascertaining whether there was a crime, who committed it and their liability, and finding and gathering evidence. The inquiry stage may last from a few weeks to several months, depending on the amount of evidence to be gathered and the complexity of the investigation. Victims often lack knowledge of their rights in this stage of proceedings. A professional victim support worker or volunteer as person of trust could have crucial importance in this stage of the procedure. This first stage of criminal proceedings, called the “inquiry stage” is carried out by a criminal police force under the supervision of the Public Prosecutor. Since the Public Prosecutor has six months to make a decision on the criminal report, communicating with victims and witnesses in order to “extract” the facts of the case is crucial, therefore well-trained police and prosecution personnel are needed in order to carry out the task properly.

Support for victims and witnesses in Croatia is coordinated by the Service for Victim and Witness Support at the Ministry of Justice and Public Administration. As it was already mentioned, police must provide victims with a “letter of rights” and information on victim support services.⁸¹ Moreover, the courts’ Victim and Witness Support Departments as well as the “Network of Support and Cooperation for Victims and Witnesses of Criminal Offenses” - in 13 counties where victim and witness support departments have not yet been established – can also provide support and information to them. Furthermore, OSVIT has established a helpline for victims of violence in 2007 aiming to support, empower and protect the rights of women with disabilities, and to promote equal opportunities and equality for them.⁸²

The role of NGOs would be also important in the field of communication and providing information, however there are some problems in that domain. NGOs dealing with victims and persons with disabilities are separated i.e. there are NGOs specialised working with persons with disabilities⁸³ and others support victims and witnesses⁸⁴, but their knowledge and expertise do not overlap.

⁸¹ <https://pzs.hr/nacionalni-pozivni-centar-za-zrtve-kaznenih-djela-i-prekrsaja-2/>

⁸² <https://mpu.gov.hr/o-ministarstvu/djelokrug-6366/iz-pravosudnog-sustava-6372/podrska-zrtvama-i-svjedocima/mreza-podrske-i-suradnje-za-zrtve-i-svjedoke-kaznenih-djela/19859>

⁸³ <https://www.soih.hr/soih-clanice> (like Croatian Association of Disabled Workers, Croatian Association of the Deaf and Hard of Hearing, Croatian Association of People with Intellectual Disabilities, Croatian Association of Multiple Sclerosis Societies, etc.) or OIST Telephone line for victims of domestic violence for Persons with disability.

⁸⁴ <https://mrezapodrskeisuradnje.com/>

Thus, they cannot provide full, broad and adequate support for victims with disabilities. Better collaboration between the two groups of NGOs and specialised trainings for their staff could solve this issue. The only example of an existing service covering both fields of expertise is the SOS helpline run by SOIH aiming specifically to help female victims with disabilities.

Apart from the organisations' services, mandatory use of interpreters and translators contribute to the exercise of the rights to information and communication. Victims participating in criminal proceedings as the injured party have the right to use their own language. The interpreter is involved in the procedure if the victim does not speak or understand Croatian language. This is also applied if the victim is deaf or deafblind.⁸⁵

In addition to the official interpreter, a victim with disabilities may also seek for help from a trusted support person who has a close connection with the victim and understands his or her needs and disability. Victims and witnesses have the right to request to be interrogated remotely via audio-video equipment.

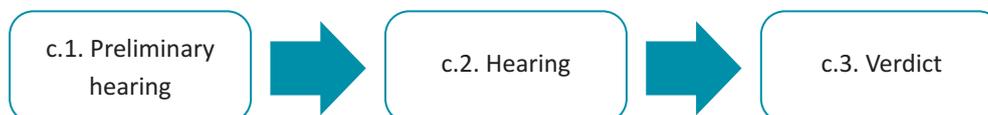
It must be pointed out that other guarantees for complying with communication needs of people with disabilities - who do not need a Sign Language interpreter or a trusted person - are neither provided by law nor in practice. The available procedural accommodation in place to allow victims to access their procedural rights do not account for the range of access needs present in persons with disabilities.

The investigation stage is optional. The investigation must be conducted for criminal offenses punishable by imprisonment for a term exceeding five years, except if State Attorney does not have enough evidence for indictment. The State Attorney must conduct an investigation if there is a reasonable suspicion that the defendant has committed a criminal offense punishable by imprisonment for a term exceeding fifteen years or a long-term imprisonment, and if there is a reasonable suspicion that the defendant has committed an unlawful offense.

⁸⁵ Criminal procedure Act (NN 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19) art. 51 (1)

7. Stage 3: Trial and Court processes

Fig. 4 – Stages of trial



Firstly, one of the prerequisites of accessing justice and being able to participate in the criminal proceedings is accessibility to court buildings. This poses a significant issue for persons with disabilities. Most judicial bodies are located in old buildings which are inaccessible to persons with disabilities – especially for those with physical disabilities. There is a strong need to adapt court buildings to their needs that could be solved with universal design to ensure full exercise of their rights.

In the trial stage of the proceedings, Victim and Witness Support Departments and NGOs provide support and information to victims with disabilities. At the courts, an expert assistant – who are mostly psychologists or social-pedagogy experts - deals with communicating with children and persons with disabilities. As in the other stages, the victim can also have the support of an accompanying person (person of trust), and they have the rights to give statements remotely (via audio-visual equipment) and the to be provided with certain adjustments based on the assessment of their individual needs.

However, based on the reports of 2019⁸⁶ and 2020⁸⁷ of the Ombudsman for Persons with Disabilities, lawyers of victims with disabilities often prevent their clients' equal and effective participation in the proceedings. The Ombudsman has found that court appointed lawyers are passive and inefficient. After reaching a decision, for example on a court order on forced institutionalisation of the person, lawyers often neglect to inform them of their right to appeal or the use of other judicial remedies, therefore they often miss the deadline for submissions. Apart from the lack of appropriate financial resources dedicated for the court appointed counsel services, the problem probably stems from the lawyers' approach as well. Lawyers provided by free legal aid shows similar patterns. People with disabilities using free legal aid often complained about their lawyer's lack of interest or enthusiasm. In the mentioned Annual Report of 2019, the Ombudsman emphasises the right to effective legal assistance and the right to a fair trial, the obligation of the active involvement of lawyers in the procedure in accordance with their competence and rules of the profession, the obligation of conscientiousness and responsibility in acting and sent his recommendations to the Croatian Bar Association concerning the issue.

The Constitutional Court of the Republic of Croatia has made it clear that effective legal representation of a person with a psycho-social disability is an obligation and that domestic courts should intensify the supervision of the legal representatives' effectiveness.⁸⁸

⁸⁶ Annual Report of Ombudswoman for Persons with Disabilities 2019, p.37, available at: <https://posi.hr/wp-content/uploads/2020/04/lzvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>

⁸⁷ Annual Report of Ombudswoman for Persons with Disabilities 2020, p.67, available at: <https://posi.hr/wp-content/uploads/2021/04/lvjesce-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-za-2020.-godinu.pdf>

⁸⁸ Annual Report of Ombudsman for Persons with Disabilities 2019 - Report Summary, p.8, available at: <https://posi.hr/wp-content/uploads/2020/04/SA%C5%BDETAK-lzvje%C5%A1%C4%87e-o-radu-POSI-za-2019.pdf>

Concerning judges, interviewees stated that they encountered judges who were respectful to persons with disabilities and considered their conduct effective and adequate.

Matea Babić⁸⁹, Senior Expert Advisor in Social Pedagogy working in Zagreb County Court referred to a case of a juvenile victim with a serious hearing impairment. First, they thought that the victim has profound deafness, therefore could not communicate with them or the Court, however she was only hard of hearing and expressed her wish to give statements in writing. The victim asked Matea to read her statements to the panel so that the litigators could ask her questions. The case was quite challenging as her proposal was rejected by the State Attorney arguing that giving statements in writing violates the Croatian Criminal Procedure Act. The judge overruled the rejection and granted the victim the opportunity to give her statements as requested. Due to the Court's flexibility and sensitive approach, combined with their commitment to ensure a fair trial (including the right to give a statement in person), this led to a successful end to the case in a way which was less traumatic for the victim.

⁸⁹ Matea Babić has experience in support, education, assistance, protection, and counselling of persons of different personality profiles and ages, experience in discovering the causes and consequences of behavioural disorders and coordination and integration collected data.

8. Stage 4: Post-judicial

After the final the decision of the court, the victim unfortunately has no further procedural rights. There are ordinary judicial remedies and extraordinary judicial remedies. Authorized persons may file an appeal against the first instance verdict within fifteen days from the day of delivery of a copy of the verdict. The parties, the defence counsel and the injured party may file an appeal. The injured party can challenge the verdict regarding the court's decision on the costs of the proceedings and the decision on the claim for damages, but if the state attorney takes over the prosecution from the assistant prosecutor, the injured party can appeal for all reasons. The appeal is lodged with the court that rendered the judgment in the first instance in a sufficient number of copies for the court, the negative party and the defence counsel to respond to it. The first instance court will deliver a copy of the appeal to the opposing party, who can file a response in eight days.

Probation and right of the victim to information about release of the perpetrator

Probation is the conditional and supervised freedom of the (law) offender. The person involved in the probation may be the defendant, convict or prisoner. During probation, probation officers carry out supervision and, through professional procedures, influence risk factors in the behaviour of the offender in order to re-socialise and reintegrate the offender into the community.

The Probation Service does not impose or change the imposed measures, obligations and sanctions, but only executes them on the basis of final judgments or decisions of the State Attorney, the court or the enforcement judge. These orders could be community service, conditional sentence with protective supervision, special obligations or security measures, conditional release or obligations imposed by state attorney. Other community services and organisations, such as the police, welfare centre, addiction treatment institutions, or various non-governmental organisations may also be involved in probation activities. An offender under probation, is required to carry out tasks properly in accordance with the established deadlines and timetable for an individual sentence plan, report to the probation office regularly, and notify the office without delay if there has been a change of place of residence or whereabouts.⁹⁰

If the defendant is in custody, pre-trial detention or the perpetrator is serving a prison sentence, victims have the right to be informed about the termination of custody, termination of pre-trial detention, escape of the defendant or release of the perpetrator from prison, but only if they wish. Victims will receive a notice of the release of a defendant from custody or pre-trial detention through the police, and a notice of escape or release of the perpetrator from prison through the Victim and Witness Support Service of the Ministry of Justice and Administration. The criminal justice authorities are obliged to ask victims if they want to receive this notification, and they can express their preference. If victims wish, they will also be informed of the measures taken to protect them. The measures taken in this case are most often the measures of physical protection of the victim provided by the police. If the perpetrator endangers the victim's safety in any way after

⁹⁰ <https://sudovi.hr/en/citizens/probation>

release, they must seek help from the police, who can protect them physically, by taking precautionary measures or informing the competent court that released the perpetrator, asking the court to impose adequate measures.⁹¹

According to the Article 43 of the Criminal Proceeding Act, every victim has the right to be informed, at her request, of any decision terminating criminal proceedings. If the summons cannot be served on the injured party, the private prosecutor, the injured party as a plaintiff, his legal representative, and the attorney at the previous address, or it is obvious that the recipient avoids receiving the summons, the summons will be displayed on the bulletin board and website, and after the expiration of eight days, the delivery is considered to be in order. Also, if the victim, injured party, injured party as plaintiff or private prosecutor has a legal adviser, legal representative, or attorney,⁹² the letters will be delivered only to the advisor, representative or attorney, and if there are more, only to one of them. Everyone has the right to submit a written or oral petition to the president of the court for the work of the court or judge for delaying the proceedings in which he is a party or has a legal interest, or for improper or inappropriate behaviour of a judge and other employee in official relations with a party contrary to the code of ethics on them.

Victim and witness support and assistance is provided to victims and witnesses after the trial either by support departments established in seven county courts, or networks of civil society organisations that provide support and assistance to victims and witnesses in counties where Victim and Witness Support Departments have not been established. The available support is mostly emotional support and information regarding compensation. For further legal aid and support victims and witnesses are referred to specialised institutions or NGOs. Victim and Witness Support Departments offer direct provision of psychological support, legal aid, and information on social rights, rights in health services and in the pension system. Victims with disabilities may consult NGOs that work with persons with disabilities for additional support, and for practical information about their social rights.

Once the criminal proceedings are completed, the obligation to carry out individual assessment is also removed for all judicial bodies. During the writing of this report, there was no available data on whether the investigative bodies gathered or analysed the results of the individual assessments. However, there are several important issues around individual assessments that should be studied. What was the impact of individual assessments on the victims and on the process, and what were the obstacles for the police and judicial system in the processing of the assessments? What tools could be added, or what kind coordination could improve swift exchange of information? How could individual assessments be used to prevent problems of communication and information provision for victims with disabilities?

⁹¹ <https://mpu.gov.hr/UserDocImages/24817>

⁹² See section 4. Legal and policy framework

9. Experiences of women with disabilities

The Croatian Association of Persons with Disabilities (OSVIT) has an SOS helpline for victims of violence established in 2007 with the aim of supporting and empowering women with disabilities, promoting equal opportunities and equality for women with disabilities, and protecting the rights of women with disabilities. The specific activity of the SOS helpline is peer counselling, meaning the use of active listening skills and support by a person who shares a similar life experience with a person with disabilities. The SOS helpline also supports the involvement of victims in the work of the Croatian Association of Persons with Disabilities. In the 2020 report of the Ombudsman for Persons with Disabilities it is stated that, according to the experiences of the helpline, the Croatian Association of Persons with Disabilities noticed an increase of women with disabilities reporting violence or taking alternative measures to protect themselves.

The situation regarding providing shelter to women with disabilities who are also victims of domestic violence is a somewhat better today than it was. By 2020, if a woman with disabilities did not have a severe impairment, she could have been placed in almost any shelter. The problem arises if a woman with disabilities requires the support of a personal assistant, in addition to architectural accessibility.

In 2020 and 2021, the previously mentioned ARVID project was conducted in Croatia and Slovenia. The project included interviews with justice system personnel, and one of the interviewees has brought up a case that happened several years ago. *“The victim was a child with autism and serious intellectual disabilities, she could not talk or understand the world around her. She had a brother and they lived together with their parents. She was sexually abused by her brother, who also had an intellectual disability”*. The interviewee pointed out that she did not know how to get a statement from the victim, and that she asked for psychological expertise. Two psychologists went to the home of the victim to do the interview in familiar surroundings. The interviewee mentioned that she is still angry about the case, as the county court convicted her brother for sexual intercourse without consent instead of rape, which lessened his punishment. The Supreme Court confirmed the sentence, although she tried to prove that resistance would not have been possible since she cannot talk, and cannot give or refuse consent. ⁹³

Although we consider it good practice to work with psychologists when receiving statements from victims, if other support is not available, we must condemn the system that is not ready to provide full support to the victims, especially if they have a previous trauma or disability.

During another interview, with a justice system support worker, he stated that *“there had been several victims with disabilities in 2021. Within a two week period two girls with intellectual disabilities were victims of the criminal offense of rape – one was raped by a friend and the second by her father who made her pregnant.”* The justice system support worker went on to comment that *“during 2020, we supported one victim with a hearing impairment. Prior to the phase of giving a statement to the court, an official interpreter was hired. The support office worked to explain*

⁹³ Thanks to amendments to the Criminal Code in 2019., any sexual intercourse without consent should be now considered rape, for the purpose it will be punished more severely. Until then, there was rape and “sexual intercourse without consent”. Rape involves the use of force or threat, and “sexual intercourse without consent” is a situation where there is no coercion or threat, but no consent of the victim. In the case of rape, a sentence of one to ten years in prison can be imposed, and in the case of unconstitutional intercourse, was six months to five years. Amendments to the law provide for the abolition of sexual intercourse without consent, ie any sexual act without consent will be considered rape.

relevant information to the interpreter, to help pass to the victim. During this process we learnt some Sign Language, the way the communications should be held with someone who has a hearing impairment, the speed of communication, and the limitations of understanding certain words.”

10. Recommendations

To the European Commission

- Make an urgent evaluation and refinement of the Victims Directive 2012/29/EU in terms of legal aid, access to justice for victims, support and services provided by the State.
- Refine the Victims' Rights Directive 2012/29/EU such that EU Member States are required to adapt their criminal procedure and victims' rights so that the violation of the rights be recognised as procedural errors.
- Provide more funding to the State bodies and NGO's which provide support to victims with disabilities, including those which provide education, training, and exchange of knowledge in EU Members States in skills required for effective communication with victims with disabilities.

To the Government of Republic of Croatia and Ombudsman Office for People with Disabilities

- Amend the National Strategy for Equalization of Opportunities for Persons with Disabilities with special focus on the rights of victims with disabilities.
- The National Strategy for Victim and Witness Support for the period 2022 should contain an Action Plan with an emphasis on victims with disabilities.
- Guardianship laws and the procedural role of victims with intellectual disabilities should be in compliance with Articles 12 and 13 of the Convention on the Rights of Persons with Disabilities.
- More funds should be allocated for State bodies and NGOs dealing with persons with disabilities. These funds should be earmarked for hiring experts and specialised staff to be able to provide adequate support as well as for accessing relevant materials and premises allowing NGOs to fulfil their roles.
- Draw up protocols and adopt laws and regulations that will enhance multi-sector cooperation.
- Provide internal support to State bodies in the judicial system.
- The Ombudsman for Persons with Disabilities should dedicate a section specifically on victims with disabilities and their support in his/her annual report.
- Although the Ombudsperson does not receive complaints about criminal offenses, but may learn about them indirectly, Annual Reports should categorize legal areas or criminal offenses, and encourage persons with disabilities or organizations working with persons with disabilities to submit complaints or descriptions on a regular basis. Make all necessary adjustments concerning access to the premises of judicial, social, education and health institutions. for persons with disabilities.

To the Ministry of Justice and Administration and Ministry of Interior and Head of Prosecution Office of Republic of Croatia

- A strategy and an action plan should be drawn up in order to promote a better understanding of the rights of victims among people with disabilities as well as strategies on how to tackle the problem of underreporting and how to create sustainable reporting mechanisms.
- Relevant bodies shall keep specifically classified data and statistics concerning the types of crime committed against people with disabilities as well as of the number of victims with disabilities.
- It is necessary to adapt victims' rights notice in a way that it can be understandable to every victim, regardless of her age, education or whether she has any disabilities or health issues, i.e., easy-read versions of the "Victims' Rights Notice" should be available
- While carrying out an individual needs assessment, relevant stakeholders shall consider the specific communication needs of victims with particular regard to victims with disabilities. In addition, the use of individual needs assessment must be enhanced in practice and should be carried out in a general level.
- The Ministry of Internal Affairs should collect and provide annual statistical data on the number of criminal offenses with special regards to offences committed against people with disabilities.
- The Ministry of Justice and Administration should encourage the Judicial Academy to provide adequate training for judges and members of the prosecution on how to communicate with victims and witnesses with disabilities in an efficient way in order to receive "quality statements".
- The Ministry of Justice and Administration and the Ministry of Interior must train police and prosecution officers as well as judges on how to carry out field work with person with disabilities at least on county level.
- Create policies on ensuring adequate human resources with special regard to training and hiring more experts in the field, to be able to provide appropriate assistance for law enforcement authorities and judicial bodies when dealing with victims with disabilities,
- Provide regular trainings to experts dealing with people with disabilities on matters concerning victims with disabilities and on how to enable them to fully and equally participate in criminal procedures.

NGO and cross-disciplinary support

- The exchange of experiences of NGOs dealing with people with disabilities and NGOs dealing with victims in general should be enhanced and encouraged. It could be enabled through common trainings and conferences organised specifically for members of NGOs focusing on various sector of disability rights.

- An official platform should be established where police officers and members of other relevant sectors (e.g. social and health care workers, judicial staff) can exchange knowledge and experience on how to approach and communicate with persons with disabilities, especially with victims of domestic violence, should be established by the Municipalities
- NGOs dealing with disability rights and victim support services should be involved in the trainings provided to law enforcement and judicial staff.
- Local municipalities and counties should make more funds available for supporting organisations or individuals working with people with disabilities.