

Voices for Justice

Victims of crime with disabilities in Slovenia



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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, VWSS
- Czechia and Slovakia: FORUM for Human Rights
- Lithuania: Mental Health Perspectives, PSP
- Romania: Centre for Legal Resources
- Slovenia: PIC – Legal Center for the Protection of Human Rights and the Environment; Social Protection Institute of the Republic of Slovenia, IRRSV; and University of Ljubljana



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

Social Protection Institute of the Republic of Slovenia

The Social Protection Institute of the Republic of Slovenia (Inštitut Republike Slovenije za socialno varstvo) covers the fields of social protection, child and family and disability policies. In accordance with its annual plan the Institute creates and maintains a variety of databases for social assistance and social services including development and experimental programmes. It has three decades of experience in evaluation and monitoring service provision for people with disabilities in Slovenia and has coordinated cross-border projects. Most importantly related to the rights of people with disabilities they have been developing and evaluating process of deinstitutionalisation and the recently introduced legislation on personal assistance.

Faculty for Social Work at the University of Ljubljana

The Faculty for Social Work at the University of Ljubljana (Fakulteta za socialno delo, Univerza v Ljubljani) has a long tradition in developing action research methods. Since the eighties the faculty has been very active on the national and international (Bosnia and Hercegovina, Macedonia, Serbia, Sri Lanka etc.) level in developing research on the rights of people with disabilities in particular of those living in total institutions. It was particularly active in deinstitutionalisation in the post-Yugoslav context and not only researched it but also working as advocates for people living in institutions on a collective and individual level.

PIC – Legal Center for the Protection of Human Rights and the Environment

PIC – Legal Center for the Protection of Human Rights and the Environment (PIC- Pravni center za varstvo človekovih pravic in okolja) brings legal expertise in protecting, supporting and defending marginalised and vulnerable groups and provides legal assistance to more than 1,000 people with disabilities each year. PIC is participating in decision-making processes, working bodies, committees, networks and forums, in order to advance the position of non-governmental organizations in Slovenia and increase their influence on decision-making. They endeavour towards strengthening the integrity in the non-governmental sector and advocate transparent and responsible activity at all levels of the social system.

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1. Executive Summary

This national report presents the findings and recommendations from research aimed at exploring and analysing access to justice for people with disabilities who are victims of crime. The report has a particular focus on their rights to information and communication in Slovenia and other rights provided by the European Union Victims' Rights Directive. Even though some improvements have been made since the Criminal Procedure Act was amended in 2019, intending to transpose the Victims' Rights Directive, the criminal justice system remains hardly accessible to victims of crime with disabilities. In light of the findings from the research, a number of recommendations have been formulated which are intended to improve communications with victims of crime with disabilities and uphold their human rights in the legal process. A fundamental area of improvement is raising awareness and providing basic relevant information on the rights of victims with disabilities in criminal proceedings. During the research, we came across inaccessible and deficient data on victims and especially on victims with disabilities, as well as people with disabilities in general. It is crucial to collect detailed statistics and disaggregated data on people with disabilities and victims with disabilities, which could contribute to monitoring access to rights of victims with disabilities in criminal proceedings and ensuring a proper allocation of resources. Online and offline materials should be improved and obstacles removed that impede or prevent the physical and communication access for victims of crime with disabilities to proceedings or to support services. Special attention should be paid to providing supports which ensure effective communications and meet other needs of victims with disabilities. Providing quality training, establishing coordination between services and the judiciary system and developing advocacy services are other key points of necessary improvement. The research points out the stigma that still affects people with disabilities who are crime victims, highlighting areas and topics for further research and action so that people with disabilities can access their rights.

1.1 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 Directive¹ (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

¹. The European Union Victims' Rights Directive¹. (Directive 2012/29/EU) is referred to as either the VRD or the Directive throughout this report.

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 law² and to access to justice,³ at the same time as asserting the rights to equality and non-discrimination,⁴ and the obligation of states “to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention.”⁵ Together with the Victims’ Rights’ Directive, this means that, 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 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 Slovenia.

The first chapter gives a brief description on how research was conducted and the methodology used. The National Legislation chapter offers an overview of domestic legislation regulating victims’ rights and further deals with the concept of disability in Slovenian legislation and regulation of disability related rights. The chapter on transposition of the Directive describes the process and transposition of Directive rights into national legislation and further offers a more detailed insight into how the Criminal Proceedings Act, as the most comprehensive legal document in this field, implements victims’ rights. Then follows the chapter describing victim’s rights in practice and how they are implemented, drawing on the experiences of victims and support organisations. Finally, the last chapter presents key findings and recommendations, on how to improve access to justice system for people with disabilities who are victims of crime.

². UN CRPD Article 12.

³. UN CRPD Article 13.

⁴. UN CRPD Article 5.

⁵. UN CRPD Article 4.

1.2 Methodology

Given how little is known about the topic, the research is exploratory in nature. A common methodology was used across the project and a separate methodology paper is available on the project website. The research involved 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.

The research was implemented not only with the aim of exploring and analysing access to justice of people with disabilities who are victims of crime with a focus on their right to information and communication in Slovenia, but it was also the researchers' intention to enter into a dialogue with the relevant stakeholders and promote the implementation of the right to understand and be understood as established in the VRD⁶. Since the COVID-19 epidemic was declared in Slovenia on 12 March 2020, the research process faced a number of organisational obstacles. Restrictive measures prevented the activities from being carried out or caused activities to be postponed or cancelled. Above all, the victims of the epidemic were people with disabilities who were facing their own existential problems and understandably had less time to work with researchers.

The research has been implemented through three main approaches – desk research, creation of an action group, and interviews. The desk research was implemented by collecting existing data and reviewing existing research, legislation and policy. The action group was previously established with users and experts from different institutions. The group was formed to address and report violence, and to improve information and communication for people with psychosocial disabilities who are living in long term institutions.

The interviews with the stakeholders were performed between May and August 2021. Opportunistic and purposive sampling was used. Three persons with disabilities, six social workers, one legal advisor and the head of a victim support service were interviewed. The field research and desk research data were analysed simultaneously and triangulated to improve the validity and objectivity of the findings. The data was analysed using critical thematic analysis with structural coding.

The information obtained in the research is used to formulate recommendations for improving communication with people with disabilities who are victims of crime, thereby helping to ensure that their human rights are upheld during the criminal justice processes. At the same time, and in addition to the recommendations set out, the research sheds light on topics that need further concrete action.

We thank all participants for their contribution to the report, especially people willing to share their personal experience as victims of crime with disabilities, and professionals who work in the system. We consider these important starting points and support for the continuation of our joint planning and work.

⁶ Victims' Rights Directive 2012/29/EU (n 2).

2. National Legislation Overview

This chapter firstly offers an overview of domestic legislation regulating victims' rights and further deals with the concept of disability in Slovenian legislation together with the regulation of disability related rights.

The main law regulating victims' rights in Slovenia and at the same time the main legal document for the transposition of the Directive is **THE CRIMINAL PROCEEDINGS ACT**⁷. The provisions of this Act and the rights it regulates are described in more detail in the chapter on transposition and implementation of the Directive. In general, the Criminal Proceedings Act lays down rules to ensure that no person who is innocent is convicted and that criminal sanctions are imposed on the perpetrator of a criminal offence under the conditions defined by criminal law and based on due process. After the amendment (ZKP-N) of this Act in 2019, a substantial change was made in terms of victims' rights and an approximation to the rights and standards set by the Directive was established, at least at the legislative level.

2.1 Victims' Rights Legislation

The position of victims of crimes and their rights are regulated by various national laws. Slightly different terminology is used in different laws to refer to victims (victim of domestic violence, injured party, crime victim) but the definition and the main meaning through various regulations is practically the same and Article 144 of the Criminal Proceedings Act defines a victim as a person whose personal or property rights have been violated or threatened by a criminal offence. Family members are also considered victims, when a person's death was a direct consequence of the crime, which aligns with the definition of victim under Article 2 of the Directive. In fact, the transposition of the Directive resulted in expanding the definition of victim to include the recognition of indirect victims (family members) in Article 144. However, the Criminal Proceedings Act formally uses the term injured party, and the term victim is not even legally defined in this Act. The term injured party remained even after transposition of the Directive, meaning that the Act uses the term injured party when regulating victims' rights transposed from the Directive and hence, throughout this report the term injured party and victim are used interchangeably, even though the term victim is predominantly used.

Laws regulating victims' rights in general do not differentiate between victims with disabilities and other victims. However, the Criminal Proceedings Act introduces the injured party (victim) with special needs for protection, meaning an injured person whose personal or property right has been significantly violated by the criminal offence, but who, owing to their personal characteristics or vulnerability, is in need of special protection due to the nature, gravity or circumstances of the crime or the conduct of the accused person or the injured party in pre-trial or criminal proceedings and outside them, in order to protect their personal integrity during individual acts in pre-criminal and criminal proceedings (the amended Article 144). Therefore, disability is definitely considered as one of the circumstances causing special needs for protection.

⁷ Zakon o kazenskem postopku (ZKP), Official Gazette RS no. 176/21, [officially consolidated text](#)

THE CRIMINAL CODE⁸ regulates criminal offences, criminal liability and sanctions, focusing on the accused and not so much on the victim. The only right regulated in the Criminal code is the victim's protection pertaining to claims for damages (pecuniary claim) in criminal proceedings (Article 76 of the Criminal Code).

WITNESS PROTECTION ACT⁹ regulates the conditions and procedures for the protection of witnesses and other persons (i.e. family members) endangered due to participation in criminal proceedings. Protection of endangered persons is provided in pre-trial proceedings, during and after the completion of criminal proceedings for criminal offenses specified in this Act and is carried out through protection programmes and other measures based on the needs and endangerment of the witness.

CRIME VICTIM COMPENSATION ACT¹⁰ regulates the right to compensation for victims of violent intentional crimes and their family members, the procedure for exercising these rights and the bodies that decide and participate in the procedure for deciding on these rights. The primary obligation of the victim is to file pecuniary claims in criminal or civil proceedings, and, only if it is proved that the enforcement of the claim was not successful, the victim is entitled to seek compensation under this Act. At this point, the compensation is covered by the state. But there is an exemption regarding victims with disability as it is regulated under Article 7 of this Act. In that case, if the eligible person (victim or family member) for compensation is a person with disability, it is presumed the enforcement of the claim will not be successful therefore disabled victims are not obliged to file pecuniary claims in criminal or civil proceedings prior to seeking compensation under this Act. By removing this procedural prerequisite, they are put in a slightly more favourable position than other victims.

However, under Article 2 of this Act a person with a disability is defined as a person who has been recognized as having a disability at the time of the commission of the crime in accordance with the regulations governing the protection of disabled persons. But in our opinion, this opens the door to potential inequality, since disability needs to be formally recognised for the person to be able to exercise this exemption. In practice not every person with a disability is formally recognised as disabled, which is especially problematic in connection to persons with mental health issues, who are often not recognised as having a disability.

LEGAL AID ACT¹¹ promotes the right to judicial protection based on the principle of equality and taking into account the social situation of persons who are not able to exercise this right without jeopardising their subsistence and the subsistence of their families. Free legal aid is defined as the right of the eligible person to full or partial provision of funds necessary to cover the costs of legal aid and exemption from the payment of costs for judicial proceedings. The main criterion for eligibility is the financial position of the applicant and their family members. Irrespective of income and property criteria, free legal aid may be granted in the form of exceptional free legal aid, on the basis of the applicant's medical grounds. This applies if the applicant faces costs associated with their treatment that are not covered by compulsory health insurance but are necessary due to their degree of disability or other form of physical or mental impairment (Article 22).

⁸. Kazenski zakonik (KZ), Official Gazette RS no. 50/12, 6/16, 54/15, 38,16, 27/17, 23/20, 91/20 and 95/21

⁹. Zakon o zaštiti priča (ZZPrič), Official Gazette RS no. 81/06, 117/06, 110/07 and 30/18

¹⁰. Zakon o odškodnini žrtvam kaznivih dejanj (ZOZKD), Official Gazette RS no. 101/05, 114/06 and 86/10

¹¹. Zakon o brezplačni pravni pomoči (ZBPP), Official Gazette RS no. 96/04, 23/08, 15/14 and 19/15

ENFORCEMENT OF CRIMINAL SANCTIONS ACT¹² is one of four laws partially transposing the Directive into national law. It regulates the enforcement of criminal sanctions and other measures imposed by a court in criminal proceedings. The amendment of the law in 2018 (ZIKS-1G) introduced the right of the victim to be informed on the departure of the accused from prison or other institution, on their release or escape, if the victim so requests (Articles 18 and 30.b).

DOMESTIC VIOLENCE PREVENTION ACT¹³ contains quite a few provisions regulating victims' rights which have been in force longer than the provisions of the Criminal Proceedings Act. So, there has been more time for these rights to be realised. However, this Act applies only to victims of domestic violence.

This Act also partially transposes the Directive into domestic law, which was done through the amendment in 2016 (ZPND-A). It regulates the victims' right to an assistant who can accompany them in all violence-related procedures and proceedings in which the perpetrator of the violence is involved (Article 7). For the assistant to be present in such procedures, it is sufficient for the victim to declare prior to the start of the procedure or in the actual procedure that they want a specific person to accompany them and that they want them to be present during the procedure. It also regulates the right to an advocate, who, in accordance with special regulations, protects the victim's benefits in procedures and activities concerning the victim (Article 8). This Act also introduces the right to protection of the victim's identity (Article 9), and the right to protection of the victim's data (Article 9.a). It also stipulates that authorities, organizations, and NGO's shall ensure that victims receive adequate and timely information on available support services and legal measures in a language they understand (Article 9.b). In Article 10 the role of authorities, organizations and NGO's is defined and in addition to the obligation of providing mutual information and assistance, this article also introduces the obligation for regular education of professional staff, particularly concerning the prevention and detection of acts of violence, enforcement, judging and execution of sanctions for such acts of violence, equality between men and women, the needs and rights of victims and the prevention of secondary victimisation.

The domestic violence prevention act also directs the tasks of social work centres (CSD) who provide services in accordance with the Act regulating social security, where the elimination of direct threat is the goal of their involvement. They also work to ensure the victim's long-term safety by eliminating the causes or circumstances in which violence is present, by resolving their social and material living needs (Article 14).

SOCIAL ASSISTANCE ACT¹⁴ transposes the Directive in the part relating to the provision of support to victims of crime (Article 14.a of the Act). Support is provided to victims regardless of whether they have formally reported the crime. Support for victims under this Act includes professional support and expert advice to a person who has been directly harmed by any criminal offense. Professional support includes identifying the person's distress, along with their information and guidance needs. Professional support and expert advice are provided in order to enable the victim to adequately improve the psychological, social and financial situation resulting from the crime.

Victim support is organized as a public service and is therefore free of charge (Articles 42 and 100), and the state is obliged to develop a network of victim support services (Article 43).

¹² *Zakon o izvrševanju kazenskih sankcij (ZIKS)*, Official Gazette RS no. 110/06, 76/08, 40/09, 9/11, 96/12, 209/12, 54/15, 11/18 and 200/20

¹³ *Zakon o preprečevanju nasilja v družini (ZPND)*, Official Gazette RS no. 16/08, 68/16 and 54/17

¹⁴ *Zakon o socialnem varstvu (ZSV)*, Official Gazette RS no. 3/07, 23/07, 41/07,61/10 and next

2.2 Disability Rights Legislation

In Slovenian legislation there is no uniform definition of disability. The definitions of disability are fragmented in several laws, with each law defining persons with disability differently, entitling them to different rights, benefits and services. To be entitled to any of the services or benefits, people with disabilities must meet specific conditions prescribed by each law governing specific right. The general principle is that a person must be recognized as disabled or acquire the status of disability on the basis of one of the laws, to be able to exercise rights.

EQUALISATION OF OPPORTUNITIES FOR PERSONS WITH DISABILITIES ACT¹⁵. was adopted in 2010, following the ratification of the CRPD (Convention on the Rights of Persons with Disabilities). It does not regulate disability status but rather ensures equal opportunities for people with disabilities and their non-discrimination through providing planned activities to enable inclusion in various aspects of society, such as public services, the built environment, goods and services, information, communications, etc., to be accessible to all, regardless of disability. The definition of disability pursuant to this Act is very general and somewhat resembles the definition from CRPD as it states in Article 3 that people with disabilities are people with long-term physical, mental and sensory impairments and intellectual disabilities, which in connection with various barriers can limit them from participating fully and effectively in society.

Other laws define disability in connection to a specific circumstance or to the objective the law is pursuing. This means that the **WAR DISABILITY ACT**¹⁶. links the origin and existence of disability to conditions of war. Article 1 defines disability as at least 20% damage to health due to injury or illness which was caused or exacerbated by conditions of war. This act defines disability as an absolute damage to health and it is assumed the existence of damage to health impairs a person's ability to meet basic living needs or to participate equally in society. In such cases, no other conditions need to be met for the person to obtain disability status and exercise the rights regulated by this Act. Rights are focused on monetary benefits and exemptions, healthcare and functional forms of help but do not have a direct impact on the field of criminal law.

Laws that regulate work and employment connected with disability have a very important place in disability legislation. **THE PENSION AND DISABILITY INSURANCE ACT**¹⁷. regulates mandatory insurance and provides disability status to (insured) persons who have a reduced ability to provide or maintain a job or to career advancement, due to changes in their health condition that cannot be eliminated by treatment or medical rehabilitation measures. Disability based on this law is not absolute and based only on person's deteriorated health status but is recognised only if the deterioration of health actually affects a person's ability to work.

This Act also defines physical impairment (which is legally separate from disability) and signifies a loss, significant injury or significant impairment of individual organs or parts of the body that complicates the activity of the organism and requires greater efforts to meet the needs of life, regardless of whether this impairment causes disability or not.

¹⁵. [Zakon o izenačevanju možnosti invalidov \(ZIMI\)](#) ([pisrs.si](#)), Official Gazette of RS, no. 94/10, 50/14 and 32/17.

¹⁶. [Zakon o vojnih invalidih \(Zvojl\)](#), Official Gazette of RS, no. 63/95 and next

¹⁷. [Zakon o pokojninskem in invalidskem zavarovanju \(ZPIZ-2\)](#), Official Gazette of RS, no. 96/12 and next

Rights under this Act are exercised on the basis of insurance and offer a wide range of options related to work (transfer, part-time work, limitations of work tasks, retraining for another profession or post, etc.). In addition, a person with disability status or physical impairment is entitled to monetary benefits.

VOCATIONAL REHABILITATION AND EMPLOYMENT OF PERSONS WITH DISABILITIES ACT¹⁸. A person can gain disability status, if they are recognized by the Employment Service of Slovenia as a person with a permanent physical or mental disability which reduces their possibilities to obtain or maintain employment. The purpose of this law is to increase the employability of people with disabilities and to establish conditions for their equal participation in the labour market by removing barriers and creating equal opportunities. There are no monetary benefits deriving from this Act, there is only limited payment granted during the process of vocational rehabilitation, which is already a subject of criticism, as this regulation grants disability status without any monetary support for persons struggling to navigate the labour market.

The newest and the most modern law regulating disability is the **SOCIAL INCLUSION OF DISABLED PERSONS ACT**¹⁹ which entered into force in 2019, repealing the Act on Social Care of Persons with Mental and Physical Impairments. In accordance with the new act, disability status can be obtained by adults suffering from moderate, severe or serious intellectual impairments or severe autism spectrum disorder, deaf-blind persons, persons with a moderate to serious brain injury or impairment, and persons with severely reduced mobility if disability occurred before adulthood (18 years of age or, if undergoing education and training, until 26 years of age).

This Act provides protection for persons with permanent congenital or acquired impairments and disorders, who are unable to integrate into the community without assistance or to care for themselves independently due to their disability and are ensured the right to social assistance services providing adapted forms of employment and training, which encourage them to live as independently as possible.

Even though this Act is based on the social model of disability, in general in the field of disability protection there is a serious lack of such broader definitions which would include more people, especially people with mental health problems, and enable them to access all their rights as other people with disabilities can do.

Due to different definitions of disability in Slovenian legislation, different conditions must be met to obtain and exercise rights to services and benefits. But not all disability statuses provide monetary benefits; therefore, there are differences between people with different disabilities which violates the constitutional right to equality and also social security. This is especially evident in the treatment of persons with psychosocial disabilities. The Ministry of Labour, Family, Social Affairs and Equal Opportunities took the position that persons with mental health problems are not disabled since mental health issues are a sickness which can be treated and do not constitute a permanent condition that cannot be remedied, which, in their view, is a fundamental element of disability. In contrast, the Ombudsman took the view that persons with psychosocial disabilities should also be considered disabled and should enjoy protection under the CRPD and legislative protection if the mental or psychosocial impairment was long-lasting and affected the individual's ability to participate fully and effectively in society.²⁰

¹⁸. [Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov \(ZZRZI\)](#), Official Gazette of RS, no. 16/07 and next

¹⁹. [Zakon o socialnem vključevanju invalidov \(ZSVI\)](#), Official Gazette of RS, no. 30/18

²⁰. [Varuh človekovih pravic, 'Vsi so enaki, le da so nekateri malo bolj'](#)

In 2021, the Ombudsman emphasized that the legislation in the field of social protection of persons with disabilities, who are unable to work must be unified and harmonized in accordance with a more modern approach, based on the social model of disability, and that an appropriate legal basis needs to be adopted if misuse of the definition is to be eliminated. The Ombudsman also emphasized that persons with psychosocial disabilities should be properly included in disability protection, since it is hard for them to obtain official disability status, disability benefits and other rights, associated with the status.^{21.}

In conclusion it should be pointed out that a separate definition of disability within the criminal legislation in Slovenia does not exist. The Criminal Procedure Act, the Criminal Code and the Court Rules^{22.} do not provide any definitions of disability nor do they indicate specific vulnerable groups (apart from minors). The Criminal Procedure Act does state, that when the personal assessment of the victim is made, a particular consideration should be taken of the age and potential disability of the victim (Article 143.č). Similarly, the Domestic Violence Prevention Act states that special care in dealing with violence and aiding victims shall be given to the elderly and people with disabilities, as well as to persons who need care due to personal circumstances and are not able to care for themselves (Article 4).

However, considering the fact there are different definitions of disability in the Slovenian legal system and certain conditions must be met in order to exercise individual disability rights, it is a far better option not to include disability definitions and criteria in victims' rights regulations since that doesn't set any limitations on who could exercise the right to protection and the right to protection should only derive from the needs of an individual and not from the formal disability status.

^{21.} Ibid.

^{22.} Sodni red <http://www.pisrs.si/Pis.web/pregledPredpisa?id=DRUG4076>

3. Transposition and Implementation of the Directive 2012/29/EU

The Victims' Rights Directive that was adopted on 25th of October in 2012, setting minimum standards in victim's rights. It is a legally binding document for Member States in the field of guaranteeing fundamental rights, support and protection to victims of crime. As directives are not directly applicable in EU countries, they must be transposed into national law. This chapter offers an overview of the laws through which the Directive was transposed into national law and the implementation of the Directive rights in the Criminal procedure Act as this Act regulates victims' rights most extensively.

3.1 National Laws Transposing the Directive

The Directive stipulates in Article 27, that Member States should transpose it into national law (bring into force the laws, regulations and administrative provisions) by 16th November 2015. A study, conducted by the European Parliament's Research Centre in December 2017, reported that only two Member States had not fully transposed the directive into national law, one of which was Slovenia.²³

Until then, Slovenia amended the Prevention of Domestic Violence Act (ZPND-A)²⁴ in 2016 in which it regulates the victims' right to an assistant who can accompany them in all violence-related procedures and proceedings in which the perpetrator of the violence is involved (Article 7). It introduces the right to protection of the victim's identity (Article 9), and the right to protection of the victim's data (Article 9.a) as well as the right to information on available support services and legal measures in a language they understand (Article 9.b). Article 10 stipulates the obligation for regular education of professional staff on the needs and rights of victims and the prevention of secondary victimisation. This act successfully transposes and implements some of the victims' rights regulated by the Directive, but protection is limited only to victims of domestic violence.

In 2018 the Enforcement of Criminal Sanctions Act was amended (ZIKS-1G)²⁵ introducing the right of the victim to be informed on the departure of the accused from prison or other institution, on their release or escape, if the victim requests (Articles 18 and 30.b), and thus providing more protection to victims. Yet, the question of appropriate formulation of these provisions arises, since the victim is informed on the departure, release or escape of the accused only on the victim's request. This inadequacy is somewhat mitigated by the Paragraph 4 of Article 30.b, as it states that when the accused starts to serve the sentence, the court notifies the victim, who hasn't submitted such request, of their right to be informed and the possibility to file the request. Nevertheless, the victim should have the right to be informed on release, departure or escape of the accused without a specific request.

²³. European Parliamentary Research Service, *The Victims' rights Directive 2012/29/EU Implementation Assessment* (December 2017) <[www.europarl.europa.eu/RegData/etudes/STUD/2017/611022/EPRS_STU\(2017\)611022_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/611022/EPRS_STU(2017)611022_EN.pdf)> accessed 5 October 2021.

²⁴. Zakon o preprečevanju nasilja v družini ZPND-A Official gazette of RS, no. 68/2016

²⁵. Zakon o izvrševanju kazenskih sankcij ZIKS-1G, Official gazette of RS, no. 11/2018

On November 8th 2018, the European Commission sent a reasoned opinion to Slovenia calling on it to properly implement the Directive. Soon after this, in March 2019, the National Assembly adopted an amendment to the Criminal Procedure Act (ZKP-N)²⁶, which is described in separate subchapter, since the majority of victims' rights are implemented by this Act.

Soon followed the amendment of the Social Assistance Act (ZSV-I)²⁷, establishing a free of charge and accessible support network for all victims of crime and introducing support services in accordance with the goals and purpose of the Directive. Before this amendment, legislation did not regulate support for victims of crime systematically and did not provide adequate support to victims regardless of the nature of the crime and regardless of whether they reported the crime or not, as required by the Directive.

3.2 Implementation of Victims' Rights in the Criminal Proceedings Act

Directive no. 2012/29/EU of 25 October 2012, regulates the position of victims of crime at an integrated level, paying special attention to vulnerable groups of victims. The amended Criminal Proceedings Act is in alignment with the Directive. In the terms of content, provisions of the Act are very comparable to the Directive and reach the required minimum standard in the field of protection and support of victims of crime.

Some of the victims' rights the Directive regulates were already incorporated in provisions of the Criminal Proceedings Act (hereinafter ZKP). One is the right to be heard, as ZKP already provided the right of the victim to participate in a hearing and to present evidence (ZKP Articles 59, 54, 64, 236, 240). The right to legal aid was also provided partially in ZKP (Article 65) and partially in the Legal Aid Act. Still, the legal framework regulating the right to legal aid remains unsuitable. The main criterion for eligibility under the Legal Aid Act is the financial position of the applicant and their family members. The threshold is set as twice the amount of monetary social assistance benefit, but that doesn't mean that persons with disability will necessarily fall under the eligibility criteria. It is a strong possibility, since disability benefits are low, but it also depends on the other income of a disabled person and their family members, and on their property. Even more problematic is, that the process of obtaining free legal aid is lengthy and administratively complicated, especially for persons with psychosocial disabilities (the form is very complicated, applicants have difficulties providing supporting documents). Additional obstacles include the fact that there are no specialised legal representatives who would represent victims with disabilities in criminal cases. Attorneys representing victims don't have relevant knowledge and experience, so appropriate representation of victims depends on sensitivity and flexibility of the individual attorney. Therefore, a systemic solution should be in place, providing suitable training and specialisation for attorneys representing victims in criminal cases.

Even before the Directive, national legislation provided the right to reimbursement of expenses (ZKP Article 92) and the right to a decision on compensation from the offender in the course of criminal proceedings (ZKP Articles 52 and 100-116 and Article 76 of the Criminal Code). The right to protection of privacy was already implemented through the possibility to exclude the public from

²⁶. Zakon o kazenskem postopku ZKP-N, Official gazette of RS, no. 22/2019

²⁷. Zakon o socialnem varstvu ZSV-I, Official Gazette of RS, no. 28/2019.

proceedings and confidentiality of information (ZKP Articles 240.a, 295 and 331). The rights of victim resident in another Member State were also already appropriately regulated. Cooperation between competent authorities of the Member States and the mutual exchange of information is governed primarily by the Cooperation in Criminal Matters with the Member States of the European Union Act²⁸. and in part, the issue is resolved in the ZKP Articles 146 on the reporting of a criminal offense and 244.a on the use of videoconferencing.²⁹

Some of the victims' rights were already included in ZKP to a certain extent, but needed amending. The Directive is more suitably implemented through amendment to ZKP Article 8, which regulates the right of the parties, witnesses, suspects and other participants in the proceedings to use their language in investigative and other judicial proceedings or at the main hearing (implementing the right to interpretation and translation from Article 7 of the Directive). Now, for greater clarity, ZKP Article 8 states which documents are essential for the injured party in terms of written translation (summonses, decisions dismissing criminal complaints, decisions dismissing or rejecting requests for investigation, decisions discontinuing the proceedings, decisions rejecting indictments, judgments, and instructions on the right to assume or continue prosecution).

According to the requirements of Article 5 of the Directive, a new ZKP Article 147.a was created which regulates the rights of victims when making a complaint (the right of the victim to be issued a written certificate on the filing of the complaint and for it to be translated free of charge) and is *lex specialis* in relation to ZKP Article 8 (regarding providing language assistance).³⁰ Article 147.a regulates that the state prosecutor, the court and the police must inform the victim who filed the criminal complaint about their right to be issued a written certificate on the filing of the complaint. The victim who does not speak or understand the official language must be provided with the necessary language assistance of a person who, in addition to the official language, also understands and speaks the language understood and spoken by the victim, and who is willing to respect the confidentiality of the communications.³¹ This provision is otherwise linguistically and semantically properly formed, as it speaks of the right to necessary language assistance³² for the victim who doesn't speak or understand the official language. Therefore, necessary language assistance could easily be interpreted more broadly and could also include non-verbal, alternative and augmentative forms of communication and not only traditional forms of translation. However, this has yet to be put into practice, as easy-to-read and other accessible materials are still very rare³³ and there are practically no specialised communication experts who could help facilitate non-verbal and other forms of alternative communication between officials and people with disabilities, especially psychosocial and intellectual disabilities.

ZKP Article 144 introduces important novelties implementing the Directive (Articles 2, 22, 23) in terms of defining the term victim, which is now further extended to certain family members of a person whose death was the direct result of a crime. Additionally Article 144 introduces the term victim with special protection needs who is defined as the injured person whose personal or

²⁸ [Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije \(ZSKZDČEU-1\)](#), Official gazette of RS, no. 48/2013 and next

²⁹ Tina Bučar, 'Direktiva 2012/29/EU o določitvi minimalnih standardov na področju zaščite žrtev kaznivih dejanj in njena implementacija' (MA Thesis, Univerza v Ljubljani 2019).

³⁰ Paragraph 5 stipulates that translation of the certificate is provided on the request of the victim.

³¹ [Jasmina Potrč, Večina določb novele ZKP-N se začne uporabljati čez pol leta, IUS-INFO Portal, 11.4.2019](#)

³² Rather than merely "translation".

³³ A. To., 'Lahko branje in dostopnost informacij za vse. Intervju z Zagovornikom načela enakosti Miho Lobnikom' (*RtvSlo Dostopno*, 11 June 2020) <www.rtv slo.si/dostopno/clanki/lahko-branje-in-dostopnost-informacij-za-vse/526848?fbclid=IwAR2ziOQjelGDkxfvR4sMchv-nZDRIAWJn85SrHjw3O7WHrxhAua3f7amkWG> accessed 14 September 2021.

property right has been significantly violated by the criminal offence, but who, owing to their personal characteristics or vulnerability, is in need of special protection due to the nature, gravity or circumstances of the crime or the conduct of the accused person or the injured party in pre-trial or criminal proceedings and outside them, in order to protect their personal integrity during individual acts in pre-criminal and criminal proceedings. This is extremely important as it means that disability is recognised as a circumstance of vulnerability in criminal proceedings and provides the basis for the recognition of special protection.

Further, the amended fourth paragraph of ZKP Article 65 implements Article 3 of the Directive (right to understand and be understood) and stipulates that in pre-trial and criminal proceedings, a victim who is a minor or a victim of violence or another victim, if so required by the nature and gravity of the crime, victim's personal circumstances or the degree of threat to their life and body, may be accompanied by a person of their choosing (whom they trust), and unless this is contrary to the interests of the successful implementation of pre-trial or criminal proceedings or even the benefit of the victim. An important change is that this amendment extended the circle of victims who are allowed to be accompanied by a person of trust based on personal circumstances of the victim, and this may also include disability.

The right to be accompanied by a person of trust is extremely important and it is favourable that the regulations don't set any limitations on who the person of trust can be. It can be a family member, a friend, an NGO representative or someone else. However, this right can be significantly hindered in practice, as the person of trust can't be a person who participates or will participate in the criminal proceedings, because it is considered this is contrary to the interests of the successful implementation of proceedings, which is focused on seeking material truth. This is especially evident in cases of domestic violence, where a family member whom the victim trusts the most, will likely be a witness during the process and therefore can't be a person of trust. Another point that should be raised is that the person of trust doesn't have an official status and is not an active participant in the proceedings. In addition, the person of trust is not allowed to speak or intervene during proceedings in order to aid the victim, not even in terms to give assistance with communication. The role of the person of trust in this regard could be reconsidered, since their assistance could be invaluable, as they are aware of the particular individual needs that the victim may have and how to approach and even remove the obstacles that the victim faces during the proceedings.

Unlike the person of trust, guardians of victims without legal capacity can and do have an official status in criminal proceedings. Based on ZKP Article 64 which stipulates that if the injured party is a minor or a person who has no legal capacity, their legal representative (who for adults without legal capacity is the guardian) shall be entitled to submit all statements and perform all procedural acts which the injured party is entitled to submit or perform under this Act.

So even though ZKP in general grants equal participation for people with disabilities, the regulation of guardianship and the position of the guardian do not follow this principle. Furthermore, the institute of guardianship, intended to protect the interests and benefits of the most vulnerable people with disabilities, can leave the victim excluded from the process, as their guardian is entitled to make the statements and perform all procedural acts in the name and instead of the victim. This is in direct contrast not only to the Directive but also to the CRPD, namely Article 12. Guardianship for adults is regulated by the Non-Contentious Civil Procedure Act³⁴ and the Family Code³⁵ which

³⁴. Zakon o nepravdnem postopku ZNP-1, Official Gazette of RS, no. 16/2019.

allow for the deprivation of the legal capacity, including business and procedural capacity, of persons with psychosocial and/or intellectual disabilities. The main issue is that the state considers guardians to be a form of support, although they are appointed as substitute decision makers for persons with disabilities in various areas of life³⁶. which contradicts the main principles rights provided by the CRPD and the Directive.

The right to receive information from the first contact with the competent authority (Article 4 of the Directive) was implemented with the new ZKP Article 65.a which in Paragraph 1 specifies in detail the information that must be provided to victims at the first contact with the competent authorities in pre-trial or criminal proceedings:

- free medical, psychological and other assistance and support;
- protective and other measures for ensuring personal security (such as restraining orders);
- free legal aid;
- assistance and measures pursuant to the Act governing the prevention of domestic violence (for instance protection of victim's identity, transfer of accommodation in common use);
- reimbursement of costs and compensation for damages; interpretation and translation;
- contact person and an assistant (person of trust); and
- other rights stated in Paragraph 1 of this Article).

The amount and type of information depends on the victim's personal characteristics and vulnerability, their specific needs for protection, the nature, gravity and circumstances of the crime and the stage of pre-trial or criminal proceedings (Paragraph 2).

The obligation to provide information on victims' right upon first contact is imposed to all competent authorities in pre-trial or criminal proceedings. Therefore, the police, the prosecution and the court are obliged to do so. However, there are no provisions requiring this information to be provided in written form. This is definitely a drawback for all victims, but especially for victims with psychosocial and intellectual disabilities, who might not be able to fully comprehend all rights presented to them orally and to remember them all. There is a brochure³⁷ listing victims' rights which can (and usually is) given to victims upon first contact, but it is overcrowded and too complicated and is therefore neither user friendly nor appropriate.

Pursuant to Article 65.a (Paragraph 3) the victim also has the right to receive information on the state of pre-trial or criminal proceedings and final judgments if they make such a request or if so provided by law. In order to ensure their personal security, the victim may also request to be informed of the release or escape of the suspect or accused person from pre-trial house detention or from detention (Paragraph 4), which aligns with rights stipulated by the Directive (Article 6). The legislation regulates the right of the victim to be informed of the release or escape of the offender in two separate laws. But both laws stipulate that this right is recognised upon the victim's request, which is inappropriate. The Enforcement of Criminal Sanctions Act regulates the right after the court proceedings have been concluded and the accused started serving the sentence. As already mentioned, article 30.b explicitly obligates the court to inform the victim of this right and the

³⁵. Družinski zakonik *DZ*, Official Gazette of RS, no. 15/17 and next.

³⁶. Also noted by the Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Slovenia, adopted at its 386th meeting, held on 5 March 2018, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsiV%2Bq2wB82cxwrVotBOWJsoWAUSWNqtykKMEtURxvZ0CNkBX8rxf9hTyugdQKLO5L6%2FS0srzEUsgCntqOX4Avdq8G5T0e%2BINO1%2FAWIH8BHG>

³⁷. Available at <https://www.gov.si/assets/ministrstva/MP/obrazci-odskodnine-zrtvam/Publikacije-pravice-zrtev-KD/Pravice-zrtev-v-kazenskem-postopku-slo.pdf>

possibility of filing such a request within eight days from when the accused started serving the sentence. However, article 65.a of the ZKP remains highly problematic since the right of the victim to be informed is conditional on making a request, and it also states that such information may be refused if the suspect or accused person could be threatened as a result (Paragraph 4).

One of the most important rights is introduced through the new ZKP Article 143.č which regulates that the competent authority in pre-trial or criminal proceedings shall, if possible, assess the degree of the victim's exposure to secondary and repeated victimisation, intimidation and retaliation (individual assessment as required in Article 22 of the Directive) in order to establish the existence of special needs for protection during the very first contact with the victim. The individual assessment should give particular consideration to the age and potential disability of the victim and also to the circumstances of the criminal offences committed as a result of prejudice, discrimination, exploitation or hatred, criminal offences involving the elements of violence or criminal offences against sexual integrity and criminal offences involving the elements of terrorism, trafficking in human beings and crimes committed within the context of a criminal association. If the victim is a minor, it is always presumed, they need special protection. Furthermore, the Directive (Article 24) is also implemented by the amended ZKP Article 64 in connection with the presumption that the victim is a minor if their age is unclear but it is probable that they are a minor.

And while the right to an individual assessment is set out with the aim of offering support and enabling victims with disabilities to exercise their right to participate in the justice system, there should also be awareness that in practice, there are also potential negative effects of the individual assessment, especially in terms of it becoming a lever for managing risk and providing protection instead of making it easier for the person with a disability to participate in the proceedings. This can have the effect of creating even more barriers. For instance, creating concerns regarding safety and protection of victims, who might, as a result, be discouraged or even prevented from following through with a criminal case to avoid additional distress and hardships. Therefore, it is crucial that the individual assessment is carried out thoroughly and professionally with maximum inclusion of the victim and with regard to the victim's opinion and particular needs. Yet, there are no specific provisions on how to carry out such an assessment. A questionnaire was drawn up by a workgroup of the Ministry of Justice for the police or the prosecutors to carry out individual assessments. The official carries out the assessment by posing the victim a set of questions, scoring the circumstances in each case and assessing whether the level of threat is low, high or very high on the basis of the points obtained. However, the number of points does not bind officials in determining for or against providing special protection measures; it is merely a tool to help them carry out the assessment. Individual assessment should be updated if the circumstances change, also the opinion of the Centre for Social Work may be obtained when the first assessment or an update is made.

The right to protection and the right to avoid contact between victim and offender (Directive Articles 18 and 19) were already partially in place in ZKP Articles 141.a (right to personal safety), 240 (questioning of a minor with assistance of a professional), 240.a (measures for witness protection such as keeping certain data and facts secret, hearing the witness by means of technical equipment like sound altering device or protective screen), 244.a (hearing through videoconferences). A very useful option is regulated in Article 178 where a judge can remove the accused person from a hearing to protect the witness. The amended ZKP Article 65 regulates in Paragraph 5 that the authority conducting pre-trial and criminal proceedings shall ensure that the injured party does not come into unwanted contact with the suspect or the accused person, unless such contact is indispensable for the successful implementation of pre-trial or criminal proceedings.

The right to the protection of victims during criminal investigations (Article 20 of the Directive) is implemented indirectly in ZKP Article 147 which regulates prompt action in relation to the complaint. This ensures that the process is carried out quickly and also that the victims are in the shortest possible time and without unnecessary delays heard before the investigative judge. But there was no amendment to the ZKP Article 234 regulating witness hearings and there are no specific rules to keep hearings and interviews to a minimum.³⁸ On the other hand, the ZKP Article 264 was amended and so in cases of bodily injuries, the expert witness examines the victim only if absolutely necessary, otherwise the examination is based on medical documentation or other information contained in the files. During the examination, the physical and mental integrity of the injured person must be respected. And while minimizing the victim's exposure to examinations and evaluations is welcome, systemic changes and policies should not fall into the trap based on the medical model of disability that a medical assessment of the victim is adequate or appropriate.

With regard to the "victim with special needs", the amendment contained in ZKP Article 240 Paragraph 5 states that the hearing of a witness who is a victim with special need for protection may be carried out, depending on their personal circumstances, with the assistance of an expert of the relevant profession, where a person of the victim's own choosing may also be present, unless this would be contrary to the interests of successful implementation of pre-trial or criminal proceedings. Paragraph 6 further provides that the hearing of a witness who is a victim with special need for protection may be carried out in specially adapted premises. The same goes for the hearing of a witness who is younger than 15 years and who was the victim of the criminal offence referred to in Paragraph 3 of Article 65 of this Act, unless this is not necessary for justifiable reasons which must be specifically substantiated by the court. Specially adapted premises, so called safe rooms, already exist and are intended for hearings and questionings of children in criminal proceedings. Centres for Social Work, courts and NGOs have such rooms, which are less formally furnished rooms with comfortable furniture, toys and books, and these could also be used as adapted premises for hearings or questionings of victims with disabilities in appropriate cases.

An additional right is stipulated in ZKP Article 331, where direct questioning of persons under 15 years of age, who are victims of criminal offences referred to in Paragraph 3 of Article 65 of this Act, is not permitted at the main hearing. In such cases, the court must decide that the record of the previous questioning of such persons be read out. This right, if necessary, is extended to other victims who are minors and also to victims with special needs for protection. These ZKP Articles successfully implement rights from Articles 20, 23 and 24 of the Directive.

Article 12 of the Directive sets out that protection measures should be available and provided to safeguard victims from secondary and repeat victimisation, from intimidation and from retaliation during restorative justice proceedings. In the Slovenian criminal system these are settlement and deferred prosecution procedures, which were already regulated by the ZKP but were slightly amended by implementation of the Directive.³⁹ Now ZKP Article 161.a regulates the possibility of a settlement procedure if the victim agrees. With the consent of the victim, the state prosecutor may also defer the criminal prosecution if the suspect is willing to act in accordance with the state prosecutor's instructions and perform certain tasks to reduce or remove the harmful consequences of the criminal offence (ZKP Article 162). The result of a successful settlement or deferred prosecution is the dismissal of the complaint, which means the victim cannot continue

³⁸. Tina Bučar, 'Direktiva 2012/29/EU o določitvi minimalnih standardov na področju zaščite žrtev kaznivih dejanj in njena implementacija' (MA Thesis, Univerza v Ljubljani 2019) pg. 42

³⁹. Jasmina Potrč, Večina določb novele ZKP-N se začne uporabljati čez pol leta, IUS-INFO Portal, 11.4.2019

the prosecution and must be explicitly informed of that consequence. The victim must also be provided with necessary information on the course of the proceedings, the possible outcome, and any other consequences before agreeing to any of the proceedings, which is additionally regulated in ZKP Article 163.a.

Victims' rights regulated in Articles 8 and 9 of the Directive on victim support services are not directly regulated in ZKP as the law refers to regulations governing social and health care. Competent authorities have the obligation under ZKP Article 65.a to inform victims and direct them to appropriate support services, general (for all victims) and specialist services (for victims with special needs) to help and support victims.⁴⁰ The Social Assistance Act (Article 14a) provides psychosocial and other assistance, which is carried out by Social Work Centres and NGOs and is covered from the state budget.

However, the Social Assistance Act contains very sparse provisions on victim support as it includes only professional support and expert advice to a person who has been directly harmed by the criminal offense. Professional support includes identifying the person's distress, gathering and providing information and guidance. Professional support and expert advice are provided in order to enable the victim of the crime to adequately improve the psychological, social and financial situation resulting from the crime. Practice has shown that Social Work Centres focus mainly on providing general counselling and assistance with social care related rights. Victims of crime are referred to NGOs that provide more concrete support services such as offering advocacy, accompanying the victim in proceedings, assisting with communication etc.

Considering the fact that every victim dealing with aftermaths of a crime (regardless of the criminal complaint being filed or not), will at least once be directed to the Social Work Centre, there should be more specific rights regulated in social assistance legislation or at least every Social Work Centre should employ at least one expert specialised in victim support. This is especially important outside bigger cities which do not have NGO support networks.

Also, there are no specific support services for victims with disabilities, especially victims with psychosocial or intellectual disabilities. There are 238 NGOs in Slovenia working in the public interest in the field of disability protection⁴¹. but very few are specialised in victim support⁴².

In conclusion, states must provide at least minimum standards for support and protection of victims, but may also exceed these standards and provide additional rights (so called gold-plating). Slovenia provides minimum standards and, in rare cases, additional rights are provided.⁴³ For instance ZKP provides some additional safeguards to protect victims from re-victimization, intimidation and revenge, against causing emotional and psychological harm, and offers physical protection. In addition, the Slovenian legal order also regulates this issue in the Witness Protection Act, which determines the broad range of protective measures for witnesses and other persons at risk due to participation in criminal proceedings.⁴⁴ If we look at the definition of the victim in ZKP Article 144, a person is considered a victim if their personal or property rights have been

⁴⁰ Predlog Zakona o spremembah in dopolnitvah Zakona o kazenskem postopku- čistopis št. 2 po seji Vlade (1.2.2019), str. 10

⁴¹ [Register of disability organizations](#) kept by the Ministry of Public Administration.

⁴² Društvo za nenasilno komunikacijo, Društvo SOS telefon, Društvo Ženska svetovalnica, Ključ – center za boj proti trgovini z ljudmi, Beli obroč Slovenije, združenje za MOČ are a few NGOs providing victim support.

⁴³ Tina Bučar, 'Direktiva 2012/29/EU o določitvi minimalnih standardov na področju zaščite žrtev kaznivih dejanj in njena implementacija' (MA Thesis, Univerza v Ljubljani 2019). Pg.48

⁴⁴ Ibid.

violated or threatened by a criminal offence, making the definition of a victim under the ZKP broader than the definition of a victim under the Directive, as for subsumption under the notion of victim is sufficient to endanger/threaten a certain right and not to actually inflict harm, as Article 2 of the Directive states.⁴⁵

However, any positive deviations from the minimum standards in the protection of victims' rights do not compensate for the lack of regulation of the protection of the rights of victims with disabilities. As it was pointed out in legislation overview, the laws regulating victims' rights in general do not differentiate between victims with disabilities and other victims. And as a result, there is a substantial lack of national legislation provisions explicitly regulating situations of people with disabilities in criminal proceedings. The Criminal Proceedings Act does introduce the victim with special needs for protection due to their personal characteristics or vulnerability, where disability is definitely considered as one of the circumstances causing special needs for protection. But disability as a personal circumstance is not emphasized enough in criminal legislation.

Yet, the legal framework does contain basic principles that can be used for guaranteeing the rights of victims with disability, as the Constitution of the Republic of Slovenia⁴⁶ states that everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of, inter alia, disability (Article 14). Further, the Constitution regulates equal protection of rights in any proceedings before a court or before other state authorities (Article 15) and also guarantees special protection for persons with disabilities (Article 52).

Those general constitutional rules can be used in conjunction with the already mentioned Equalisation of Opportunities for Persons with Disabilities Act, the purpose of which is to prevent and eliminate discrimination based on disability. The aim of this law is to create equal opportunities for people with disabilities in all areas of life. Hence Article 6 explicitly prohibits any disability-based discrimination in proceedings before courts and before other state or local community authorities and providers of public authority and public services. Discrimination may occur by imposing special conditions on the recognition and respect of the rights of persons with disabilities; by disregard or deprivation of the rights of persons with disabilities, provided that those rights are granted to other persons on equal terms; and even by disrespect, disregard or deprivation of rights based on the discretion of the civil official if it's due to a person's disability. This act also broadens non-discrimination policies to other regulations as it states in Article 5 that the exercise of the rights of persons with disabilities is also subject to non-discriminatory provisions and provisions that ensure equal opportunities under other regulations. Notwithstanding the provisions of other laws, the provisions of this law shall apply if they are more favourable to the disabled person.

This is also extremely important in connection to the reasonable accommodation regulated in Article 3 of this act, which imposes the necessary legislative, administrative and other measures (that don't impose a disproportionate burden), where they are necessary in a particular case, to ensure that persons with disabilities enjoy or exercise their rights and freedoms on the same basis as others. And when other regulations don't specifically contain provisions on reasonable accommodation, the Equalisation of Opportunities for Persons with Disabilities Act can always represent a basis for exercising such rights. In practice there is still not nearly enough done in the

⁴⁵ Tina Bučar, 'Direktiva 2012/29/EU o določitvi minimalnih standardov na področju zaščite žrtev kaznivih dejanj in njena implementacija' (MA Thesis, Univerza v Ljubljani 2019). Pg.40

⁴⁶ [URS](#), Official gazette of RS, no. 33/91-I and next

area of reasonable accommodation, not only in criminal and pre-trial proceedings, but also more generally. It is not only a problem in terms of insufficient regulations but also poor awareness and very sparse case law.

Which is to say there are still shortcomings on providing access to justice and equal recognition before the law and accessibility, in compliance with the CRPD (Articles 9, 12 and 13). In 2018 the Committee on the Rights of Persons with Disabilities adopted Concluding observations on the report of Slovenia⁴⁷ in which it expresses concern over lack of harmonization of national legislation, policies and programmes with the provisions of the Convention and the persistence of a paternalistic approach to persons with disabilities. The Committee observed in its last report from 2018, that there are still substantial delays in the implementation of programmes and legislation to improve accessibility and failures on the part of the State to implement the minimum standards of accessibility of all goods and services available in the public and private sectors. Despite amendments to criminal proceedings regulations in 2019 and other related legislation, these concerns remain relevant because there was not enough focus on persons with disability and their access to justice as victims of crime. There is still a lack of information on specific procedural, gender- and age-appropriate accommodation for persons with disabilities in judicial proceedings, in particular for deaf-blind persons and barriers to access to justice for persons with psychosocial and/or intellectual disabilities, in particular persons living in institutions and/or deprived of their legal capacity.

⁴⁷. Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Slovenia, adopted at its 386th meeting, held on 5 March 2018, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrCAqhKb7yhsiV%2Bq2wB82cxwrVotBOWJsoWAUSWNqtykKMEtURxvZ0CNkBX8rxlf9hTyugdQKLO5L6%2FS0srzEUsgCntqOX4Avdq8G5T0e%2BIN01%2FAWIH8BHG>

4. Victims' Rights in Practice

Although national legislation was amended and successfully implements the Directive, and there are numerous and specific Articles in the national legislation that ensure the rights of victims with disabilities, this does not mean that victims' rights are implemented in practice, in line with the Directive, without the need for additional policy and guidance.^{48.}

And more importantly, there is still a gap between theory and practice This is shown below through the experiences shared by victims and different professionals.

Complications occur during the very first steps, when a person with a disability tries to exercise their **RIGHT TO UNDERSTAND AND TO BE UNDERSTOOD (Article 3)** and the **RIGHT TO INTERPRETATION AND TRANSLATION (Article 7)**.

For persons with blindness, visual impairments or deafblindness, the right to understand and be understood should be more straightforward given that Slovenia recognised the position of deafblind people by including sign language and the language of deafblindness in the Constitution.^{49.} This important formal recognition still needs to be enacted in law and through regulations to ensure that such fundamental rights regarding language and communications are upheld. In practice, the implementation often remains in the domain of NGOs and volunteers.^{50.}

In addition, sometimes professionals in criminal procedures do not understand the difference between different kinds of interpretation, translation or other assistance that a person might need. For example, the association TAKTIL reports that in one particular case the court did not understand that sign language is different in every country and thus did not provide the victim with adequate interpretation, violating their rights under Article 7^{51.} Research from 2017 shows that deafblindness is a condition which is generally unfamiliar, and therefore professionals do not have the appropriate knowledge to approach and support or communicate with people with deafblindness.^{52.} In court settings it is important to note that aids to communication are even more limited. A person with deafblindness, for example, does not have the right to an interpreter in the language of the deafblind in court proceedings, and their relatives cannot act as interpreters.^{53.}

Nevertheless, there are some adjustments in place for people with special needs in terms of communication. There are certain tools available for victims with visual impairments or blindness to make the whole process accessible and understandable. All documents presented at the court hearing are read to them fully and clearly, and all communications take place verbally. For people with visual impairments, they can adapt the format of the document (enlarged font, different contrast) and for the people with blindness the Centre for Informatics at the Supreme Court is able

^{48.} Gorkič Primož, Direktiva 2012/29/EU: dve leti zamude pri implementaciji in načelo lojalne razlage, Pravna praksa, št. 12-13, 2018, str. 6-8.

^{49.} On June 4, 2021, the National Assembly declared [constitutional law supplementing Chapter II of the Constitution of the Republic of Slovenia](#) with the entry of Slovenian sign language, sign languages of the Hungarian and Italian national minorities and the language of the deafblind.

^{50.} Simona Gerenčer Pegan, *Ljudje z gluhoslepoto v Sloveniji*, (Fakulteta za socialno delo 2017)

^{51.} Taktil, Združenje tolmačev gluhoslepim Slovenije, 'Zakaj tolmač gluhoslepim?' <<http://taktil.si/zakaj-tolmac-gluhoslepim/>> accessed 20 September 2021.

^{52.} Simona Gerenčer Pegan, *Ljudje z gluhoslepoto v Sloveniji*, (Fakulteta za socialno delo 2017).

^{53.} Jasna Murgel, Polona Dremelj and Barbara Kobal Tomc, *Oblikovanje strokovnih podlag za ureditev različnih statusov invalidov* (Final version 6/2021, Inštitut RS za socialno varstvo 2021).

to print in Braille. People with visual impairments can also be escorted to and from the courtroom, they can ask for the presence of a trusted person, and if regulations and hygiene standards allow it, a guide dog can be present. During the court procedure, people with hearing impairments are asked questions and answered in writing. If the court hearing cannot be conducted in this way, an interpreter is involved.⁵⁴

Much more problematic are other forms of communication and information, in particular easy-to-read or easy-to-understand formats for people with intellectual disabilities. Those forms of communication are not explicitly regulated by law although the right to be informed, communicate or exchange information in an accessible form is already based on international and national legislation, strategies, and other public policy regulations. Although state bodies, including the police and courts, are bound by the CRPD and the Equalization of Opportunities Act, easy-to-read and other accessible materials are still very rare.⁵⁵ Persons with intellectual and psychosocial disabilities experience barriers when practicing their right to equal access to information and participation in proceedings, their chances of getting free legal aid or counselling are limited, making it harder for them to exercise their basic rights to access justice and participate in the justice system.⁵⁶ This field of providing simple and accessible information urgently needs developing.⁵⁷

That said, some positive practices concerning people with intellectual and psychosocial disabilities can already be identified. One such example is the website “Na sodišču”⁵⁸, which includes many brochures and other information materials, in regular Slovene language. This website offers simple and useful information on court proceedings, but has no specific information on victims’ rights. Also on this site, the Constitution of the Republic of Slovenia is published in easily accessible language⁵⁹.

Analyses of publications provided by different public authorities related to criminal proceedings show that accessibility is a significant issue for several reasons.⁶⁰ But mostly they are overcrowded with information, the language is too complex, the font is too small, the contrast too low and therefore they are not suitable for people with intellectual disabilities.⁶¹ National legislation is not clear on how communication assistance for people with psychosocial disabilities is provided and who shall provide it. There is no service that would provide expert communication support for people with psychosocial disabilities. Some general services for victims exist at Centres for Social Work or NGO’s (Vizija, Društvo za nenasilno komunikacijo and others), where a person can seek support, often someone to accompany them, regardless of their disability.

⁵⁴. Interview with Head of Victim Support Service, Court, SI-INT-VS-03 (12 August 2021); Sodstvo Republike Slovenije, 'Gluhi in slepi v sodnih postopkih' <www.sodisce.si/informacije/gluhi_in_slepi_v_sodnih_postopkih/> accessed 15 September 2021.

⁵⁵. A. To., 'Lahko branje in dostopnost informacij za vse. Intervju z Zagovornikom načela enakosti Miho Lobnikom' (*RtvSlo Dostopno*, 11 June 2020) <www.rtvlo.si/dostopno/clanki/lahko-branje-in-dostopnost-informacij-za-vse/526848?fbclid=IwAR2ziOQjeIGDkxfvR4sMchv-nZDRIAWJn85SrHjw3O7WHrxhAua3f7amkWG> accessed 14 September 2021.

⁵⁶. Tatjana Knapp, *Projekt LAHKO JE BRATI: Predlog sistematizacije dostopnih informacij v Republiki Sloveniji*, (Zavod RISA 2021).

⁵⁷. For Easy-to-read, e.g., handbooks *Lahko je brati* (2019) are available. On the other hand, Plain language is not researched, developed, or promoted at all.

⁵⁸. Na sodišču <<https://nasodiscu.si/>> accessed 1 September 2021.

⁵⁹. Na sodišču, 'Ustava Republike Slovenije' <<https://nasodiscu.si/ustava-republike-slovenije#lahko-berljiva-ustava>> accessed 1 September 2021

⁶⁰. Ministry of Justice and Ministry of the Interior, the Police, 'Rights of victims of crime' (2019) <www.gov.si/assets/ministrstva/MP/obrazci-odskodnine-zrtvam/Publikacije-pravice-zrtev-KD/Pravice-zrtev-v-kazenskem-postopku-ang.pdf> accessed 1 September 2021; Ministry of the Interior, Police, 'Ko postanem žrtev kaznivega dejanja' (January 2015) <www.policija.si/apps/obvescanje_oskodovancev/Ko_postanem_zrtev_KD_februar_2015.pdf> accessed 20 September 2021.

⁶¹. As of the time of this report, there are no brochures or similar publications on the rights of victims of crime in Easy-to-read format in Slovene language (Easy Slovene).

The abovementioned shortcomings can be largely attributed to insufficient knowledge and skills due to lack of training of public officials and the absence of high-quality standards for production and publication of accessible information.

Communication issues are extremely important since they can impede other rights, starting with the [RIGHT TO RECEIVE INFORMATION FROM THE FIRST CONTACT WITH COMPETENT AUTHORITY \(Article 4 of the Directive\)](#).

The first contact of a victims of crime in the criminal justice system is often with the police. In some cases, a first contact, especially when a person is a victim of violence, is with a medical expert, for example a family doctor.⁶² In other cases, a first contact for victims with disabilities, are social services, and only later the police. During interviews there were reports of multiple obstacles upon first contact with authorities. Victims often felt that authorities did not understand them or take them seriously; they reported a lack of awareness of the needs of people with disabilities.⁶³ A significant problem was the inability to adapt to the victim's mental state and recognise their difficulties in expressing themselves. For instance, one interview revealed that a victim with depression was not able to express herself properly and the police found her to be indecisive, disoriented and unreliable.⁶⁴

A victim may not be taken seriously, especially if the offender is well spoken and can express themselves easily and correctly. During the reporting of the crime, the authorities do not invite a psychologist or other expert or support person to be present, which impedes the [VICTIM'S RIGHTS WHEN MAKING A COMPLAINT \(Article 5\)](#). How well are victims able to communicate with police depends largely on the officer leading the conversation and how well prepared the victim is for this process.⁶⁵

“We live on the ground floor and we get harassed a lot. We called the police about it several times. We wrote a complaint to the police, because we wanted this harassment to stop. But there was no written reply. They say that we are weird.”⁶⁶

“I went with a friend to report sexual abuse to the police. The police officer didn't relate to him, their attitude was like if they don't trust him. They were mostly talking to me, turning to me for answers and not to him. And I wasn't even there when all this happened. I remember that for a long time after this, he wasn't feeling well. Situations like these stays with you. He talked about what happened a lot, and what was done to him.”⁶⁷

“I think professionals don't take people seriously, once they figure out that they have mental health disability. Sometimes it is true, that a lot of things happen to you, paranoia for example, but it is not always like this. And even when they really should react, they don't.”⁶⁸

⁶². Špela Veselič, Dalida Horvat and Maja Plaz, *Priročnik za delo z ženskami in otroki z izkušnjo nasilja*, (Društvo SOS telefon za ženske in otroke – žrtve nasilja 2014) <<https://društvo-sos.si/wp-content/uploads/2019/08/prirocnik-za-deloz-zenskami-in-otroki-z-izkusnjo-nasilja.pdf>> accessed 14 September 2021.

⁶³. Interview with service user, SI-INT-PwD-02 (18 May 2021).

⁶⁴. Interview with legal advisor, NGO, SI-INT-VS-02, (14 May 2021).

⁶⁵. Ibid.

⁶⁶. Interview with service user, SI-INT-PwD-02 (18 May 2021).

⁶⁷. Ibid

⁶⁸. Ibid

It is important how different officials communicate with a person who has turned to them for support, both verbal and non-verbal communication, especially given the fact that the majority of crime victims (disabled or not) do not report the crime.⁶⁹ Those who do come forward need to be treated appropriately, otherwise the statistics on reporting the crime will continue to drop. Victims often mention that they have a feeling that professionals at various institutions and organizations are not aware of how little is actually needed to make a person feel accepted and heard. They say the response is often cold, officials give a sense of inaccessibility and do not inspire enough confidence in the victims for them to be able to tell honestly and comprehensively what they have experienced.⁷⁰

Also, if the first contact and the first interview with the victim is not successful and communication is not adequate, there is a high probability that the interview with the victim or hearing will have to be repeated, which is contrary to the [RIGHT TO PROTECTION OF VICTIMS DURING CRIMINAL INVESTIGATIONS \(Article 20\)](#).

“For people with mental health problems, the feelings of the victim are quickly present. We find it difficult to judge our actions. When a person is in an acute state, in distress, they cannot think right, even if they know (things). The police, within their competence, invite the person for an interview. Police officers, criminal investigators find it difficult to judge in advance what they need to pay attention to and whether a person has a mental health problem. In my case, I told them. I was lucky to have a criminalist on the other side, who knew how to understand this and behaved accordingly. However, due to stigma, one can underestimate or transfer a personal point of view to a professional relationship. I have once witnessed such a situation, and I also heard the experiences of others. When the victim is repeatedly exposed to stressful situations, instead of discovering the material truth, it becomes even more confusing. Everyone has their own story. In the field of mental health, an expert opinion may be required, and the question is how the expert will perceive the situation. Sometimes police officers act pretentious and arrogant. We have a system where obtaining evidence by police officers is not enough, and they have to make additions, and the victim is questioned again. Then there’s the question of what’s going on at hearings. A person with jurisdiction should not judge a person by stereotypes and prejudices. The attitude towards a person must be to discover and recognize everything that needs to be discovered, but there are also other things that are not part of the legislation. The whole complex should lead to improvement, no matter if the person is the perpetrator or the victim. What someone has done and the consequences of the crime need to be ascertained with a professional and compassionate, dignified, humane attitude. It is best to be neither the perpetrator nor the victim.”⁷¹

But in terms of the [RIGHT TO RECEIVING INFORMATION FROM THE FIRST CONTACT](#), which is the main objective of [Article 4](#) and implementing provisions of national law, the experience of both NGOs that offer victim support services is that, information-wise, the process has not changed for the better after implementing the Directive into national legislation in 2019.⁷² Victims are provided with information on:

⁶⁹. FRA, European Union Agency for Fundamental Rights, *Crime, Safety and Victim’s Rights, Fundamental Rights Survey* (Publications Office of the European Union 2021).

⁷⁰. Veselič, et al., *Priročnik za delo z ženskami in otroki z izkušnjo nasilja* (n 84).

⁷¹. Interview with service user, SI-INT-PwD-01 (19 May 2021).

⁷². Interview with social worker, NGO, SI-INT-VS-01 (13 May 2021); Interview with legal advisor, NGO, SI-INT-VS-02, (14 May 2021).

- free medical, psychological and other assistance and support;
- assistance and measures under the law governing the prevention of domestic violence;
- protective and other measures to ensure personal safety, including the right to an accompanying person, the right to have any undesired contact with the perpetrator prevented unless contact is indispensable to the successful performance of procedure;
- the right to be represented in proceedings by an authorised representative, and the right to free legal aid;
- the possibilities for compensation of damage, the payment and reimbursement of costs;
- the right to interpretation and translation;
- the option of concealing an address or place of residence;
- the right to be provided with the details of the contact person of the competent authority with whom they can communicate their case;
- any other rights or benefits that may be relevant.

At their request, victims also have [THE RIGHT TO RECEIVE INFORMATION ON THE COURSE OF THEIR CASE \(Article 6\)](#) and their role in pre-criminal or criminal procedure. They can also request to be informed of the release or escape of a suspect or the accused from detention or house detention, but this request may be refused if the suspect or defendant could be endangered as a result.

Services to address and alleviate social distress include [SUPPORT FOR VICTIMS OF CRIME \(Articles 8 and 9\)](#). Support for victims includes professional support and expert advice to a person who has been directly harmed by any criminal offense. The services are provided and funded by the Centres for Social Work. Professional support includes identifying the person's distress, and providing information and guidance. Professional support and expert advice are provided in order to help the victim of the crime deal with and recover from any psychological, social and financial impacts resulting from the crime. Support services are provided to all victims regardless of whether they reported the crime. Where the direct consequence of the crime is the death of a person, the closest family members are entitled to support. However, there are only general services in place. There are no support services tailored for victims with disabilities which raises questions whether general support services are and will be accessible to people with disabilities, especially those with intellectual disabilities.

All victims of crime are entitled to free support services both during and also after the criminal proceedings. Health, psychological and other care and support are offered by the Centres for Social Work and other organisations, mainly NGOs (for instance Association Vizija⁷³. and Društvo za nenasilno komunikacijo⁷⁴). However, such support remains limited and is not evenly geographically distributed.

Examples from interviews and field observations show that after a trial, victims of crime are often left to process the consequences by themselves. An existing support network for people with disabilities is available, but it is not sufficient or does not specialize in helping victims of crime. Poverty and poor social networks, which often accompany disabilities, create circumstances that are especially difficult for people who do not receive adequate and properly targeted support.

⁷³. Interview with social worker, NGO, SI-INT-VS-01 (13 May 2021).

⁷⁴. Interview with legal advisor, NGO, SI-INT-VS-02 (14 May 2021).

The following example shows us the difficult situation of a woman with disability who was a victim of violence and also experienced great abuse and deprivation after the trial. Services in the community proved to be deficient, and above all, they did not respond to the specific and demanding situation: “But after we moved out from the safe house, to that house I mentioned, we didn’t have electricity there, nor water. First, I went to a petrol station and took water there, and I was bringing in these litres and litres of water home. But then, to take a shower, we had to go home – where the perpetrator, still lived. And we couldn’t find support for this – we needed to take a shower somewhere safe, but we didn’t get this. With professionals, we never had this conversation – how not to have contacts with the perpetrator, what can be done – we were “forced” to have these contacts with the perpetrator. At the end the perpetrator, my husband had to go to the hospital, and me and my daughter returned home - I also had to take care of my sick mother. After this, my daughter ran away from home. I have a feeling that there isn’t enough support that you could really leave the perpetrator. These situations bring you back, and you find yourself in the same story again. In the end, you are alone; you have to survive alone.”⁷⁵.

In addition, provisions on victim support are very sparse. Special regulations are adopted to organize and provide service in cases of domestic violence⁷⁶, but no such regulations exist for victims of crimes unrelated to domestic violence. As a result, in practice it is not clear what the tasks of social workers are, who should provide support services and how they should be provided. So the implementation is inconsistent (and is different for each Centre for Social Work), and there is little coordination between different support services. Additionally, many locations where support service are provided to victims are not accessible for people with physical disabilities.

In another case, social worker reported how difficult it was to organize a support for the victim:

“I had to call, it took the whole week to call and explain, sometimes three times to different professionals, why we need to react urgently and support her. They tried to tell me that it would be better for her to go to a psychiatric hospital for a while, and I didn’t agree with them, because this was a different matter, she needed to get the experience of support in her community. Even her psychiatrist was against the placement in the hospital. All social services, professionals from ‘my house’ even NGO’s that I called, they were all ‘afraid’ to support her, due to her double diagnosis. All week I was calling them. One social worker can’t do all this. I found myself in a situation, where I couldn’t understand why ‘my own’ system doesn’t work and how they couldn’t understand that we need to provide support now and that it is an urgent situation. The victim then left her own home, she stayed at friends. Then I helped her to get to a safe house, which was at the other part of the country - there are some regulations that prevent victim and perpetrator to meet. She had a lot of practical questions that worried her – like where to leave the car while she is in the safe house, etc. These are practical, but very important questions. Staff from the safe house was good, they came to pick her up. Although she couldn’t stand this system for a long time. Soon after, I think two months after, she really was hospitalized. At the end she died in a general hospital, not because of this situation, but due to her medical problems.”⁷⁷.

⁷⁵. Interview with service user, SI-INT-PwD-02, (18 May 2021).

⁷⁶. [Rules on the organisation and work of multidisciplinary teams and regional services and on the activities of social work centres in dealing with domestic violence](#)

⁷⁷. Interview with a social worker, public service, SI-INT-S-05 (8 June 2021).

Bearing in mind that the main law regulating victims' rights is the Criminal Procedure Act, regulation of the area is the responsibility of the Ministry of Justice. Tasks and services arising from other laws and performed by the Police and Social Work Centres should be regulated and provided by the Ministry of the Interior and the Ministry of Labour, Family, Social Affairs and Equal Opportunities, with the coordination and support of the Ministry of Justice.

After implementing the Victim's Rights Directive into national legislation, a service intended to support victims was established at the District Court in Ljubljana in October 2019 to facilitate, among others the [PROTECTION OF VICTIMS](#) under Chapter 4 of the Directive and also to promote the implementation of Articles 3 and 4. In addition to the standard invitation to the hearing, the Victim Support Service (SPO) provides information for victims with special protection needs about their rights. Victims are informed about where they can turn to for additional forms of assistance (medical, psychological, social), about access to free legal aid, about opportunities for compensation for the damage caused by the crime, about the right to a translator or an interpreter, and about other rights. Victim support services can be reached by telephone, through e-mail, and at the office in-person, but there is no website.⁷⁸

SPO is involved in the process when they receive victim's individual assessment from the police or the prosecutor. Based on the individual assessment and on other gathered information, the SPO contacts the victim and sends them initial information on victim's rights duties⁷⁹. It also informs them they are available for any additional questions regarding proceedings and measures for the protection of the victim ([THE RIGHT TO AVOID CONTACT BETWEEN VICTIM AND OFFENDER, Article 19](#)). Based on victim's requests and needs, they can arrange and organize measures, for instance by organizing hearings in separate buildings or enabling the use of technical devices. If the victim needs other support services, including psychological support, they are referred to social work centres or NGOs providing such services.

SPO can also help organize hearings of witnesses who are victims with special protection needs and exercise the [RIGHT TO PROTECTION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS DURING CRIMINAL PROCEEDINGS \(Article 23\)](#). Such hearings may, depending on a victim's personal circumstances, be conducted with the assistance of an expert. A person of their choice may be present unless this would be contrary to the interests of the successful conduct of pre-trial or criminal proceedings or the benefits of a witness.⁸⁰

“The first hearing was convened in the proceedings, where additional evidence may be presented. The judge asked me if I had any additional evidence. Together with the judge we reviewed the documentation. The perpetrator did not attend the hearing. Luckily for me, I understood what my rights were and what I could do, the matter was relatively simple. Someone who does not know these things is faced with an impasse. When I had the hearing, I was relatively well, I was able to be myself, judicious. For someone who has constant mental health episodes, however, it can be a severe burden that is difficult to bear on their own without a trained representative.”⁸¹

⁷⁸. Interview with head of Victim Support Service, Court, SI-INT-VS-03 (12 August 2021).

⁷⁹. Duty to respond to the summons, notify the court of any address changes, consequences of fines, etc.

⁸⁰. Interview with Head of Victim Support Service, Court, SI-INT-VS-03 (12 August 2021).

⁸¹. Interview with service user, SI-INT-PwD-01 (19 May 2021).

The main problem is that setting up victim support services is in the jurisdiction of each district court and so far only the Ljubljana District Court has established such a service. Other Courts in Slovenia still do not have a formal support services so victims need to rely on the help of random court staff, which is not only inappropriate but also ineffective. This shows that legislation provides victims with rights to protection under chapter 4 of the Directive, but there still is not a system in place to enable victim to actively and effectively exercise those rights. This too, falls under the jurisdiction of the Ministry of Justice which should organize the creation of victim support services and provide funding for them.

When referring to the protection of victims, it must be mentioned that in practice it very often happens that the victim and offender meet in court. Courts rarely grant victims the right to have undesired contact prevented, as we learned from interviews with NGOs offering victim support services. According to the SPO at the District Court in Ljubljana, there are possibilities that victims can be heard in a safe room or by technical means (videoconference) if they do not wish to meet with the accused. If the injured party or witness does not want to testify in the presence of the accused, the latter may be temporarily removed from the courtroom. In doing so, the defendant's right to defence must also be taken into account. It is a matter of assessing each specific case, especially if the circumstances indicate that the witness would not be telling the truth in the presence of the accused.⁸² But the aspect of victim's protection needs to become more visible and become more emphasized, and officials in criminal proceedings need to consider a victim's rights as equally important to the procedural rights of the suspect.⁸³

In the experience of NGOs offering victims support services, it is difficult for people with disabilities who are victims of crime to receive the required support and accommodations for their needs during court procedures. This is especially true for people with intellectual or psychosocial disabilities, as judges, lawyers and other legal personnel are not well equipped with the knowledge and tools to communicate with them.⁸⁴

“Police and the court do not make sure that victims understand the documents they receive and the things that are said during the trial. It is believed that people with legal capacity have the ability to understand the process and what is expected from them.”⁸⁵

“Judges do not have this knowledge (Comm. on how to communicate with victims with intellectual or mental disabilities). For them, the procedure is exactly the same as any other, they have to determine the facts, ask victims about it, and do not have much understanding to adjust the way of questioning, tempo, give more space to talk about emotions.”⁸⁶

⁸². Interview with social worker, NGO, SI-INT-VS-01 (13 May 2021); interview with Head of Victim Support Service, Court, SI-INT-VS-03 (12 August 2021).

⁸³. Suspect's rights are guaranteed not only by law but also by the Constitution, starting with Article 27 that provides the presumption of innocence and Article 29 regulating legal guarantees in criminal proceedings, including the right to be present at their trial and to present all evidence to their benefit. The protection of suspect's rights is crucial as criminal proceedings can lead to interference with one of the most important human rights, the right to personal liberty.

⁸⁴. Interview with social worker, Long term stay institution for people with psychosocial disabilities, SI-INT-S-01 (18 May 2021); interview with social worker, Long term stay institution for people with psychosocial disabilities, SI-INT-S-02 (18 May 2021).

⁸⁵. Interview with legal advisor, NGO, SI-INT-VS-02 (14 May 2021).

⁸⁶. Ibid.

“I had to negotiate with the lawyer (free legal aid) to talk to us for anything more than 15 minutes before the hearing. They are otherwise paid for the time to prepare and for the time they talk with the users, but people with mental health disabilities are at the end of the line of favourite clients.”⁸⁷.

In this case, education of judicial staff is essential. The training of judicial staff to work with vulnerable groups is carried out at the Judicial Training Centre⁸⁸, which is the only national institution in Slovenia that provides on-going training for judicial officials and other employees in the judiciary. They do provide regular trainings but unfortunately still insufficient, especially considering that in most cases such trainings are not obligatory. The new Resolution on the National Programme for Language Policy 2021-2025 (ReNPJP21-25, 2021)⁸⁹ enables the development of adapted means of communication for people with disabilities, including people with sensory impairments, people with deafblindness, people with psychosocial disabilities, intellectual disabilities and other. Though promising, it was only adopted in 2021; therefore, at this time not much information on implementation is available.

In the light of everything mentioned above, THE RIGHT TO BE ACCOMPANIED BY A TRUSTED PERSON becomes even more important and NGOs offering victim support emphasized this in their interviews. The right to be accompanied by a trusted person is very important, not only during criminal proceedings but also in the initial phases. According to Association Vizija⁹⁰, which works with people with physical disabilities who are mostly victims of violence, victims rarely report violence on their own, because they are too often economically and physically dependent on the perpetrator (who may be their caregiver) and they may not even recognize the violence as a crime. In their experience, reports are usually made by family members, other people close to the victim or social services, especially personal assistants. Practice shows that the right to be accompanied by a trusted person during initial contact with the police and then later through investigation and the court hearing is of great support to the victim. Despite the victim's right to the presence of a trusted person, there are some cases recorded, when the trusted person was not allowed to stay in the courtroom during the trial.⁹¹

Victims have the right to be apprised of the release or escape of a suspect or the accused from detention or house detention to secure their personal safety, and to request information on the departure, release or escape of a prisoner under the Enforcement of Criminal Sanctions Act. But practice shows that the right to protection provided by the legislation is not sufficiently translated in practice and that specific measures need to be taken to protect the victim of a crime. NGOs often use security plans to organize the protection of victims of violence.⁹² In the disability field, a risk analysis method has been adopted and further developed in Slovenia to prevent and manage risky situations.⁹³ Experience shows that the risk analysis method is rarely and not systematically used by the community and institutional services that support people with disabilities. Support

⁸⁷. Interview with social worker, Long term stay institution for people with psychosocial disabilities, SI-INT-S-02 (18 May 2021).

⁸⁸. Gov.si, 'Center za izobraževanja v pravosodju' <www.gov.si/drzavni-organi/ministrstva/ministrstvo-za-pravosodje/o-ministrstvu-za-pravosodje/center-za-izobrazevanje-v-pravosodju/> accessed 11 October 2021.

⁸⁹. Resolution on the National Programme for Language Policy 2021-2025, Official Gazette of RS, no.94/21.

⁹⁰. Interview with social worker, NGO, SI-INT-VS-01 (13 May 2021).

⁹¹. Interview with social worker, NGO, SI-INT-VS-01 (13 May 2021).

⁹². Društvo za nenasilno komunikacijo, 'Varnostni načrt za ženske, žrtve nasilja' <<https://www.drustvo-dnk.si/doziviljate-nasilje/varnostni-na%C4%8Drt-2.html>> accessed 15 September 2021.

⁹³. Vito Flaker, 'Analiza tveganja' [1994] *Socialno delo* 33/3 PG 189.

for people with disabilities in risky situations is most often reactive and focuses primarily on individuals and resolving acute situations rather than preventing the circumstances that lead to risky situations.

The protection and support for victims with disabilities is of extreme importance not only during investigation and court proceedings, but also after formal criminal proceedings have ended. For people with disabilities, criminal proceedings can be difficult, even when the proceedings are conducted correctly. Victims are affected by the crime, burdened by the processes, which are often lengthy, and they have to come to terms with a verdict at the end of the trial and life complexities afterward.

“For people with mental health problems, everything is an additional burden, and many experiences cannot be processed. Where there is ignorance and health problems, people find it difficult to process. For people with psychosis, bad experiences are joined with other bad experiences. They find it difficult to recognize the positive elements of events. The question, therefore, arises as to how the victim processes the situation. A problem emerges when burdens are intertwined with health problems, and situations get worse. Often people see themselves as inferior. Criminology is not enough; it is necessary that all fields of support are represented in order to achieve a comprehensive treatment.”⁹⁴.

In terms of the [RIGHT TO SAFEGUARDS IN THE CONTEXT OF RESTORATIVE JUSTICE \(Article 12\)](#), national legislation is very sparse since there is only the right to consent to restorative justice (without victim’s consent, the proceedings of settlement and deferred prosecution can’t take place) and the right to be informed. The Directive points out that the victim’s interest is the main focus and reason behind restorative justice proceedings. But it seems that the national legislation and practice don’t base decisions on the interest of the victim. They put too much power in the hands of state prosecutors who base their decision more on the nature of the crime and circumstances of the perpetrator, rather than interest of the victim.⁹⁵ Prosecutors use restorative justice proceedings when they believe that a crime committed cannot be left without a measure, but this measure is not necessarily a criminal sanction.

[THE RIGHT TO AN INDIVIDUAL ASSESSMENT \(Article 22\)](#) by the competent authority (the police or the prosecutor) in pre-trial or criminal proceedings is crucial. This right is new in Slovenian criminal legislation and it means a significant improvement in the field of safeguarding the victim. The purpose of the individual assessment is to determine the existence of special needs for protection at the first contact with the injured party and the level of the victim's exposure to secondary and re-victimization, intimidation and revenge is assessed. In each case emphasis should be on the individual needs of the victim as the law stipulates the extent of the assessment can be adjusted according to the gravity of the crime and the degree of obvious damage suffered by the victim.

Usually, police have the first contact with the victim in pre-trial proceedings, therefore police officers should conduct the individual assessment, and it can be upgraded later by the state prosecutor’s

⁹⁴. Interview with service user, SI-INT-PwD-01 (19 May 2021).

⁹⁵. Tina Bučar, 'Direktiva 2012/29/EU o določitvi minimalnih standardov na področju zaščite žrtev kaznivih dejanj in njena implementacija' (MA Thesis, Univerza v Ljubljani 2019).

office, if necessary. As mentioned earlier in this report, apart from the questionnaire created by the Ministry of Justice, there is limited information on how this assessment is done in practice and what exact training police officers receive.

During the research interviews, information came to light that an individual assessment is not always made, despite the legal provisions. Even in later stages of the case, when the prosecutor takes over, an individual assessment is not made.⁹⁶

According to the Annual Report of the Police⁹⁷, there were 286 training programs implemented in 2021, but only 3,8% programs (11 programs with 135 participants) were dedicated to social skills and working with people.⁹⁸ These numbers show that the education of police officers as the first contact point for crime victims is insufficient. This affects the investigation process and the skills and tools used, which can be inappropriate to the victims' needs.

“A social worker reported of victim’s distress after the contact with the police. Victim reported the sexual assault that happened at her home. Because of the type of the crime, police had to take some of her belongings as evidence, for example sheets. After police left, the victim called the social worker on the phone, she was crying and explaining how she felt when police was there, that her privacy was invaded and she felt like she was abused again.”⁹⁹

“The police took photographs and asked some questions. One of the police officers was especially helpful and kind. The victim was directed to seek medical help and retrieve a medical report. The victim was called to the police station. Although the staff were friendly and they asked understandable questions they even provided the victim with a ride back home. The victim emphasizes he would have preferred to be questioned at home, as questioning at the police station added to the distress of the current family circumstances.”¹⁰⁰

If the individual assessment shows that the **VICTIM HAS A SPECIAL NEED FOR PROTECTION (Article 23)** or that they would benefit from measures provided by law (for instance collecting information by the person of the same gender, audio-visual recording of the testimonies, help of an expert when conducting hearings, concealing victim’s identity or other protective measures, exclusion of the public from trial and other), such measures may be implemented, provided other legal conditions are met. The individual assessment can be updated if its elements are significantly altered. The opinion of the injured person must be taken into account, in particular if the injured person expressly refuses in advance the option for special protection.

There is a specific issue that needs to be addressed regarding rights of victims living in institutions. So far, Slovenia has failed to ensure the right to full and effective participation in society¹⁰¹ for people with disabilities, and institutions are still the central form of organized care for adult people

⁹⁶ Interview with legal advisor, NGO, SI-INT-VS-02 (14 May 2021).

⁹⁷ Ministry of the Interior, Police, General Police Directorate, ‘Letno poročilo o delu policije 2020’ (n 86)

⁹⁸ The report doesn’t mention on trainings in the field of disability.

⁹⁹ Interview with a social worker, public service, SI-INT-S-05 (8 June 2021).

¹⁰⁰ Interview with service user, SI-INT-PwD-03 (17 July 2021).

¹⁰¹ Darja Zaviršek, ‘Living independently and being included in the community – country report. Country: Slovenia’ (ANED, 1 May 2019) <www.disability-europe.net/country/slovenia> accessed 15 September 2021.

who need long-term support. Due to the high level of institutionalization of people with disabilities in Slovenia, all issues related to ensuring the rights of people with disabilities are also closely related to institutional care and the deinstitutionalization process in Slovenia.

Based on the interviews and field observations, people with disabilities living in institution are insufficiently informed about their rights and have serious difficulties in exercising them. According to a social worker of a long-term care institution for people with psychosocial disabilities, residents have some access to information about their rights, but information is scarce, and at the same time access to exercising these rights is very limited:

“There is a well-established system of formal and informal rules in the institutions (Comm. Institutions have rules and regulations which govern every aspect of a resident’s live). None of the users knows much about the legislation, but for them, things also do not matter if no one helps them to exercise their rights or it takes a very long time. Users do not feel that they can exercise their legal rights and are therefore not interested in what they are.”¹⁰².

It must be noted as well that institutions most often do not have protocols for dealing with criminal cases. In case of crime and abuse, measures are reactive rather than proactive. Post-crime efforts are not supported by methods that would support the victim (such as risk analysis). For example:

“We had a case where an elderly man living in the residential unit instigated sex from a female flatmate. In addition, another user, who is a member of the council of the institution, and is one of the leading people among the residents in the hierarchy, encouraged the abuse. After the incident, the female resident complained to the worker. The first resident was moved from the housing unit to the central building of the institution, and the second resident was even defended by the employees and was not sanctioned. After the incident all they had was a series of conversations. The problem in this case was also that the residents in the residential unit were left alone after eight o'clock and the female resident was afraid.”¹⁰³.

“Abuses are a taboo topic in the institution and there are more of them than it is noticeable. I remember a case of a man nobody would attribute this to, and then they found out he was abusing someone on a regular basis. In this case, nothing happened. He was transferred to another department. The perpetrator was searched for and found and nothing else happened.”¹⁰⁴.

To what extent institutions for people with disabilities are functioning as isolated, separate entities in the Slovenian society is demonstrated by the shortcomings of reporting, resolving and dealing with crimes. It is a general problem in these institutions that abuse, violence, theft and other crimes are often minimized or swept under the rug. Most cases do not even reach the competent authorities as the situation concerning a crime will be dealt with behind closed doors within the institutions and often remains without consequences.

¹⁰². Interview with social worker, Long term stay institution for people with psychosocial disabilities, SI-INT-S-02 (18 May 2021).

¹⁰³. Ibid.

¹⁰⁴. Interview with social worker, Long term stay institution for people with psychosocial disabilities, SI-INT-S-01 (18 May 2021).

“When a woman, living in a group home, was raped by two of her roommates no report to the police was made. One of the men, who raped her, was resettled into another group home, another one stayed in the same group home, with the victim. It was considered by the staff, that he didn’t really rape her, since he ‘just recorded the rape and encouraged his friend, while he was doing it’. There are different standards in the institution, than in the rest of the world.”¹⁰⁵.

Another person said in an interview that she called the police from a psychiatric hospital, and reported that they didn’t treat her according to her rights (she was tied to a bed for more hours than the Slovenian legislation allows). She made the report on the call, but she never heard back from the police, nor did she receive any information from medical staff. Until this day she doesn’t know if they even came to the hospital to investigate.¹⁰⁶.

¹⁰⁵. Interview with social worker, social welfare institution, SI-INT-S-03 (18 May 2021).

¹⁰⁶. Interview with service user, SI-INT-PwD-02 (18 May 2021).

5. Key Findings and Recommendations

The Directive imposes obligations on countries to ensure minimum standards for victim protection. Slovenia was late to transpose the Directive in national law and is late in translating victims' rights into practice, as no solid system of support exists and the state has yet to meet its obligation and provide victims with relevant support during all stages of the criminal proceedings and after.

5.1 Key Findings

Although the amendment of the Criminal Procedure Act has taken important steps towards guaranteeing victims' rights during (pre)trial and court process, in practice victims with disabilities are often left without access to information, and without access to the infrastructure and support that would ensure their equal participation in criminal proceedings. Rights to understand and be understood, to be accompanied by the person of choice, right to an interpreter, right to avoid undesired contact and to keep the number of interviews of victims at minimum are not always accessible, and in practice even the court infrastructure itself remains inaccessible.

Inaccessibility is even more pronounced for victims with intellectual and psychosocial disabilities and people with deafblindness, where the approach of the institutions and the individuals involved can significantly affect the outcome of the entire process, including the victim's quality of life. Inappropriate treatment of victims during all stages of criminal proceedings may result in secondary victimization, blaming the victim, minimizing the violation they experienced and further exacerbating their position, which is in direct contrast to the objectives of the Directive.

Even though the law grants equal participation for people with disabilities, there are numerous barriers to practising this right. Information-wise, the competent authorities are obliged to notify the victim about their rights during first contact. Although the research has found an improvement in this area, it has also established that information is often given uniformly, without adapting it to specific needs or making sure the victim understands. Courts are now sending brochures and leaflets to inform the victims of their rights. Accessibility of online materials and applications of the public authorities has improved. However, a lot still needs to be done to make these materials accessible to people with psychosocial and intellectual disabilities. The information available to people with disabilities living in institutions regarding their rights is scarce, and access to exercising their rights is severely limited.

Communication-wise, victims with disabilities have the right to use the language they know or understand and the right to interpretation and translation. While legislative provisions for persons with visual and hearing impairments exist, national regulation does not clarify how communication assistance shall be provided for people with intellectual and psychosocial disabilities or who should provide it. Additionally, judicial staff and other officials are not sufficiently educated and aware of specific needs of victims with disability and are not well equipped with the knowledge and tools to communicate with them.

The Criminal Procedure Act grants the victims the right to cautious and considerate treatment for reasons of vulnerability, such as age, health, or other similar circumstances. Furthermore, according to the same Act, the competent authorities must, in pre-trial or criminal procedure, upon first

contact with the victim, prepare an individual assessment and determine whether and to what extent the victim would benefit from different measures that legislation provides for.

It is extremely important that the application of measures provided by law is based predominately on the assessment of the victim's individual needs and not on the nature or circumstances of the criminal offense. In addition, all authorities of criminal proceedings will have to address facts relevant to the victim's needs as facts relevant to the conduct of (pre) criminal proceedings.

During research the right to the presence of a trusted person proved to be extremely important in all stages of criminal process, yet in practice that right was frequently still violated. Also providing victims with the right to avoid meeting the accused is underused and the courts insufficiently grant victims the right to have undesired contact prevented.

There is also an insufficient geographical coverage of support system for victims of crime with disabilities, since Victim Support Service was established at the District Court in Ljubljana, while other courts do not offer such a service. Victims are also granted the right to free psychological and other support provided by Centres for Social Work and other organizations. But it is not clear what are the tasks of social workers, who should provide such support services and how they should be provided. Support network exists, but they are insufficient or do not specialize in helping victims of crime.

5.2 Recommendations

1. Strengthening the resources of the public sector, civil societies, and NGOs supporting persons of disabilities to raise awareness and provide basic relevant information on the rights of victims with disabilities in criminal proceedings. The Ministry of Justice should adopt a programme providing financial resources for different projects aimed at strengthening the sector.
2. The Ministry of Labour, Family, Social Affairs and Equal Opportunities should develop a specific strategy for awareness raising, informing, and providing support to victims of crime with disabilities living in institutions.
3. Systematically improving online and offline materials used to inform victims with disabilities about their rights regarding the needs of people with disabilities. Information for people with intellectual disability needs to be provided in Easy language (Easy-to-read). Activities should be carried out within the framework of inter-ministerial cooperation (Ministry of Justice, Ministry of Labour, Family, Social Affairs and Equal Opportunities and Ministry of the Interior) as materials should be available through courts, police and Social Work Centres.
4. Removing all obstacles that impede or prevent the physical and communication access of victims of crime with disabilities to pre-trial and court proceedings (police, courts, etc.) and to support services (attorneys, Centres for Social Work, civil society organizations, etc.). In the field of communication access, this includes developing and implementing clear standards for providing information and communication assistance to people with different needs in all stages of the proceedings which should be done by the Ministry of Justice.

5. Inter-ministerial cooperation between the Ministry of Justice and the Ministry of Labour, Family, Social Affairs and Equal Opportunities aimed at strengthening the resources of all relevant parties involved in the process or providing assistance or support to victims with disabilities, including deafblindness, psychosocial and intellectual disabilities, ensuring that the communication is handled understandably and appropriately, adapted to each victim's needs.
6. The Police Academy and Judicial Training Centre should provide quality training to all stakeholders involved in the process on the needs of persons with disabilities to reduce stigma and prejudice, improve communicational skills, and enable a person-centred and rights-based approach.
7. Setting clear guidelines by the Ministry of the Interior for conducting individual assessment in order to establish the victim's need for special protection in each case, with emphasis on also enabling effective participation of the victim in the justice process. Additionally, providing police and prosecutors who carry out individual assessments with sufficient training and awareness rising carried out by the Police Academy and Judicial Training Centre.
8. Establishing national level coordination spearheaded by the Ministry of Justice to improve the victim support network and use available resources in the public services, the civil societies and criminal justice system.
9. Developing advocacy services and support self-advocacy to ensure that all victims with disabilities can exercise their right to equal participation through projects of the Ministry of Justice.
10. The Ministry of Labour, Family, Social Affairs and Equal Opportunities should collect anonymous statistical information about disability which could be useful for better understanding the needs of victims with disability and consequentially for a more sensible allocation of public funds.
11. Further, more detailed research by the Ministry of Justice needs to be conducted in order to assess access to rights of victims with disabilities in Slovenia.
12. The Ministry of Labour, Family, Social Affairs and Equal Opportunities should make sure that every Social Work Centre has at its disposal at least one expert specialised in providing support to people with disabilities who are victims of crime.
13. Amending the legal aid system by removing administrative obstacles (simplified forms, connected databases) within the competence of the Ministry of Justice. And providing specialised courses and trainings for attorneys and lawyers representing victims with disabilities within Judicial Training Centre and the Bar Association of Slovenia.
14. Eliminating the guardianship system and the role of guardians not only in relation to criminal proceedings but the regulation of guardianship in general, and introducing supports in the exercise of legal capacity, which would primarily require legislative changes and ensure compliance with the CRPD.