

Voices for Justice

Victims of crime with disabilities in Lithuania



Mental Health Perspectives ('Psichikos sveikatos perspektyvos')

Voices for Justice: Victims of crime with disabilities in Lithuania

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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



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Mental Health Perspectives, PSP

Mental Health Perspectives (Psichikos sveikatos perspektyvos) is a Lithuanian non-governmental organisation established in 2000. They work in the field of mental health, disability, and human rights. The organisation's mission is to contribute to the well-being of society, especially its most vulnerable groups, through the consolidation of the fundamental right to accessible, evidence-based and person-centred services, whilst also prioritising mental health at the political level.

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Authors

Ugnė Grigaitė and Erika Leonaitė

Research team

Ugnė Grigaitė, Erika Leonaitė, Karilė Levickaitė, Indrė Giedrė-Gegeckaitė, Milda Beišytė, Rūta Drakšaitė, and Kotryna Sipko

Contacts

Mental Health Perspectives
Webpage: www.perspektyvos.org
Email: vilnius@perspektyvos.org

Project contacts

Webpage: validity.ngo/projects-2/voices-for-justice/
Email: infocom@validity.ngo

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Executive Summary

The main aim of this study is to explore and analyse how people with disabilities, who are victims of crime, are able to access the justice system in Lithuania; particularly, concerning their right to information and the importance of effective communication. In order to achieve this, desk-based research and semi-structured interviews were completed with victims of crime with different disabilities, as well as their carers and/or family members, support staff, professionals working in the justice system, and victims support services. The study has revealed a number of related shortcomings and gaps within the justice system, and in the practical implementation of the EU Victims' Rights Directive concerning crime victims with disabilities in Lithuania.

The implementation of the EU Victims' Rights Directive in the country has mainly focused on introducing legal provisions oriented towards strengthening a victim's position in criminal proceedings. Amendments to the Code of Criminal Procedure encompassed victims' rights to report the incident in their native language or to use the interpretation services, the right to receive information on the state of criminal proceedings involving them, the right to be accompanied by a chosen person during police interviews and court hearings, the right to receive information about the suspect's release from detention, and the right to compensation. Special rules on interviewing children were also introduced.¹ However, amendments to the Code of Criminal Procedure contained no provisions referring specifically to disability or people with disabilities.

In transposing Article 4 of the Victims' Rights Directive, the prosecutor general adopted a standardised 'letter of rights' for victims. However, neither the form nor the wording of this document meets the requirement of 'easy to read', 'easy to understand' or 'simple and accessible language' required by the EU Directive; it is difficult to read and understand for any person without a legal background.²

There are criticisms of how the EU Directive has been transposed and the way it operates in practice.³ Research has shown that law enforcement officers rarely take an active role in ensuring that the victim understands the content of the provided 'letter of rights', such as offering additional oral explanations or making sure that the victim has understood their rights. More vulnerable victims, including persons with visual difficulties, persons with intellectual or psychosocial disabilities, and children are not provided with this information in a language tailored to their individual needs. Pre-trial officers tend to communicate with persons with disabilities in a formal way, without explaining the situation in plain, easy-to-understand language, or a way that is most accessible to each individual person. The limited number of guidelines, leaflets and informational campaigns produced by the national authorities are aimed at 'the average user', without regard for individual needs.

¹ Law amending Articles 8, 9, 28, 43, 44, 128, 185, 186, 188, 214, 239, 272, 275, 276, 280, 283, 308 and the Annex of the Code of Criminal Procedure, and supplementing the Codex with Articles 271, 362, 561, 1861, 17 December 2015, retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/1085d150aee411e5b12fbb7dc920ee2c>, came into force on 1 March 2016.

² Bitiukova N., Normantaitė, K. VOIARE National Report. Lithuania, 2019, https://victim-support.eu/wp-content/files_mf/1564677061VOIARE_National_Report_Lithuania_interactive.pdf

³ National Report within the Framework of VOIARE Project: https://victim-support.eu/wp-content/files_mf/1564677061VOIARE_National_Report_Lithuania_interactive.pdf

In general, the research team has observed that professionals who have worked in the justice system for many years do not necessarily have experience with victims of crime with disabilities; as though they were invisible. Also, no practicing lawyers could be identified during the study who had worked with, and could share their direct experiences of, representing victims of crime with disabilities.

Similarly, disability hate crime is mostly invisible and is rarely investigated. Usually, the qualifying circumstance of the ‘vulnerable state of a victim’, implying a more grave crime was committed, is applied concerning victims of crime with disabilities. The additional motive or possibility of a disability hate crime is rarely considered. Lithuanian NGOs report that ‘as currently hate crimes against people with disabilities are hardly reflected in national crime statistics, it can be concluded that such a motive is not registered or taken into account within criminal investigations’.⁴ Moreover, it is essential to develop a clear definition of hate crimes in Lithuanian legislation, indicating that ‘hate crimes are crimes committed with “bias motivation” instead of simply “hatred”’.⁵

When comparing information obtained during interviews with victims of crime with various types of disabilities (psychosocial, intellectual, sensory, physical, and autism) and that obtained during interviews with professionals (a pre-trial investigator, prosecutors), it is apparent that there is a difference in responding to the same interview questions. Victims of crime with disabilities often talked about the partial or full lack of accessible information provided to them, along with not-so-positive experiences with general communications and the attitudes towards them (especially by the police); whereas the professionals tended to present a more positive picture, saying that information can be made available and everything could be arranged, if and when needed.

Victims of crime with disabilities have reported that a more humane attitude and respectful communication was often missing in their encounters with police, along with a lack of general support or taking them seriously, lack of information about next steps and processes, what to expect and when, updates, and outcomes. Similar issues were observed concerning both the reporting and the pre-trial stages. The main means of communication used by the police (pre-trial investigators) are usually telephone and paper letters by regular/registered post. The latter is inappropriate and inaccessible, especially for victims of crime with visual or intellectual disabilities. In theory, sign language interpreters are available, but the research team has not been able to establish the use of these services in practice. Moreover, easy-to-read or Braille materials are not available or used at any stage of the criminal justice process.

The procedural rights and interests of victims with mental health difficulties, psychosocial, or intellectual disabilities are usually addressed through the participation of their statutory representative (family member, close relative, guardian), who directly communicates with the victim. Concerning communication with persons with psychosocial disabilities and provision of information to them, if a person has a more severe disability, all communication goes through their representative. All notifications are sent directly to the representative (not the victim), and the representative is expected to explain these things to the victim. In general, there is a lack of specialised communication skills trainings for professionals, and also on matters related to better understanding the various types of disability, especially with a human rights based approach and the UN CRPD.

⁴ Juodkaitė, D., Grigaitė, U., Jurevičiūtė, G., Zankovska-Odina, S. and Sepper, M.L. Disability Hate Crime in Estonia, Latvia and Lithuania: Recommendations for Stakeholders. 2020, p. 6: <http://hrmi.lt/wp-content/uploads/2020/04/PONGO-recommendations-english.pdf>

⁵ Ibid.

At the time of writing this report, there was no system of generic support services for victims of crime in Lithuania, only specialised support to certain categories of victims (i.e. victims of domestic violence, victims of human trafficking and sexual exploitation, child victims). Having said that, the new Law on Assistance to Victims of Crime was adopted on 14 January 2021,⁶ which has initiated the creation of the first system of generic Victim Support Services in Lithuania. However, it should be noted that the Regulation on Provision of Support Services for Victims of Crime does not specifically mention persons with disabilities; the scope of an obligation to take into account individual needs when providing support is limited to ensuring interpretation, translation or sign language interpretation.⁷

Following analysis of the data in this research study, a number of recommendations have been drawn up by the research team. Firstly, it is important to review and revise the existing legal definitions of disability, especially the Law on the Social Integration of the Disabled, to bring them into conformity with Article 1 of the UN CRPD. Additionally, it is recommended to review and revise all legislative provisions relating to persons with disabilities to remove language that is derogatory, and ensure they uphold the dignity of persons with disabilities as recommended by the UN CRPD Committee by using the direct language of their Concluding Observations.

With regards to some more practical aspects, it is crucial to ensure the health and safety, and address the concerns of persons with disabilities relating to in-person hearings in light of the COVID-19 pandemic: enact guidance/regulations clarifying the formalities, ensure they take into account the specific needs of victims of crime with various types of disabilities, and with the effective participation of persons with disabilities, examine feasible solutions for preventing undue 'pressure' in online proceedings.

It is highly recommended that the 'letter of rights' is reviewed and tailored to the potential individual needs of persons with various types of disabilities, including a Braille and easy-to-read version of this document. Moreover, it is important to give specific and adequate attention and regard to awareness raising and education about matters of disability, from a UN CRPD and human rights-based approach, to all law enforcement officers, at all stages of their education and training, as well as in their continued professional development. This should include mandatory, quality trainings on communication with victims of crime with different types of disabilities. The way that victims with disabilities are communicated with is as important as what the communication entails. It would be vital to ensure that training courses available to judicial and law enforcement personnel cover all the barriers faced by persons with disabilities who wish to gain access to the justice system, in response to observations made by the UN CRPD Committee.

Moreover, when creating the new system of Generic Victims Support Services in Lithuania, it is recommended to give specific regard to the specialised knowledge and skills needed to work and effectively communicate with persons with various types of disabilities. Revise the regulation on the provision of support services for victims of crime to clearly include victims with disabilities.

When talking about persons with intellectual or/and psychosocial disabilities, the recognition of their full legal capacity must be ensured at all stages of the justice system, together with the

⁶ Law on Assistance to Victims of Crime (Pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatymas), 14 January 2021, Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/599af1605b2b11eb9dc7b575f08e8bea>

⁷ Regulation on the Provision of Support Services for Victims of Crime, approved by the Order of the Minister of Social Security and Labour, 19 July 2021 (Dėl Akredituotos pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims teikimo tvarkos aprašo patvirtinimo), Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/c1bafb50e87011eb9f09e7df20500045>

obligation to ensure the necessary supports (such as through a chosen, trusted support person, under the system of supported decision making, with the full and informed consent of the victim concerned).

Mediation in cases of domestic violence, especially with victims with disabilities, should not be used, unless it meets the criteria in paragraph 45 of CEDAW General Recommendation No. 35 on Gender-Based Violence against Women, and training be carried out to this effect. It is recommended to ensure that an impartial third party is part of any process focused on reconciliation, alongside the criminal justice authorities, suspect(s) and victim. Guidance for the process should ensure that there is no undue pressure to reconcile, and that full and informed consent is obtained from all parties.

It is crucial to start collecting statistical data on the types of disabilities of victims of crime; data on the specific numbers of people with disabilities who became victims of domestic violence and hate crimes, among other crimes; data on distribution of victimisation, intensity of victimisation, and characteristics of victims, their individual and communication needs, and how those are met. Additionally, it is important to prioritise, recognise and investigate disability hate crime, with appropriate regard given to the provision of information and effective communication to victims and their individual needs, including their emotional and psychological needs, resulting from experiencing hate crime.

In general, public authorities should strive to hear directly from victims with disabilities in order to get the least distorted, first-hand information from those directly affected by the crime. Moreover, the perspectives of victims with disabilities should be heard concerning their experiences with the accessibility of information and quality of communication whilst participating in the justice system. Currently, there are gaps in the provision of legal representation, especially as victims with disabilities do not automatically qualify, and often the statutory representative 'replaces' the victim in the eyes of the police and prosecution service in terms of their obligations to provide information in an accessible manner and any connected implications. A 'representative's' role should be limited to ensuring the victim understands, and the authorities understand the victim, and they should never act in the victim's name or absence.

Finally, it is recommended to adopt official guidelines for law enforcement officers, implementing the provisions of the EU Victims' Rights Directive on a victim's right to understand and be understood, taking into account potential individual communication needs of crime victims with disabilities.

1. Introduction and Context

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

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

(15) "In applying this Directive, Member States should ensure that victims with disabilities are able to benefit fully from the rights set out in this Directive, on an equal basis with others" (Directive 2012/29/EU of the European Parliament and of the Council)

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

In addition to this, the United Nations Convention on the Rights of Persons with Disabilities (CRPD), establishes the rights of persons with disabilities to equal recognition before the law⁸ and to access to justice,⁹ at the same time as asserting the rights to equality and non-discrimination,¹⁰ 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."¹¹ 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 Lithuania.

⁸. UN CRPD Article 12.

⁹. UN CRPD Article 13.

¹⁰. UN CRPD Article 5.

¹¹. UN CRPD Article 4.

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

Lithuanian context and disability rights

Lithuania is an independent democratic republic with a multi-party parliament. Legislative power is vested in the unicameral Seimas (Lithuanian Parliament). Executive power is exercised by the President and the government, which is headed by the Prime Minister. Judicial power is vested in courts. The court system consists of the Constitutional Court, courts of general jurisdiction (Lithuanian Supreme Court, the Court of Appeal, district courts and local courts) and administrative courts (Lithuanian Supreme Administrative Court and regional administrative courts). Judges are appointed by the President of Lithuania. The judiciary is independent of executive and legislature power.¹² Being a multi-party system, the government of Lithuania is usually not dominated by any single political party, rather it consists of numerous parties that must work with each other to form coalition governments. The Economist Intelligence Unit rated Lithuania as a 'flawed democracy' in 2019.¹³

The official definition of 'disability' is provided in the Law on the Social Integration of the Disabled:¹⁴ 'Disability is a long-term deterioration of a person's state of health, reduced opportunities for activities or participation in public life, which is caused by the interaction of impairments in a person's body structure and functions, and the unfavourable environmental factors'.¹⁵ Based on the comprehensive assessment of 'the extent of the loss of a person's health condition, independence in daily activities and opportunities for education (ugdymasis)', a major, medium, or minor level of disability is established.¹⁶

The UN Committee on the Rights of Persons with Disabilities, in its Concluding observations (2016) noted that the definition and understanding of disability in Lithuanian laws and regulations is focused on the individual impairment, thereby neglecting the social and relational dimensions of disability, including, in particular, various attitudinal, physical, and informational barriers faced by persons with disabilities in society.¹⁷ Though the essence of the existing definition of 'disability' (adopted in 2004) embodies the concept of disability as resulting from an interaction between long-term health conditions and unfavourable environmental factors, it is criticised by some experts as focusing too much on impairments in a person's bodily structure and functions, and on the extent

¹². Constitution of the Republic of Lithuania, 25 October 1992 (with later amendments), retrieved from: <https://www.lrkt.lt/en/about-the-court/legal-information/the-constitution/192>

¹³. https://www.eiu.com/public/topical_report.aspx?campaignid=democracyindex2019

¹⁴. In translating Lithuanian legal provisions, the terms that most accurately correspond to the cited Lithuanian text are used, for example, "the disabled" instead of "persons with disability".

¹⁵. Law on Social Integration of the Disabled (*Neįgalųjų socialinės integracijos įstatymas*), 11 May 2004 (with later amendments), Art. 2(6), retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/TAR.199156E4E004/asr>

¹⁶. Law on Social Integration of the Disabled, Art. 2(7), 19.

¹⁷. Committee on the Rights of Persons with Disabilities. Concluding observations on the initial report of Lithuania, 11 May 2016: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssZC9ptKX1BBEFvl4q2fNHbisloJQJExObNo%2b164VPCFXgGIA71mMejw37A6SN9XPUfu0q0d%2bKAUo0n7OoJHqx8CIPsL3E3GfZp%2bYbsWbcEo>

to which they reduce a person's ability to participate in society.¹⁸ The plans to review this definition in line with recommendations by the Committee on the Rights of Persons with Disabilities have not yet been implemented in Lithuania.¹⁹

There are no specific definitions of disability, a person with a disability, or vulnerability in the Lithuanian Code of Criminal Procedure. Explicit provisions on victims with disabilities are also not included in this Code. However, there is a provision that establishes the mandatory participation of a lawyer for certain categories of suspects/accused, including 'cases of the blind, deaf, mute or other persons who, due to physical or mental "deficiencies", are unable to exercise their right to defence'.²⁰ In reference to this provision, it is important to point out that the Committee on the Rights of Persons with Disabilities (2016) has noted the frequent use of derogatory language, such as 'disorder', when referring to persons with disabilities in legislation and data collection efforts, which perpetuates negative perceptions about persons with disabilities.

Regardless of the national definition, the authors of this report have relied on the CRPD Art. 1 definition of 'a person with a disability' and the definition of 'victim' as provided in the Victims' Rights Directive (VRD).

Since 2017, the number of people with disabilities within the general Lithuanian population has decreased, but the number of people with disabilities who are registered as victims of crime has increased. Over three years (2017–2019), the number of victims with disabilities increased by 34%. People with a disability constitute 8–9% of the general population, but in 2018, victims with disabilities made up 1.83% of all victims.²¹

According to official data, 2.7% of victims of domestic violence are people with disabilities, even if they are only around 9% of the general population.²² In addition, in the last 7 years, not a single person with disabilities was registered as a victim of sexual violence in a domestic setting. These numbers suggest a very high latency of victimization of persons with disabilities.²³

The general obligation of non-discrimination is provided in the Lithuanian Constitution. However, the constitutional provision stating that 'Human rights may not be restricted; no one may be granted any privileges on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views',²⁴ does not include disability as prohibited grounds of discrimination. This constitutional provision is reflected in various laws, including the Law on Courts,²⁵ and the Law on Prosecution Service.²⁶

¹⁸. Juodkaitė D., Sabatauskaitė B., Pakšytė A. Analysis of possible discrimination due to denial of reasonable accommodation (*Galimos diskriminacijos dėl sąlygų nepritaikymo analizė*), 2019, p. 22, p. 7, retrieved from: http://www.ndt.lt/wp-content/uploads/2019_Diskriminacijos_dėl_sąlygų_nepritaikymo_analizė_visas-galutinis.pdf

¹⁹. Juodkaitė D., Sabatauskaitė B., Pakšytė A. Analysis of possible discrimination due to denial of reasonable accommodation, p. 9.

²⁰. Code of Criminal Procedure (*Baudžiamojo proceso kodeksas*), 14 March 2020 (with later amendments), Art. 51(1(2)), retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/TAR.EC588C321777/asr>

²¹. Uscila R. Domestic violence: the situation assessment of crimes with victims with disabilities (*Smurtas artimoje aplinkoje: negalia turinčių nukentėjusiųjų situacijos įvertinimas*), *Pedagogika*, 2020, Vol. 138, No. 2, p. 180.

²². Uscila R. Domestic violence: the situation assessment of crimes with victims with disabilities, p. 189

²³. Uscila R. Domestic violence: the situation assessment of crimes with victims with disabilities, p. 190.

²⁴. Constitution, Art. 29(2), 25 October 1992, Retrieved from: <https://www.lrkt.lt/en/about-the-court/legal-information/the-constitution/192>

²⁵. Law on Courts (*Teismų įstatymas*), 31 May 1994 (with later amendments), Art. 2(2), Retrieved from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.5825>

²⁶. Law on Prosecution Service (*Prokuratūros įstatymas*), 22 April 2004 (new version with later amendments), Art. 3(2), Retrieved from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.5956/asr>

At the same time, it should be mentioned that, according to the official interpretation of the Constitution by the Constitutional Court, the list of grounds of non-discrimination established in the Constitution may not be understood as exhaustive, as the preconditions would be created for denying the equality of all persons before the law, the courts, and other state institutions, i.e., for denying the very essence of the constitutional principle of the equality of the rights of persons, as secured under Article 29(1) of the Constitution.²⁷ So far, the Constitutional Court has ruled on the unconstitutionality of discrimination based on sexual orientation, gender identity, and age. And while there have been cases where discrimination on the grounds of disability was established, especially in employment (e.g., Lithuanian Supreme Administrative Court, decision in administrative case No A-162-602/2020, 25 March 2020), no cases concerning discrimination on the grounds of disability have reached the Constitutional Court to date.

Nevertheless, the ground of disability is reflected in laws that were revised more recently. For example, in 2015 it was included in the non-discrimination clause of the new version of the Law on Police.²⁸ It is also included in the newly adopted Law on Assistance to Victims of Crime (2021). This law contains the principle of equality/non-discrimination (*lygiateisiškumas*) as one of the guiding principles for provision of assistance to victims of crime (other principles include cooperation, [geographical] accessibility, efficiency, accessibility of information, and individualisation).²⁹ The principle of equality/non-discrimination states that ‘a victim is entitled to assistance regardless of their gender, race, nationality, citizenship, language, origin, social and property status, education, religion, beliefs or opinions, age, sexual orientation, disability, ethnicity, religion or other circumstances’.³⁰

The ground of disability was included in the definition of discrimination provided in the Law on Equal Opportunities in 2008,³¹ according to which, state and municipal institutions, and educational institutions and employers are obliged to ensure equal opportunities regardless of disability (among other grounds).³² However, there is no Lithuanian law which explicitly promotes disability equality.

Implications of the COVID-19 Pandemic

During the first quarantine (16 March – 16 June 2020) the Judicial Council of the Republic of Lithuania recommended cancelling or postponing hearings in oral proceedings until the end of the quarantine, except in cases of statutory urgency (for example, issues related to arrest, or removal of a child from an unsafe environment).³³ Thus, under quarantine, the court system ceased operations. In April and May 2020, some online hearings took place, and gradually, in-person hearings were organised as well. After the quarantine was lifted on 16 June 2020, the courts’ workload became very intense. Together with the onset of the second wave of the pandemic, a national quarantine was reintroduced on 6 November 2020.

²⁷ Ruling of the Constitutional Court of 3 June 2020, case no KT100-N6/2020, Retrieved from: <https://www.lrkt.lt/en/court-acts/search/170/ta2176/content>

²⁸ Law on Police (*Policijos įstatymas*), 25 April 2015 (new version with later amendments), Art. 4(1), Retrieved from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111665/asr>

²⁹ Law on Assistance to Victims of Crime (Pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatymas), 14 January 2021, Art. 3(1), Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/599af1605b2b11eb9dc7b575f08e8bea>

³⁰ Law on Assistance to Victims of Crime, Art. 3(1(4)).

³¹ Law on Equal Opportunities (*Lygių galimybių įstatymas*), 8 November 2016 (new version with later amendments) Art. 2(1), Retrieved from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.222522/asr>

³² Law on Equal Opportunities, Art. 2(1).

³³ <https://www.teismai.lt/en/news/news-of-the-judicial-system/regarding-the-exercise-of-judicial-functions-during-the-quarantine-period/7463>

Compared with the first quarantine, the Judicial Council's recommendations, announced on 23 October 2020, were more flexible, and left the decision of organising work up to the discretion of judges. A mixed mode of work (combining traditional and online hearings) was recommended.³⁴

As the number of new COVID-19 cases rose drastically, on 8 December 2020, the Judicial Council amended their recommendation on organising the work of the courts. This time, priority was given to written procedures and online hearings.³⁵ Yet, many defence lawyers objected to online hearings (due to, for example, the difficulty of advising a client confidentially during a hearing). Judges were also reluctant to organise online hearings, at least in more serious cases, both due to a lack of clarity over the formalities to be observed during such hearings (e.g. whether witnesses are still required to sign an oath, whether online proceedings should be considered as ensuring the principle of "direct and oral examination", etc.), as well as due to uncertainties as to whether a person appearing on screen was not experiencing pressure.³⁶ Participants of proceedings, especially those from COVID-19-related risk groups, due to age, etc., objected to in-person hearings due to health concerns.³⁷

On 29 December 2020, the Ministry of Health recommended that in-person hearings should only be held in exceptional cases, where there is no possibility of postponement. All other court functions must be performed virtually, except in cases where it is necessary to guarantee the procedural rights of the parties, e.g., to familiarise them with a case file, or where their participation in court hearings is necessary.³⁸

All of these circumstances led to certain (sometimes significant) delays in criminal proceedings. However, specific data concerning COVID-19-related delays in court proceedings is not publicly available.

By spring, the quarantine requirements were relaxed. The Judicial Council recommended gradually renewing the oral examination of cases, by, when possible, ensuring on-line participation of participants of the proceedings. In selecting cases for oral examination, previously adjourned cases with approaching statutory limitations for imposing criminal responsibility, as well as cases requiring expediency (e.g. where defendants were detained), and cases in the final stages of examination were to be granted priority.³⁹

The amendments to the Code of Criminal Procedure providing for the possibility, in exceptional cases, to perform some pre-trial investigative actions and hear criminal cases through videoconferencing, came into force only on 1 June 2021.⁴⁰

³⁴ <https://www.teismai.lt/lt/naujienos/teismu-sistemas-naujienos/teiseju-tarybos-rekomendacijos-del-teismu-darbo-organizavimo/8097>

³⁵ <https://www.teismai.lt/lt/naujienos/teismu-sistemas-naujienos/atnaujintos-rekomendacijos-teismams-del-darbo-organizavimo/8288>

³⁶ Presentation by judge V. Šelmiėnė at the conference "Vulnerable participants of proceedings in courts: how to recognize and respond to their needs?", 2020-12-16, <https://www.youtube.com/watch?v=iJ8sTt7KHvs&t=4512s>

³⁷ Materials of the conference "Vulnerable participants of proceedings in courts: how to recognize and respond to their needs?", 2020-12-16, <https://www.youtube.com/watch?v=iJ8sTt7KHvs&t=4512s>

³⁸ <https://www.teismai.lt/lt/naujienos/teismu-sistemas-naujienos/sam-atnaujino-rekomendacijas-teismu-darbo-organizavimui-karantino-metu/8316>

³⁹ The Judicial Council. On functioning of the courts under relaxed quarantine conditions (*Dėl teismų funkcijų vykdymo sušvelnintomis karantino sąlygomis*), 27 April 2020.

⁴⁰ Law amending Articles 8-1, 210, 263, 269 and 277 of the Code of Criminal Procedure and adding Article 8-2 of the Code (Baudžiamojo proceso kodekso 8-1, 210, 263, 269 ir 277 straipsnių pakeitimo ir Kodekso papildymo 8-2 straipsniu įstatymas), 22 April 2021, Retrieved from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/6c092531a37211ebb458f88c56e2040c?jfwid=-2w5iqfyx>.

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 purpose of the semi-structured interviews was to hear from victims of crime with disabilities, as well as from their carers and/or family members, support staff, professionals working in the justice system, and victims support services, about their experiences and opinions of how victims of crime with disabilities can access justice in Lithuania. Of particular interest was the information provided them, who provides it and how, and what support is available to make sure all people with disabilities understand the justice process and are understood.

Twelve interviews were carried out online between 17 March and 28 April 2021, due to the pandemic. Research participants came from five different districts in Lithuania: Alytus, Kaunas, Klaipėda, Telšiai, and Vilnius.

Five interviews were conducted with victims of crime with disabilities (sensory, intellectual, psychosocial, and physical disabilities), one with a family member of a young person with autism, one with a social worker, four interviews with prosecutors, and one with a pre-trial investigator.

Convenience sampling and snowball sampling methods were applied, since the topic of the study is very sensitive and involves adults that are more vulnerable. Open calls to participate in the study were announced and distributed via local NGOs and associations, the Lithuanian UNCRPD Implementation Monitoring Committee, Social Care Homes and Independent Living Homes, and social media. In addition, direct contact was established with the Prosecutor General's Office, individual judges and prosecutors, Lithuanian Women's Rights Association, which coordinates the Specialised Complex Support Centres (for victims/survivors of domestic violence), and with the Lithuanian Sign Language Translation Centre.

Audio recordings were made of all interviews, and were subsequently transcribed. Analysis of the data took place after the research and field work, drawing out themes identified from the relevant international legal frameworks to evaluate the implementation of national legislation, policy, and practice in the country.

3. Legal and Policy Framework

Criminal Justice Procedures

The Lithuanian criminal procedure has more characteristics of an inquisitorial system, although there are some features of an adversarial system.⁴¹ The pre-trial investigation is essentially an inquisitorial procedure, while elements of an adversarial system are found in the trial phase: both the prosecution and defence can submit evidence, make requests and present their arguments.⁴² However, the court is obliged not to limit itself with the evidence presented by the participants of the proceedings. The task of the court is to be proactive and employ all means necessary to establish 'substantive truth'. Thus, in Lithuanian legal doctrine, the inquisitorial model is the dominate model.⁴³

The majority of issues related to criminal law are covered by two sets of codified laws – the Criminal Code and the Criminal Procedure Code, both of which came into force in the early 2000's after a complete reform of the criminal justice legal framework. Other legal sources relevant for criminal procedures including the Constitution and constitutional jurisprudence, international treaties and EU law, case-law of the Lithuanian Supreme Court, and sub-statutory legal acts, such as Recommendations by the Prosecutor General.

The first stage of criminal procedure is the criminal investigation, called 'pre-trial investigation' in the Criminal Procedure Code. The pre-trial investigation is usually conducted by investigating police officers, and in some instances – officers of other investigating institutions. They are jointly referred to as pre-trial investigation officers in the Criminal Procedure Code. Each individual case is assigned to a prosecutor, who oversees the criminal investigation. The investigation is considered concluded when the prosecutor draws up the act of indictment and submits it to the court, together with all the material of the case. From that moment, the case is overseen by the court, which decides it. The first instance court's decision can always be appealed. A second appeal, appeal in cassation, to the Supreme Court of Lithuania is also possible, but only on points of law. The Code of Criminal Procedure indicates two grounds for cassation: 1) improper application of criminal law; 2) fundamental breaches of the Code of Criminal Procedure. The latter concept refers to breaches of the requirements of the CCP that 'led to restrictions of the rights of the accused or precluded the court from examining the case thoroughly and impartially and from adopting a fair judgment'.⁴⁴

Victims of Crime with Disabilities

There is no specific regulation on the matters concerning people with specific types of disabilities, e.g. **psychosocial and/or intellectual disability**, as victims of crime, only general provisions concerning statutory representatives. The general rule is that the victim's statutory representatives (e.g. their guardian) may participate in all stages of the proceedings and defend

⁴¹ Cape E., Namoradze Z, *Effective Criminal Defence in Eastern Europe*, Legal Aid Reformers Network, 2012, p. 199.

⁴² Code of Criminal Procedure, Art. 7, retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/TAR.EC588C321777/asr>

⁴³ Goda G., Kazlauskas M., Kuconis P. Law of Criminal Procedure (*Baudžiamojo proceso teisė*), Vilnius, Registrų centras, 2011, p. 13-15.

⁴⁴ Code of Criminal Procedure, Art. 369.

the interests of the represented person who is a minor or ‘incapacitated’ person, unless such participation would be contrary to the interests of the represented person, or would prejudice criminal proceedings. In the latter case, participation of another statutory representative has to be ensured.⁴⁵ Another representative is appointed by the prosecutor. It is especially relevant in situations where the guardian is acting contrary to the victim’s best interests (e.g., a parent of a victim may be pressuring them to deny the crime allegedly committed by another family member). In addition, there are no obstacles to appointing a support person as a statutory representative, however, providing individualised support in decision making is very new in Lithuania and does not yet function effectively. Currently, there are pilot projects in several regions in the country, but there is a long way to go before the right to support in the exercise of legal capacity can be effectively ensured.

The Code of Criminal Procedure also provides that if a person who is not deemed legally ‘incapacitated’, but nevertheless is unable to exercise their rights effectively due to age, disability, illness or other serious reasons, the prosecutor or the court may allow such a person’s family member or close relative to participate in the proceedings as a statutory representative.⁴⁶ As stated in the Code of Criminal Procedure, ‘a statutory representative usually participates in the proceedings together with the person they represent’.⁴⁷ Ideally, it should mean that the representative should participate in the proceedings alongside the victim to ensure that the victim understands the proceedings and the authorities understand them. However, such a role is not directly prescribed, meaning that, in reality, a statutory representative or a family member exercising these functions might actually act in the name and absence of the victim. Interviews with law enforcement officers revealed that in situations where a person is granted the rights of a statutory representative, all official communication is conducted directly with the representative. Even if the statutory representative accompanies the victim, it does not necessarily mean that they have the needed skills and knowledge to ensure that the victim understands the proceedings or that the authorities will understand the victim in a way that enables effective communication in this context.

It is important to highlight that people with disabilities have the right to full recognition of their legal capacity in all stages of the justice system, and that the UN CRPD requires that they be entitled to fully participate in this right, with support. The representation of their interests through a ‘statutory representative’ is a violation of their rights under the UN CRPD and VRD. There is clear incompatibility with Lithuania’s domestication of the CRPD in terms of the right to legal capacity, and with the VRD as read together with the CRPD. It is a violation of victims’ rights because it does not require that the ‘representative’ give effect to the will and preferences of the person concerned, and instead exercises a form of prohibited, substitute decision making.

As for persons with **hearing and speech difficulties**, they are entitled to receive the services of a sign language interpreter, to the same extent as those who do not speak the Lithuanian language.⁴⁸ According to the recommendations⁴⁹ of the prosecutor general on the assessment of the specific protection needs of victims, the right to use the services of an interpreter must be guaranteed for persons with an intellectual or psychosocial disability.⁴⁹ However, what exactly

⁴⁵ Code of Criminal Procedure, Art. 53(1)-(3).

⁴⁶ Code of Criminal Procedure, Art. 53(4).

⁴⁷ Code of Criminal Procedure, Art. 53(3).

⁴⁸ Code of Criminal Procedure, Art. 43.

⁴⁹ Order of the Prosecutor General On the Approval of the Recommendations on the Assessment of the Specific Protection Needs of Victims, 29 February 2016, No. I-63, <https://www.e-tar.lt/portal/lt/legalAct/86bc22f0dfa611e58a92afc65dd68e97>

is meant by interpretation for persons with such disabilities is not clear. According to the Code of Criminal Procedure, an interpreter/translator is ‘a person who speaks the languages required for the interpretation/translation, or who understands the signs of the “mute” or “deaf” person’.⁵⁰

Regardless, the right to interpretation for ‘victims, who do not speak Lithuanian language or who have hearing, speech, intellectual or psychosocial disabilities, or to their representatives’ in these recommendations is perceived as a special protection measure, i.e. measures aimed at protecting especially vulnerable victims from secondary victimisation. Yet, the use of an interpreter should be understood not so much as a measure of protection, but as a fundamental procedural right, enabling effective participation in criminal proceedings.

Concerning restorative justice, after sentencing, probation services may arrange mediation between the convicted person and the victim. Also, the newly adopted Law on Assistance to Victims of Crime contains a definition of restorative justice services.⁵¹ It also establishes the obligation of first contact authorities to provide victims with the contact information of entities providing these services.⁵² No further provisions concerning how this information is provided were included in the law.

An excerpt from the VOciare project’s National Report on Victims’ Rights in Lithuania, by N. Bitiukova and K. Normantaitė,⁵³ on mechanisms having some elements of restorative justice is as follows:

‘Reconciliation’ is a practice employed during criminal proceedings, which has some elements of restorative justice, but is not necessarily considered as such by legal scholars.⁵⁴ According to the Criminal Code, reconciliation between the victim and offender releases the offender from criminal liability.⁵⁵ This means that criminal proceedings are suspended for the parties to find peace and make an agreement. The practice of reconciliation is voluntary, thus both parties need to agree to it. Reconciliation is available only with respect to crimes punishable by a non-custodial sentence, or a custodial sentence of no more than six years.

Upon reconciliation, the offender is released from criminal liability if they have confessed to the criminal act, restored damages and reconciled with the victim, and if there is a basis for believing that they will not offend anyone again. There are no benefits for the victim to participate in the reconciliation process, aside from voluntary restoration of the damage and an agreement for compensation. The agreement between the victim and the offender occurs between the two parties, but the criminal justice authorities formalise it.

During reconciliation, criminal justice authorities participate in the process together with the suspect and victim, but there is no impartial third party. The referral procedure is inexistent since there are no separate bodies mediating victims and offenders in Lithuania. In the case of reconciliation, the victim can withdraw at any point and initiate criminal proceedings. It is not

⁵⁰. Code of Criminal Procedure, Art. 43.

⁵¹. Law on Assistance to Victims of Crime (*Pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatymas*), 14 January 2021, Art. 2(2), Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/599af1605b2b11eb9dc7b575f08e8bea>

⁵². Law on Assistance to Victims of Crime (*Pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatymas*), 14 January 2021, Art. 9(1(10)), Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/599af1605b2b11eb9dc7b575f08e8bea>

⁵³. Bitiukova N., Normantaitė, K. VOciare National Report. Lithuania, 2019, https://victim-support.eu/wp-content/files_mf/1564677061VOciare_National_Report_Lithuania_interactive.pdf

⁵⁴. Michailovič I. et al. (2014). Perspectives of restorative justice in Lithuania (Atkuriamojo teisingumo perspektyvos Lietuvoje). Vilnius.

⁵⁵. Criminal Code (*Baudžiamasis kodeksas*), 26 September 2000, Art. 38

possible to stop criminal proceedings once they have started, even if the victim and offender reconcile. In case of private prosecution, the reconciliation may take place before the court, with the judge acting as a mediating party.

Pre-trial officers, prosecutors, and judges usually inform the parties about the possibility of reconciliation and, in some cases pressure the victims to reconcile; interviews with victims of domestic violence revealed such practice in domestic violence cases.⁵⁶ In 2018, the UN Human Rights Committee, in its concluding observations on the fourth periodic report of Lithuania, also expressed concerns about ‘the excessive use of reconciliatory mediation for victims of domestic violence’. Taking into account that victims with disabilities are more likely to become victims of domestic violence or be dependent on their family members in adult life, they are likely to be negatively affected by the pressure to reconcile, even in situations of systemic violence or abuse. It is important to note that in cases of domestic violence, mediation can only be used in the most limited way, and only if meeting the criteria in paragraph 45 of the UN Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation No. 35 on Gender-Based Violence against Women.⁵⁷

Implementation of the UN CRPD

The UN CRPD was ratified by Lithuania on 27 May 2010. The Law on Equal Opportunities, Law on Social Integration of the Disabled, and Law on the Fundamentals of the Protection of the Rights of the Child may be referred to as being among the most important laws related to the implementation of the UN CRPD. The main governmental institution responsible for coordinating the implementation of the UN CRPD is the Ministry of Social Security and Labour. In 2018, following the initiative of the Equal Opportunities Ombudsperson, the Monitoring Commission on the Rights of Persons with Disabilities was established. This Commission operates under the Office of the Equal Opportunities Ombudsperson. From 1 July 2019, the Commission was tasked with monitoring the implementation of the UN CRPD in Lithuania and providing recommendations. It is composed of four representatives from associations of people with disabilities, and one representative from the Office of the Equal Opportunities Ombudsperson.⁵⁸

The ratification of the UN CRPD and being subjected to an international monitoring mechanism, served as an impetus to focus more attention on guaranteeing human rights for persons with disabilities. One example was the ‘legal capacity reform’, which, instead of automatic, full incapacitation, introduced a notion of declaring a person incapacitated only in certain areas, based on individual circumstances. This prevents the automatic assumption that a victim with a disability can be assessed as ‘completely incapacitated’, in which case, a guardian interacts with the justice system on their behalf. The person may still have communication support needs, regardless of their legal capacity status, and thus has the right to be accompanied.

However, measures adopted to implement the CRPD in the area of access to justice remain very limited. The Committee on the Rights of Persons with Disabilities, in its concluding observations

⁵⁶ Adutavičiūtė M. (2014). Victims’ rights directive: new perspective on domestic violence victims (Nusikaltimų aukų teisių direktyva: naujas požiūris į artimųjų smurto aukas), p. 24. Retrieved from: https://www.hrmi.lt/uploaded/Apzvalgos/Tyrimas_aukuteisiu-direkt_1.pdf. Also see Liutkevičius K., et al (2018). Human Rights in Lithuania 2016-2017: Overview, pp. 118-119. Retrieved from: <https://hrmi.lt/wp-content/uploads/2018/07/2016-2017-%C5%BDmogaus-teisi%C5%B3-ap%C5%BEvalga.pdf>

⁵⁷ CEDAW (2017) General Recommendation No. 35 on Gender-Based Violence against Women: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_GC_35_8267_E.pdf

⁵⁸ <https://lygybe.lt/lt/naujienos/kontroliere-subure-pirmaja-zmoniu-su-negalia-teisiu-stebesenos-komisija/1127>

(2016) expressed concern that the training courses available to judicial and law enforcement personnel did not cover all the barriers faced by persons with disabilities who wished to gain access to the justice system, and were insufficient in their scope and number.⁵⁹

Implementation of the EU Victims' Rights Directive

In Lithuania, the implementation of the EU Victims' Rights Directive has mainly focused on introducing legal provisions oriented towards strengthening a victim's position in criminal proceedings. Amendments to the Code of Criminal Procedure encompassed victims' rights to report the incident in their native language or to use the interpretation services, the right to receive information on the state of criminal proceedings involving them, the right to be accompanied by a chosen person during police interviews and court hearings, the right to receive information about the suspect's release from detention, and the right to compensation. Special rules on interviewing children were also introduced.⁶⁰ **However, amendments to the Code of Criminal Procedure contained no provisions referring specifically to disability or people with disabilities.**

Concerning the transposition of provisions relating to **the right to information**, it should be noted that Articles 4 and 6 of the Victims' Rights Directive establish two separate rights. Article 4 specifies what information has to be provided to victims from their first contact with a competent authority. Article 6 concerns the right of victims to receive information about their case.

In transposing Article 4 of the Victims' Rights Directive, the prosecutor general adopted a standardised 'letter of rights' for victims. According to the prosecutor general's order, every victim should receive the standardised 'letter of rights' and sign a form confirming that they were explained their procedural rights. Apart from Lithuanian, the 'letter of rights' is available in five other languages – English, French, German, Polish, and Russian.⁶¹ The document is more than five pages long, contains a description of 18 rights, and is written in a formal and technical language. Neither the form nor the wording meets the requirement of 'easy to read', 'easy to understand' or 'simple and accessible language' required by the Directive, as it is difficult to read and understand for any person without a legal background.⁶² A version of the 'letter of rights' or any other materials has not been tailored to the potential needs of persons with disabilities.

Concerning the right of victims to receive information about their case (Article 6), even before the transposition of the Victims' Rights Directive, victims had to be served with certain procedural documents, e.g. a decision not to launch a pre-trial investigation,⁶³ a decision to terminate a pre-

⁵⁹. Committee on the Rights of Persons with Disabilities. Concluding observations on the initial report of Lithuania, 11 May 2016, para 27, retrieved from:

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssZC9ptKX1BBEFvI4q2fNHbisoJQJExObNo%2b164VPCFXgGIA71mMejw37A6SN9XPUfu0q0d%2bKAUo0n7OoJHqx8CIPsL3E3GfZp%2bYbsWbcEo>.

⁶⁰. Law amending Articles 8, 9, 28, 43, 44, 128, 185, 186, 188, 214, 239, 272, 275, 276, 280, 283, 308 and the Annex of the Code of Criminal Procedure, and supplementing the Codex with Articles 271, 362, 561, 1861, 17 December 2015, retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/1085d150aee411e5b12fbb7dc920ee2c>, came into force on 1 March 2016.

⁶¹. Order by the Prosecutor General on the Approval of the Template Documents for the Criminal Process (Dėl Baudžiamojo proceso dokumentų formų patvirtinimo), 16 May 2016 (with later amendments), No I-122, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/a967f6d0906f11e48028e9b85331c55d/asr>

⁶². Bitiukova N., Normantaitė, K. VOIARE National Report. Lithuania, 2019, https://victim-support.eu/wp-content/files_mf/1564677061VOIARE_National_Report_Lithuania_interactive.pdf

⁶³. Code of Criminal Procedure, Art. 168(3).

trial investigation,⁶⁴ and, at the victim's request – a judgment.⁶⁵ After the conclusion of the pre-trial investigation (i.e. before the material is submitted to the court) victims had (and have) the right to familiarise themselves with the case file.⁶⁶ A new right, which was included into the Code of Criminal Procedure when transposing the Victims' Rights Directive, was the victim's right to receive information on the state of criminal proceedings involving them.⁶⁷ However, as indicated in the VOClARE report, in practice, victims receive information about their case by proactively approaching the pre-trial officer or the prosecutor in charge of the investigation. The level of detail provided depends on the victim's perseverance and the officer's good will, as there are no protocols in place discussing when and what information should be provided to the victim. As a matter of attitude, some law enforcement representatives consider an inquiry into the state of the proceedings as an 'interference' with the investigation, and withhold information on this ground,⁶⁸ in spite of the victim's right to receive information on the state of criminal proceedings involving them.⁶⁹

There are **criticisms** of how the EU Directive has been transposed and the way it operates in practice.⁷⁰ Research has shown that law enforcement officers rarely take an active role in ensuring that the victim understands the content of the provided 'letter of rights', such as offering additional oral explanations or making sure that the victim has understood their rights. More vulnerable victims, including persons with visual difficulties, persons with intellectual or psychosocial disabilities, and children are not provided with this information in a language tailored to their individual needs. Pre-trial officers communicate with persons with disabilities in a formal way, without explaining the situation in plain, easy-to-understand language, or a way that is most accessible to each individual person. The limited number of guidelines, leaflets and informational campaigns produced by the national authorities are aimed at 'the average user', without regard for individual needs.

On 7 March 2019, the European Commission issued a reasoned opinion in infringement proceedings No. 2016/0109, indicating that the measures of the Republic of Lithuania did not fully transpose some of the provisions of Directive 2012/29/EU into the Republic of Lithuania's national law. After examining the EC's reasoned opinion, the responsible authorities of the Republic of Lithuania agreed that Directive 2012/29/EU has not been fully transposed: there was no concept of a 'victim of crime' in the Lithuanian legal system corresponding to that used in the Directive (the Lithuanian term *nukentėjusysis* refers only to a person who has been formally recognised as a victim of crime in a pre-trial investigation); there was no comprehensive system of ensuring and protecting victims' rights; and no procedures for providing assistance to the victim.⁷¹

Following the infringement proceedings, the Law on Assistance to Victims of Crime was adopted on 14 January 2021.⁷² According to Article 2(4), the concept of assistance to victims of crime

⁶⁴ Code of Criminal Procedure, Art. 214(3).

⁶⁵ Code of Criminal Procedure, Art. 310(3).

⁶⁶ Code of Criminal Procedure, Art. 218.

⁶⁷ Code of Criminal Procedure, Article 28(2)

⁶⁸ Bitiukova N., Normantaitė, K. VOClARE National Report. Lithuania, 2019, Retrieved from: https://victim-support.eu/wp-content/files_mf/1564677061VOClARE_National_Report_Lithuania_interactive.pdf

⁶⁹ Code of Criminal Procedure, Art. 28(2)

⁷⁰ National Report within the Framework of VOClARE Project: https://victim-support.eu/wp-content/files_mf/1564677061VOClARE_National_Report_Lithuania_interactive.pdf

⁷¹ Ministry of Social Security and Labour. Explanatory report concerning legislative drafts No XIII-5245- XIII-5247 (Aiškinamasis raštas dėl įstatymų projektų Reg. Nr. XIII-5245- XIII-5247), 6 October 2020

⁷² Law on Assistance to Victims of Crime (*Pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatymas*), 14 January 2021,

encompasses ‘information, counselling and (or) services provided to victims of crime, taking into account their individual needs, the needs arising from the crime and the nature of the crime’. According to this definition, needs related to disability should fall under the ‘individual needs’ category and should be taken into account when providing support. As explained in Article 3 of this law, the principle of individualisation requires to that the individual needs and personal characteristics of the victim be taken into account, including, among others, age, maturity, gender, mental and physical characteristics, social environment, and other important circumstances, as well as emotional and social connections.

The concept of ‘disability’ is mentioned only once in the Law on Assistance to Victims of Crime, when explaining the principle of non-discrimination. It is stated that ‘a victim is entitled to assistance, regardless of their gender, race, nationality, citizenship, language, origin, social and property status, education, religion, beliefs or opinions, age, sexual orientation, disability, ethnicity, religion or other circumstances’⁷³. The Law on Assistance to Victims of Crime⁷³ contains several provisions directly related to **the right to information and effective communication** (the right to understand and be understood).

First, the Law provides that victims of crime have the following rights (among others): a) to receive information free of charge in a language they understand, in ways and through means agreed by the victim and the assisting subjects; b) to receive interpretation, translation and sign language interpretation; c) to choose a person who will accompany the victim in addressing the first contact institution and help the victim to understand and (or) be understood, unless this would be contrary to the interests of the victim or would otherwise impede the provision of assistance. The reference to ‘otherwise impeding the provision of assistance’ is quite worrying, as it might be used to preclude the victim from exercising their right to have an accompanying person in addressing first-contact institutions. Moreover, the accompanying person will need to be appropriately knowledgeable about how the system works and have the skills to support the victim in understanding and being understood.

Second, the Law establishes a list of information which must be provided to victims of crime by first-contact institutions. It includes information on the types of available support, contacts for corresponding service providers, how to report a crime and participate in criminal proceedings, the realisation of procedural rights, and restorative justice services.

Third, the Law lists information that must be provided to victims of crime by victim support services (including information on victims’ rights and the institutions responsible for guaranteeing them, organisations providing social services, health services provided by health care institutions, the possibility to report a crime, and on law-enforcement institutions).

In transposing the provisions of the Directive on individual assessment and the application of special protection measures, a concept of the ‘victim’s specific protection needs’ was introduced to the Lithuanian legal system. According to Art. 36 of the Code of Criminal Procedure, specific protection needs are the needs of the victim to use special guarantees aimed to protect the victim from psychological or mental trauma, criminal impact or other negative consequences. Such needs may be determined by the personal characteristics of the victim, the nature of the crime, or the circumstances of its commission.

Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/599af1605b2b11eb9dc7b575f08e8bea>

⁷³ Law on Assistance to Victims of Crime, Art. 9(1(10)).

Despite not having any official or mandatory training on effective communication with persons with various types of disabilities, law enforcement officers are obliged to conduct an assessment of victims' specific protection needs, and to take those into account when organising criminal proceedings.⁷⁴ The particular requirements and criteria for such an assessment have been set in the Prosecutor General's Recommendations on the assessment of the specific protection needs of victims.⁷⁵ According to the evaluation form provided in these recommendations, the criteria for the assessment of specific protection needs falls into three categories: 1) data on the crime (e.g. whether violence was used and what type of violence, what kind of damage was suffered, objects against which the crime was committed); 2) data on the victim (e.g. health, social circumstances, relationship with the perpetrator, dependence on the perpetrator, signs of psychological trauma); and 3) data on the perpetrator (identified or not, individual or a group, previously convicted or not).⁷⁶ Thus, disability would be one of many factors taken into account when conducting an individual assessment.

During the assessment, high, average or low risk of suffering harm related to criminal proceedings or other circumstances is identified. The recommendations also explain what protection measures might be applied to victims. Special protection measures may be directed towards minimising the risk of secondary victimisation unrelated to the perpetrator: interviews by an officer of the same gender, interviews by a specialised officer, participation of a psychologist, etc. Other measures should minimise the risk of negative influence related to the perpetrator: interviews conducted by a pre-trial judge in the absence of the suspect, or interviews in rooms equipped for interviewing more vulnerable victims. However, these measures are not related to the outcome of the individual needs assessment, putting in doubt the meaningfulness of the whole risk assessment. Interviews with pre-trial investigation officers revealed that they perceive the individual needs assessment procedure as a mere formality, which is usually conducted offhand by police officers at the crime scene. Furthermore, they noted that the results of these assessments have no real impact on the proceedings.⁷⁷ These findings were confirmed in interviews conducted during the current research. In interviews, certain measures referred to in the recommendations and potentially relevant for interviewing victims with psychosocial or intellectual disabilities, such as the participation of a specialised professional during questioning, were referred to as a simply unavailable practice.

Support Services for Victims

At the time of writing this report, there was no system of generic support services for victims of crime in Lithuania. Currently, only specialised support to certain categories of victims (i.e. victims of domestic violence, victims of human trafficking and sexual exploitation, child victims) is available. Having said that, the new Law on Assistance to Victims of Crime was adopted on 14 January 2021,⁷⁸ which has initiated the creation of the first system of generic Victim Support Services in Lithuania.

⁷⁴ Code of Criminal Procedure, Art. 186(1).

⁷⁵ Order of the Prosecutor General on the Approval of the Recommendations on the Assessment of the Specific Protection Needs of Victims, 29 February 2016, No. I-63, <https://www.e-tar.lt/portal/lt/legalAct/86bc22f0dfa611e58a92afc65dd68e97>

⁷⁶ Order of the Prosecutor General On the Approval of the Recommendations on the Assessment of the Specific Protection Needs of Victims, 29 February 2016, No. I-63, <https://www.e-tar.lt/portal/lt/legalAct/86bc22f0dfa611e58a92afc65dd68e97>

⁷⁷ National Report within the Framework of VOIARE Project, p. 63-64: https://victim-support.eu/wp-content/files_mf/1564677061VOIARE_National_Report_Lithuania_interactive.pdf

⁷⁸ Law on Assistance to Victims of Crime (*Pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatymas*), 14 January 2021, Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/599af1605b2b11eb9dc7b575f08e8bea>

The first organisations providing generic victim support services will be accredited in late 2021 or the beginning of 2022. However, it should be noted that the Regulation on Provision of Support Services for Victims of Crime **does not specifically mention persons with disabilities**; the scope of an obligation to take into account individual needs when providing support is limited to ensuring interpretation, translation or Sign language interpretation.^{79.}

The most developed network of specialised support services is oriented towards **victims of domestic violence**. According to the Law on Protection from Domestic Violence (2011), each victim of domestic violence is entitled to free, specialised complex support.^{80.} Specialised support is currently provided by 17 complex support centres, covering all Lithuanian municipalities. Specialised complex support centres receive tender-based government funding (for two years), and additional EU funds. The Lithuanian Women's Rights Association works together with 16 specialised support centres.

According to the activity description of the specialized complex support centres, approved by the order of the Minister of Social Security and Labour, consultants must provide a wide range of services, including information and psychological support; individualised safety and support plan; cooperation with child rights protection authorities, municipal institutions, other institutions and (or) organisations that provide shelter, accommodation and other necessary services, with police authorities, health institutions, legal aid institutions and others; and, on the basis of needs, accompany the victim to the police station, court, and other institutions.^{81.} Usually the main activity of the specialised complex support centre is to provide advice and consultations by telephone.

If the victim requires specialised psychological support and (or) legal aid, specific times for consultations are set up. If there is no in-house psychologist and (or) lawyer in the specialised complex support centre, the centre liaises on behalf of the victim to arrange such support in another state or municipal institution, or non-governmental organisation.^{82.} In addition, certain services are provided by different institutions, including municipalities, providers of social services (socialinių paslaugų įstaigos), NGOs, health care institutions, and child rights protection agency. However, research indicates that a lack of inter-sectoral and inter-agency cooperation between different institutions and service providers is a systemic problem.^{83.}

When it comes to victims with disabilities, support is, unfortunately, very limited. A report by the Parliamentary Ombudsperson (2020), referring to previous research findings,^{84.} indicates that victims of domestic violence with disabilities are more isolated, both in terms of access to information and the possibility to approach support organisations. Often they do not receive any support, as receiving such support requires proactively approaching relevant service

^{79.} Regulation on the Provision of Support Services for Victims of Crime, approved by the Order of the Minister of Social Security and Labour, 19 July 2021 (Dėl Akredituotos pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims teikimo tvarkos aprašo patvirtinimo), Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/c1bafb50e87011eb9f09e7df20500045>

^{80.} Law on Protection from Domestic Violence (*Apsaugos nuo smurto artimoje aplinkoje įstatymas*), 26 May 2011.

^{81.} Order of the Minister of Social Security and Labour 'On the Approval of the Activity Description of the Specialized Support Centres' (*Lietuvos Respublikos socialinės apsaugos ir darbo ministro įsakymas dėl specializuotos pagalbos centrų veiklos aprašo patvirtinimo*), 7 May 2012. Retrieved from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.424133/asr>

^{82.} Ibid.

^{83.} Parliamentary Ombudsperson. Report on Fundamental Human Rights Problems in the Field of Guaranteeing Assistance to Victims of Domestic Violence (*Ataskaita dėl pagalbos smurtą artimoje aplinkoje patyrusiems asmenims užtikrinimo srityje kylančių esminių žmogaus teisių problemų*), 2020, p. 8, 16. Retrieved from: <https://www.lrski.lt/ataskaitos-del-esminiuzmogaus-teisiu-problemu/>

^{84.} Purvaneckienė, G., Venslovaitė, V., Stonkuvienė, I. ir Žiliukaitė, R. (2019). (*Smurtas artimoje aplinkoje: prevencija, apsauga, pagalba, bendradarbiavimas. Kokybės tyrimo ataskaita*), p. 78-79.

providers, whereas municipalities or organisations for people with disabilities are reluctant to offer assistance due to a lack of human and financial resources. People with disabilities especially lack information on where to receive help and support in cases of domestic violence. In addition, not all organisations and institutions providing assistance are accessible to people with disabilities; support is not tailored to the potential individual needs of people with disabilities, and the needs of people with disabilities are not taken into account when providing support.⁸⁵ Similar findings were reached by another research study, indicating that the current practice of law enforcement institutions does not focus on the assessment of the situation of victims with disabilities; they remain unidentified, and so the latency of their victimization processes is extremely high.⁸⁶

Specialised support to **victims of human trafficking** is provided by six organisations. They are united by the National Association Against Human Trafficking. Their funding is allocated through two-year tenders. For 2021, EUR 300,000 was allocated to the National Association Against Human Trafficking.⁸⁷

Support to **child victims of violence** is provided by around 10 organisations (the number differs slightly each year) and child rights protection agencies. However, government funding allocated through yearly tenders for providing comprehensive specialised support is negligible. For example, in 2021, the yearly amounts allocated to 11 organisations ranged from EUR 12,637 to EUR 20,000, and amounted to EUR 200,000 in total.⁸⁸ The interests of children who become victims of crime are mainly defended by child rights protection agencies.

Reasonable Accommodation

General provisions on reasonable accommodation are established in the Law on Social Integration of the Disabled. According to this law, requirements for reasonable accommodation for persons with disabilities in all areas of life are implemented through planning of territories and designing buildings, as well as through adjustment of public buildings, housing and its environment, public transport facilities and their infrastructure, and the information environment to the 'special needs' of persons with disabilities.⁸⁹ Adjustments and adaptations of particular objects are the responsibility of municipal institutions, owners and users of these objects.⁹⁰

⁸⁵ Parliamentary Ombudsperson. Report on Fundamental Human Rights Problems in the Field of Guaranteeing Assistance to Victims of Domestic Violence (*Ataskaita dėl pagalbos smurtą artimoje aplinkoje patyrusiems asmenims užtikrinimo srityje kylančių esminių žmogaus teisių problemų*) (2020), p. 26. Retrieved from: <https://www.lrski.lt/ataskaitos-del-esminiuzmogaus-teisiu-problemu/>

⁸⁶ Uscila R. Domestic Violence: The Situation Assessment of Crimes Victims with Disabilities (*Smurtas artimoje aplinkoje: negalių turinčių nukentėjusiųjų situacijos įvertinimas*), *Pedagogika*, 2020, t. 138, nr. 2, p. 175-192. Retrieved from: https://www.vdu.lt/cris/bitstream/20.500.12259/109779/1/ISSN2029-0551_2020_T_138_N_2.PG_175-192.pdf

⁸⁷ Ministry of Social Security and Labour, Results of the tender providing social assistance to victims of human trafficking in 2020. Retrieved from: <https://socmin.lrv.lt/lt/skelbimai/projektu-skirtu-socialinei-pagalbai-asmenims-nukentėjusiems-ir-galejusiems-nukentėjusių-prekybos-zmonemis-teikti-projektu-atrankos-2020-m-konkurso-rezultatai>

⁸⁸ Ministry of Social Security and Labour, Ordinance financing of projects on providing comprehensive support to child victims of violence, child victims (witnesses) of domestic violence and their family members in 2021.

⁸⁹ Law on Equal Opportunities, Art. 11(1).

⁹⁰ Law on Equal Opportunities, Art. 11(3).

In the field of employment, neither the Law on Equal Opportunities nor the Labour Code refer to ‘reasonable accommodation’, but instead to the ‘adjustment of premises’.⁹¹ These terms have a significantly narrower meaning and ignore the individual needs of persons with disabilities that are not strictly physical.⁹² Suggested amendments to these laws, providing terms closer to ‘reasonable accommodation’, have not been adopted by the Parliament.

Neither the Law on Equal Opportunities, nor other laws establish that a denial of reasonable accommodation amounts to direct discrimination on the basis of disability. However, the provisions of the UN CRPD on denial of reasonable accommodation as discrimination were cited by Lithuanian courts in several employment cases. The same position is reflected in the decisions of the Equal Opportunities Ombudsperson.⁹³

Apart from the field of employment, the Law on Equal Opportunities does not explicitly provide for the obligation to provide reasonable accommodation or ‘adjusted premises’. This obligation might be considered inherent in the provision establishing the principle of accessibility of goods and services without discrimination, including on grounds of disability. This provision, aimed to safeguard the rights of consumers (including users of public services), sets the obligation of sellers, manufacturers or service providers to ensure equal access to the same products, goods and services, including housing, and to apply equal payment terms and guarantees for the same products, goods and services of equal value. Equal access to goods and services has to be guaranteed, regardless of gender, race, nationality, citizenship, language, origin, social status, religion, belief or opinion, age, sexual orientation, disability, ethnicity, or religion.⁹⁴

The Law on Social Integration of the disabled contains the principles of equal opportunities, prevention of discrimination and accessibility. However, this law does not establish any control mechanism and (or) further explanation on how these principles should be put into practice.⁹⁵

The existing sub-statutory regulation narrowly focuses on the adjustment of buildings and housing, even though reasonable accommodation is especially relevant in access to justice and related procedures. The adjustment of buildings (*pastatų pritaikymas*) to the needs of people with disabilities is one of the elements of the Government’s Programme.⁹⁶ Regardless, many police stations and courts are not accessible to persons with disabilities. While court cases relating to this issue were not identified, a decision by the Equal Opportunities Ombudsperson of 3 December 2019, should be mentioned. The Ombudsperson found that the stairs and ramp outside the registry of the Kaunas District Court did not meet the requirements of the technical regulation – it was too steep. This situation violated the obligation of the service providers to ensure equal access to services.⁹⁷

⁹¹ Law on Equal Opportunities, Art. 7(9), Labour code (*Darbo kodeksas*), 14 September 2016 (with later amendments), Art. 26(2(6)), retrieved from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/10c6bfd07bd511e6a0f68fd135e6f40c/asr>

⁹² Juodkaitė D., Sabatauskaitė B., Pakšytė A. Analysis of possible discrimination due to denial of reasonable accommodation (*Galimos diskriminacijos dėl sąlygų nepritaikymo analizė*), 2019, p. 22, Retrieved from: http://www.ndt.lt/wp-content/uploads/2019_Diskriminacijos_del_salygu_nepritaikymo_analize_visas-galutinis.pdf p. 22.

⁹³ Juodkaitė D., Sabatauskaitė B., Pakšytė A. Analysis of possible discrimination due to denial of reasonable accommodation, p. 12.

⁹⁴ Law on Equal Opportunities, Art. 8(1(1)); Juodkaitė D., Sabatauskaitė B., Pakšytė A. Analysis of possible discrimination due to denial of reasonable accommodation, p. 17-18.

⁹⁵ Juodkaitė D., Sabatauskaitė B., Pakšytė A. Analysis of possible discrimination due to denial of reasonable accommodation, p. 18.

⁹⁶ Parliamentary decree ‘On Programme of the eighteenth Government of the Republic of Lithuania’ (*Dėl Aštuonioliktosios Lietuvos Respublikos Vyriausybės programos*), 11 December 2020.

⁹⁷ Decision of the Equal Opportunities Ombudsperson of 3 December 2019.

It is important to recognise that ‘reasonable accommodation’ is sometimes confused with ‘accessibility’ in Lithuanian legislation. It provides for accessibility measures (e.g. modification of buildings), but lacks the right to reasonable accommodation (i.e. individualised measures that are flexible and responsive to the particular, specific, unique needs of each individual victim) or procedural accommodations (modification of court and investigative procedural rules to ensure effective communication, e.g. ‘best evidence’).

Disability Hate Crime

The Criminal Code specifies that in cases where a crime has been committed ‘with the intention to express hatred against a group of people or a member of that group on the grounds of their age, gender, sexual orientation, disability, race, ethnicity, language, descent, social status, religion, beliefs or opinions’, the motivation of that crime is either considered as an aggravating circumstance,⁹⁸ or a qualifying element of a criminal offence.⁹⁹ However, disability hate crime is not currently reflected in the national crime statistics. Thus, such a motive is rarely registered or taken into account within criminal investigations.¹⁰⁰

⁹⁸. Criminal Code, Art. 60(12).

⁹⁹. Criminal Code, Art. 129, 135 and 138.

¹⁰⁰. Juodkaitė, D., Grigaitė, U., Jurevičiūtė, G., Zankovska-Odina, S. and Sepper, M.L. Disability Hate Crime in Estonia, Latvia and Lithuania: Recommendations for Stakeholders. 2020, p. 6: <http://hrmi.lt/wp-content/uploads/2020/04/PONGO-recommendations-english.pdf>

4. A Word on the Victimology of Persons with Disabilities

Based on data on pre-trial investigations, people with disabilities mostly suffer from violent crimes: infliction of physical pain or minor health impairments, threats of murder, or systematic terrorisation. Women with disabilities are more often victims of these crimes than men with disabilities.¹⁰¹ Compared to men with disabilities, women with disabilities are three times more likely to become victims of domestic violence.¹⁰² In 2019, out of 94 murder victims, 11 were persons with disabilities—constituting 12% of all murder victims. In the field of crimes against property, men with disabilities are more likely to become victims than women with disabilities. Men are more often victims of theft, fraud, damage, or destruction of property.¹⁰³

According to information gathered by the Department on the Affairs of Persons with Disabilities, in 2019, 434 persons with disabilities became victims of violence, 226 were victims of domestic violence, and two were victims of crimes against their private life.¹⁰⁴ There were also 410 victims of exploitation, violence or abuse who received social support.¹⁰⁵

According to information from the Lithuanian Women's Rights Association, i.e. the organisation working with 16 specialised complex support centres to provide support to victims of domestic violence, in 2020, out of the 12,000 persons who reported violence, 363 were persons with disabilities.¹⁰⁶ No other statistics related specifically to victims with disabilities, or crimes committed against people with disabilities is available.

In performing its monitoring mandate, the Department on the Affairs of the Disabled collects data related to different articles of the CRPD from different state institutions. The latest report relates to data up to 2019.¹⁰⁷ Data related to criminal investigations is administered by the Department on Informatics and Communications under the Ministry of Interior. However, data related to victims of crime with disabilities is not public and it depends on the discretion of the mentioned institution whether particular data is revealed following freedom of information requests.

In any case, official data regarding victims of crime with disabilities does not reveal the full picture. In this regard, the findings of research carried out by Uscila (2020) are particularly revealing.¹⁰⁸ In their research, the situation of persons with disabilities who are victims of domestic violence was analysed. However, the findings are equally applicable to the general situation as well.

¹⁰¹. Uscila R. Domestic Violence: the situation assessment of crimes victims with disabilities, p. 182-183.

¹⁰². Uscila R. Domestic Violence: the situation assessment of crimes victims with disabilities, p. 184.

¹⁰³. Uscila R. Domestic Violence: the situation assessment of crimes victims with disabilities, p. 182-183.

¹⁰⁴. <http://www.ndt.lt/wp-content/uploads/Kriteriju-lentele-2019m.pdf>

¹⁰⁵. Department on the Affairs of the Disabled, Statistical indicators according to the articles of the UN Convention on the Rights of Persons with Disabilities for 2019. Retrieved from: <http://www.ndt.lt/wp-content/uploads/Kriteriju-lentele-2019m.pdf>

¹⁰⁶. <http://www.ndt.lt/pagalba-nuo-smurto-artimoje-aplinkoje-nukentejusiems-asmenims-su-negalia/>

¹⁰⁷. Department on the Affairs of the Disabled, statistical indicators according to the articles of the UN Convention on the Rights of Persons with Disabilities for 2019. Retrieved from: <http://www.ndt.lt/wp-content/uploads/Kriteriju-lentele-2019m.pdf>

¹⁰⁸. Uscila R. Domestic Violence: the situation assessment of crimes victims with disabilities (Smurtas artimoje aplinkoje: negalių turinčių nukentėjusiųjų situacijos įvertinimas), Pedagogika, 2020, Vol. 138, No. 2, pp. 175-192. Retrieved from: https://www.vdu.lt/cris/bitstream/20.500.12259/109779/1/ISSN2029-0551_2020_T_138_N_2.PG_175-192.pdf

As indicated by Uscila (2020), there is no representative victimology data that would reveal the situation and level of victimization amongst persons with disabilities who become victims of domestic violence. There is no data on the actual number of people with disabilities who become victims of domestic violence, on distribution of victimisation, intensity of victimisation, characteristics of victims, etc.¹⁰⁹. Victimology data is necessary in order to consistently and purposefully improve the system of assistance and support to victims. With high-quality victimology data, it is possible to accurately identify and assess the need and availability of services for victims, their geographical distribution, as well as the need to adapt the necessary services to individual needs.¹¹⁰

¹⁰⁹. Uscila R. Domestic Violence: the situation assessment of crimes victims with disabilities, p. 177.

¹¹⁰. Uscila R. Domestic Violence: the situation assessment of crimes victims with disabilities, p. 177, 189.

5. A Summary of the Main Findings

1. The 'Blank Space': the research team observed the general tendency that professionals who may have worked in the justice system for many years feel that they do not have anything to say or contribute to the research study, since they have never come across victims of crime with disabilities, as though they were invisible. Some prosecutors who have worked in the system for many years say they have not worked with victims with disabilities, or are unaware that any of the people they have had contact with had a disability.
2. Another 'Blank Space': disability hate crime is mostly invisible and is rarely investigated. Usually, the general qualifying circumstance of the 'vulnerable state of a victim', implying a more grave crime was committed, is applied concerning victims of crime with disabilities. The additional motive or possibility of a disability hate crime is rarely considered. Lithuanian NGOs report that 'as currently hate crimes against people with disabilities are hardly reflected in national crime statistics, it can be concluded that such a motive is not registered or taken into account within criminal investigations'.¹¹¹ Moreover, it is essential to develop a clear definition of hate crimes in Lithuanian legislation, indicating that 'hate crimes are crimes committed with "bias motivation" instead of simply "hatred"'.¹¹²
3. Some prosecutors argue that it is primarily the police, especially pre-trial investigators, who see victims with disabilities, not prosecutors. Prosecutors only meet victims in court, if the victim is invited to testify. One prosecutor noted that she has not had difficulties in communicating with victims of crime:

[Communication] is mostly relevant for investigators because they actually communicate [with victims], I just read what they've been talking about, and that's it. Unless you go to court, and if we need the victim there, then yes.

According to the interviews of this research study, a victim may not be invited to a court hearing for two reasons: firstly, to protect the victim from secondary victimisation, especially resulting from potential encounters with the defendant and their lawyer; and secondly, if the victim is presumed incapable of testifying it is seen as counterproductive to the proceedings, and would create the preconditions for questioning the victim's previous testimony as well. Thus, in practice, the decision to invite the victim is taken after considering these aspects.

4. No specialised victim support services exist in the country for victims of crime with disabilities. In general, there is little victims' support services, apart from the Specialised Complex Support Centres for survivors of domestic violence and victims of human trafficking.
5. The Lithuanian Women's Rights Association, which coordinates the Specialised Complex Support Centres (for victims/survivors of domestic violence), has forwarded our call for participation in our research to sixteen associated Specialised Complex Support Centres, and to the Lithuanian Women's Lobby Organisation. Only one Specialised Complex Support Centre from Alytus responded; they provided some support to women with disabilities, but not in direct contact with the justice system.

¹¹¹ Juodkaitė, D., Grigaitė, U., Jurevičiūtė, G., Zankovska-Odina, S. and Sepper, M.L. Disability Hate Crime in Estonia, Latvia and Lithuania: Recommendations for Stakeholders. 2020, p. 6: <http://hrmi.lt/wp-content/uploads/2020/04/PONGO-recommendations-english.pdf>

¹¹² Ibid.

6. No privately-practicing lawyers could be identified during the research study who had worked with, and could share their direct experiences of, representing victims of crime with disabilities.
7. When comparing information obtained during interviews with victims of crime with various types of disabilities (psychosocial, intellectual, sensory, physical, and autism) and that obtained during interviews with professionals (a pre-trial investigator, prosecutors), it is apparent that there is a difference in responding to the same interview questions. Victims of crime with disabilities often talked about the partial or full lack of accessible information provided to them, along with not-so-positive experiences with general communication and the attitudes towards them (especially by the police); whereas the professionals tended to present a more positive picture, saying that information can be made available and everything could be arranged, if and when needed.
8. Victims of crime with disabilities have reported that a humane attitude and respectful communication was often missing in their encounters with police, along with a lack of general support or taking them seriously, lack of information about next steps and processes, what to expect and when, updates, and outcomes. Similar tendencies were observed concerning both the reporting and the pre-trial stages.
9. Interviewed victims often had to chase-down pre-trial investigators, sometimes following months of silence and no information being provided to them about the process or outcomes.
10. The main means of communication used by the police (pre-trial investigators) are usually telephone and paper letters by regular/registered post. The latter is inappropriate and inaccessible, especially for victims of crime with visual or intellectual disabilities.
11. Easy-to-read or braille materials are not available or used at any stage of the criminal procedure.
12. In theory, Sign language interpreters are available, but the research team has not been able to establish the use of these services in practice. In an email, the Sign Language Interpreters Centre confirmed that they do sometimes provide sign language interpreting services at police stations and courts, but that they do not keep statistical data on specific types of clients (i.e. suspects, alleged perpetrators or victims).
13. The procedural rights and interests of victims with mental health difficulties, psychosocial, or intellectual disabilities are usually addressed through participation of their statutory representative (family member, close relative, guardian), who directly communicates with the victim. Concerning communication with persons with psychosocial disabilities and provision of information to them, if a person has a more severe disability, all communication goes through their representative. All notifications are sent directly to the representative (not the victim), and the representative is expected to explain these things to the victim.
14. The interviewed law enforcement officers expressed very different positions as to the participation of victims with psychosocial and/or intellectual disabilities (especially those deemed legally 'incapacitated' by the court) in the proceedings and their possibility to testify. Some officers noted that such persons cannot officially be questioned, but they are not prohibited from talking with them, and that these notes might be submitted to the court, yet

an official questioning does not take place. Other officers stated that they can be questioned as regular victims (except they would not be warned about the criminal responsibility for false testimony), and the reliability of their testimony may be low. In this regard, the prosecutors we spoke to drew an analogy between persons with psychosocial and (or) intellectual disabilities, and minor children. They pointed out that medical expertise may be necessary to establish whether or not a person may give testimony (while psychiatric expertise is a highly coercive procedure requiring at least two weeks of hospitalisation and observation).

15. If a person is legally deemed 'incapacitated' (lacking legal capacity), their participation in the proceedings is minimal, even if the person has victim status. In such a case, procedural documents are signed by the representative, or not signed: the person may not be able to sign due to legal 'incapacity'.
16. In general, the law enforcement officers that were interviewed perceived statutory representatives and legal aid lawyers as key subjects ensuring the rights and interests of victims with psychosocial and/or intellectual disabilities (regardless of the person's legal capacity status).
17. One of the prosecutors we interviewed said that if a psychiatric expert deemed the victim able to testify, 'no other assistance, e.g. that of a psychologist is needed'.
18. Prosecutors do not have specific/specialised knowledge on how to communicate with persons who have mental health needs, psychosocial or intellectual disabilities. In general, most court psychologists are also not quite competent enough to work with persons with more specific individual needs; they are mostly used to working with children.
19. If it is necessary, in-house police psychologists may provide assistance communication with a victim with a disability, based on 'good will' (as their function is to provide psychological support to police officers).
20. As a rule, during the pre-trial investigation, psychologists are not invited to participate in questioning victims with psychosocial and/or intellectual disabilities, and resources are not allocated for that. Based on a legal regulation established in the Code of Criminal Procedure, psychologists are only invited to participate in interviews with child victims (including children with disabilities).
21. There is a lack of specialised communication skills trainings for professionals, and also on matters related to better understanding the various types of disability, especially with a human rights based approach and the UN CRPD.

6. Stage 1: Reporting the Crime

A General Introduction to the Reporting Stage

In Lithuania, all victims of crime have the right to report a crime. Mostly, victims are encouraged to report criminal offences by calling the emergency response centre, 112, or approaching police stations.

The Law on Assistance to Victims of Crime contains a general provision, applicable to first-contact institutions and assistance services, stating that victims have a right ‘to receive information free of charge, in a language they understand, in ways and through means agreed by the victim and the assisting subjects’.¹¹³ This law also provides that victims, based on their individual needs, have the right to choose a person who will accompany them in addressing the first-contact institution, and help them to understand and (or) be understood, unless this would be contrary to the interests of the victim, or would otherwise impede the provision of assistance.¹¹⁴ First-contact institutions encompass the institutions that are first approached by the victim or their statutory representatives: pre-trial investigation institutions, prosecutor's office, courts, the Emergency Response Centre, administrations of municipalities, social services institutions, any educational or health care institution, and the State Child Rights Protection and Adoption Service.¹¹⁵

However, one interviewed prosecutor noted that persons with psychosocial disabilities may face difficulties reporting a crime:

In general, it is very difficult for such people to break through to justice without help, because imaginative and real things intertwine, and if they start telling the police about green flashes, green humanoids, there is a problem – what to believe?

On the other hand, the pre-trial investigator we interviewed asserted that all complaints must be registered, and some verification of information is conducted:

In any case, they write a report, we register it, and then we make a decision to refuse to open a pre-trial investigation. But we still need to obtain documents that a person has a disability, that a person fantasizes, in the end if they report not about themselves but about someone else, then you try to somehow interview that other person, and get answers about the results of their fantasy. We cannot refuse to accept a statement from a person, even if we sometimes see that it doesn't really correspond to any crime, to put it bluntly. This is extra work that needs to be done by someone. To adopt a decision that the material clearly does not contain any indication of a criminal offense or does not correspond to sound logic, you must still follow the law. Most often, if such a person can take care of themselves, if they do not have some kind of a guardian, then they receive that letter from us, and they appeal, that is their right.

Any person possessing information that a crime may have been committed is encouraged to report it to the police. However, such persons or organisations will not be considered an official representative of the victim, and their complaint will not be a sufficient basis for instituting criminal

¹¹³ Law on Assistance to Victims of Crime (*Pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatymas*), 14 January 2021, Art. 4(1(2)). Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/599af1605b2b11eb9dc7b575f08e8bea>

¹¹⁴ Law on Assistance to Victims of Crime, Art. 4(1(3)).

¹¹⁵ Law on Assistance to Victims of Crime, Art. 2(6).

proceedings for crimes where the complaint of the victim, their official representative, or a requirement by the prosecutor is necessary (e.g. infliction of physical pain or murder threats outside the context of domestic violence).

It is important to highlight that the examples outlined above may be classed as stereotyping, prejudice and a pro-forma application of the rules with a lack of understanding of the spirit of the regulations. Instead, they rely on pre-determined concepts of the victims based on their diagnosis, with little to no attempt at effective communication, no access to experts in communication, and no outreach to people in a relationship of trust with the victim who may be able to provide support or interpret.

Provision of Information to Victims of Crime

According to the Law on Assistance to Victims of Crime, all institutions of first contact (including the police) are obliged to provide the following information to victims of crime:

1. the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, specialist support, and temporary accommodation;
2. on procedures for lodging a complaint, statement or notification of a criminal offense and the legal position of the victim in such procedures;
3. how and under what conditions they can obtain special protection measures;
4. how and under what conditions they can access legal advice or legal aid;
5. how and under what conditions they can obtain compensation for damage caused by the criminal offense;
6. on access to interpretation and translation services;
7. on any procedures or special protection measures which victims may use in the Republic of Lithuania to defend their interests if they reside in a Member State other than that where the criminal offence was committed, and other than where they applied for assistance with the first-contact authority;
8. on the procedure for filing complaints where their rights were not respected by the competent authority operating within the context of criminal proceedings;
9. contacts of a pre-trial investigation institution (police), prosecutor's office or court which the victim may address concerning a criminal offense and/or other issues related to criminal proceedings;
10. contacts of providers of restorative justice services;
11. how and under what conditions they may be reimbursed for the costs incurred in participating in criminal proceedings.¹¹⁶

This list replicates the categories of information that must be provided in accordance with Article 4 of the Victims' Rights Directive. At the time of writing this report, it was not yet clear in what form this information should be provided, i.e. whether hand-out materials will be elaborated, or information will be provided verbally (e.g. by phone) or in writing (e.g. via e-mail) by designated representatives of first-contact institutions.

¹¹⁶ Law on Assistance to C, Art. 9(1).

While the law establishes the right of victims to receive information free of charge in a language they understand, in ways and through means agreed by the victim and assisting subjects, currently there are no official or other guidelines on providing ‘simple and accessible information’ to persons reporting a crime. In addition, there are currently no general victims’ support services in Lithuania. Whereas information about specialised support services (i.e. organisations providing support to victims of domestic violence and victims of human trafficking) is often provided in leaflets, which are supplied directly to law enforcement by the services themselves.^{117.}

Communication with Victims of Crime with Disabilities

Certain provisions related to the individual needs of victims were introduced in the newly adopted Law on Assistance to Victims of Crime in 2021. This law establishes the victim’s right to choose a person to accompany them in addressing the first-contact institution and help them understand and (or) be understood, unless this would be contrary to their interests or would otherwise impede the provision of assistance.

Guidance on how law enforcement officers can communicate with victims was elaborated upon at the initiative of the NGO Human Rights Monitoring Institute. A team of nine experts produced a handbook for law enforcement officers, ‘Communicating with Victims of Crime’. The guide aims to equip law enforcement officers with knowledge and skills on communicating with victims in a respectful, sensitive and professional manner, without discrimination of any kind. It places special emphasis on communicating and providing help to vulnerable victims: children, persons with psychosocial or intellectual disabilities, victims of sex crimes, human trafficking, domestic violence, and hate crimes.^{118.}

Case Example

A blind person was travelling by taxi in Vilnius, and as he was getting out of the taxi, he noticed that his mobile phone was missing. The taxi driver responded by saying that the mobile phone probably fell between the seats and that it’s too difficult to reach it, but she will return the phone to him after dismantling the seats. She never returned the phone to him. The police were informed, but the victim was told that he must appear in person at the nearest police station. Nothing was ever done about the stolen phone; the victim gave his statement, and even though the taxi company had all of the driver’s details, they did nothing. A pre-trial investigation was launched, but the victim only found out about it after sharing the situation with the press, a month or two later. The victim was never directly informed that the pre-trial investigation had started, and eventually found out more details via the press. The investigation was later closed due to a ‘lack of evidence’. The final information was conveyed to the victim via a registered letter in the post.

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^{117.} Bitiukova N., Normantaitė, K. VOIARE National Report. Lithuania, 2019, p. 21. Retrieved from: https://victim-support.eu/wp-content/files_mf/1564677061VOIARE_National_Report_Lithuania_interactive.pdf

^{118.} Leonaitė E. et al. Communication with Victims of Crime. A Handbook for Officers. Human Rights Monitoring Institute, 2018. Retrieved from: <https://hrmi.lt/wp-content/uploads/2018/01/Handbook-for-Officers-HRMI.pdf>

The victim explained that, as a blind person, the mobile phone is not just a phone – it is his whole life and his main (and often only) means of communication, navigation, orientation, money management, etc. He felt that this fact was completely ignored by the police and not taken seriously.

Additionally, having all of this in mind, the police did not come to him, they asked the victim (who had no ID with him at the time, as he was not in his home city, and having just lost his means of navigation) to come to them, i.e. to the nearest Police Station.

During the proceedings, most communication took place by telephone, online, and in a physical meeting at the Police Station. Before his questioning at the police station, the pre-trial investigator phoned the Association of Blind and Partially-Sighted people of Lithuania to ask whether or not they may legally question him without a representative from the association. It was apparent to the victim that they had never interviewed a blind person before and did not know what to do in that type of a situation. No support or accommodations were offered or provided in the end.

According to the victim, the police were not at all helpful with providing information or communicating, and he received the most help from friends who had been in similar situations. The police did not inform the victim that a pre-trial investigation had started, or what would happen next.

The victim said he observed extreme carelessness and negligence of police duties; their work was carried out very bureaucratically, without any real interest or willingness to help.

He also had to follow-up with the police in order to find out what was happening with the pre-trial investigation, and the name of his pre-trial investigator.

The victim felt that, in general, while the material damage was great for him, the emotional damage was more significant: the police's lack of a humane attitude was frustrating and disappointing. And, even though all of the evidence was there and easily accessible or obtainable, nothing was done about it, and his victimisation was of no interest to the police.

7. Stage 2: Pre-trial Investigation

General Introduction to the Investigation Stage

Pre-trial investigations start when the pre-trial investigation officer or a prosecutor decide to launch an investigation. For most serious crimes, an official complaint from a victim or their official representative is not necessary to institute criminal proceedings. However, there is a category of crimes where criminal proceedings can only be initiated based on a complaint by the victim, their official representative, or as a requirement by the prosecutor. These crimes include causing physical pain or minor health impairments, death threats, rape, theft, etc. In situations where a crime has been committed against a person who is unable to protect their own legitimate interests, and there is no complaint from a victim or their official representative, the prosecutor is obliged to initiate a pre-trial investigation.¹¹⁹ This provision is particularly relevant for persons with disabilities who may not be able to defend their own legitimate interests. In addition, a complaint by the victim, their official representative, or under order of the prosecutor, is not required for certain domestic crimes.

The majority of data (evidence) is gathered during the pre-trial investigation. Pre-trial investigating officers are directly tasked with identifying the person who committed the crime, and investigating all of the relevant circumstances of the crime.¹²⁰ They perform these functions under the direction and supervision of a prosecutor, who may indicate what particular procedural acts aimed at gathering data (evidence) are relevant for the investigation of the criminal act, and which elements of the criminal act should be investigated.¹²¹ Prosecutors are responsible for ensuring the legality of the pre-trial investigation and its conduct in the shortest possible time. They must determine and change the direction of the investigation, so that the pre-trial investigation is carried out quickly, rationally and efficiently.¹²² They also decide on complaints directed against the actions and decisions of the pre-trial officers.¹²³ The procedural actions and decisions of the prosecutor can be appealed to the superior prosecutor, and afterwards, to a pre-trial judge.¹²⁴ In order to avoid repeat questioning of a more vulnerable victim during a court hearing, following the prosecutor's request, a victim may be questioned in the pre-trial stage by a pre-trial judge.¹²⁵ Testimonies given to a pre-trial judge have the same evidentiary value as those given during a court hearing. After the pre-trial investigation is concluded, the prosecutor draws up the act of indictment and forwards it to the court, together with the other materials from the case.¹²⁶

¹¹⁹ Code of Criminal Procedure, Art. 167(2).

¹²⁰ Code of Criminal Procedure, Art. 18(1).

¹²¹ Recommendations on Organising and Directing Pre-trial Investigation ([Rekomendacijos dėl ikiteisminio tyrimo organizavimo ir vadovavimo jam](#)), approved by order of the Prosecutor General of 25 February 2004 (with later amendments), Para. 4, 12.4.

¹²² Recommendations on Organising and Directing Pre-trial Investigation ([Rekomendacijos dėl ikiteisminio tyrimo organizavimo ir vadovavimo jam](#)), approved by order of the Prosecutor General of 25 February 2004 (with later amendments), Para. 7.

¹²³ Code of Criminal Procedure, Art. 64.

¹²⁴ Code of Criminal Procedure, Art. 63.

¹²⁵ Code of Criminal Procedure, Art. 184.

¹²⁶ Code of Criminal Procedure, Art. 218-220.

Provision of Information to Victims of Crime

According to the Prosecutor General's order, anyone officially recognised as a victim by the pre-trial investigator or prosecutor, should receive a standardized 'letter of rights' and a form that they must sign confirming that their procedural rights have been explained to them.¹²⁷ In practice, a person is served with the 'letter of rights' before or after the first interview, together with the decision to recognize them as a victim. The 'letter of rights' is a five-and-a-half page document, and is criticized as not meeting the requirement of 'simple and accessible language'. There are no versions of 'letter of rights' that have been tailored for the potential individual needs of victims with disabilities.

For example, the victim's right to receive information on the state of criminal proceedings involving them is explained in the following way in the existing 'letter of rights' (the verbatim citation serves as an illustration of the manner in which the information is provided):

The person who has addressed a pre-trial investigation authority or a prosecutor with a request to initiate a pre-trial investigation or an aggrieved person,¹²⁸ has a right to address, either verbally or in a written form, a pre-trial investigation authority or the prosecutor who conducts, organises or supervises a pre-trial investigation and submit a request to provide the information about the course of proceedings involving them. Pre-trial investigation officers or the prosecutor has to ensure that during different stages of the criminal proceedings, the scope of the information provided to the aggrieved person would be determined, considering their special needs and personal circumstances established in accordance with Article 1861 of the CCP, as well as the type or nature of the criminal offence. The aggrieved person also has the right to refuse to receive information about the course of proceedings involving them, unless such a refusal would infringe the rights of the suspect or the accused.

Actually, this wording, especially the provisions on an individualised approach, seem to be directed primarily towards law enforcement officers and not the victims. As one prosecutor noted in one of the interviews:

Information in a language that is easier to understand is needed, because currently, a person without any legal education finds it difficult to understand that information. But I really don't know how that adapted, simplified version might look. Thus, now we just hand that information to their representative, who explains what's written there.

Though the Code of Criminal Procedure establishes the obligation of pre-trial officers, prosecutors, and judges to explain procedural rights to the participants of the proceedings (including victims) and to facilitate their effective exercise,¹²⁹ research shows that no additional measures are usually taken by pre-trial officers (the police) to ensure that, for example, persons with intellectual or psychosocial disabilities, who are not legally incapacitated, understand their rights. Typically, they are only served the procedural documents, which officers sometimes read out loud.¹³⁰ Yet, if a person has a statutory representative (guardian), all communication is conducted with a representative.

¹²⁷ Order by the Prosecutor General on the Approval of the Template Documents for the Criminal Process (*Dėl Baudžiamojo proceso dokumentų formų patvirtinimo*), 16 May 2016 (with later amendments), No I-122.

¹²⁸ 'Aggrieved person' is a formal term referring to a person who has official victim status in criminal proceedings.

¹²⁹ Code of Criminal Procedure, Art. 45.

¹³⁰ Bitiukova N., Normantaitė, K. VOciare National Report. Lithuania. Human Rights Monitoring institute, 2019, p. 15. Retrieved from: https://victim-support.eu/wp-content/files_mf/1564677061VOCIARE_National_Report_Lithuania_interactive.pdf

In transposing Article 6 of the Victims' Rights Directive, the 'Right to Receive Information About their Case', the right of victims to receive information on the state of the criminal proceedings involving them was introduced into the Code of Criminal Procedure.¹³¹ The prosecutor or pre-trial officer is also required to notify the victim after a suspect is detained, and to clarify whether or not the victim wishes to be informed about the release or escape of the suspect from detention. Victims must also be informed of any applicable measures for their protection and the procedure for their application. The obligation to notify the victim about the detention of the suspect does not apply if the place of residence of the victim is unknown, or if the notification may result in harm to the suspect.¹³² According to the Law on Detention, the detention institution should inform the victim about the suspect's release no later than one day before the date of release. If the suspect escapes detention, the victim must be notified immediately. In both cases, the victim should also receive information about the protection measures available to them.¹³³

Case Example

A woman with a psychosocial disability went to the police about two years ago stating that she believed she was being stalked and did not feel safe. She gave a statement at the police station, and as the alleged suspect lived in Lithuania at the time, she provided his home address and work place details to the police. At the time of the interview for this research study, the woman was unable to recall whether or not the police had provided her with any information or reassurances. She didn't hear back from the pre-trial investigator, and did not check-in with the police as she was pre-occupied with other matters. Nevertheless, she never received any further information about whether or not there was an ongoing process regarding her report and statement.

Communication with Victims with Disabilities

There are no official recommendations or guidance for law enforcement officers on how to communicate with victims with disabilities. The pre-trial investigator we interviewed, however, noted that certain internal recommendations relating to more vulnerable victims exist, e.g. that the first-contact police officer should proceed with the questioning. Concerning the skills needed to communicate with victims with psychosocial or/and intellectual disabilities, law enforcement officers expressed different insights. For example, the pre-trial investigator noted that she has never experienced any difficulties in communicating with persons with psychosocial or/and intellectual disabilities. Yet, one of the prosecutors emphasised that external assistance, especially by a psychiatrist, would be helpful:

The court psychologists are not quite suitable, they are not psychiatrists, they are used to working with ordinary audiences and, well, they [persons with psychosocial disabilities] are still quite specific people. I have experienced that if you ask a question the wrong way, the

¹³¹. Code of Criminal Procedure, Art. 28(2).

¹³². Code of Criminal Procedure, Art. 128(4).

¹³³. Law on Pre-trial Detention (*Suėmimo vykdymo įstatymas*), 18 January 1996 (with later amendments), Art. 48(7). Retrieved from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.24254/asr>

person may react stormily, and stop speaking with you, You have to start from the beginning and go in circles again, to gain contact, to question, etc. It's a waste of time and, well, due to a lack of knowledge, I had to learn from my own mistakes. It would be good for a specialist to be involved in the questioning, not a psychologist, not a child rights specialist, but a person with psychiatric knowledge who knows how to communicate with such an audience.

Actually, according to Article 79 of the Code of Criminal Procedure, persons who, according to a certificate of a health care institution, or the findings of a forensic psychiatrist or forensic physician, are not able to correctly understand the relevant circumstances of the case and give evidence due to a physical or mental health condition, cannot be questioned as witnesses. However, the pre-trial officer and prosecutors noted that certain information may be obtained even from victims with quite severe disabilities. Prosecutors also emphasised that psychiatric expertise is not applied to victims, as it involves hospitalisation for at least two weeks, and it would constitute an unacceptable measure. Instead, a psychological evaluation may be conducted in order to establish whether or not a victim is 'inclined to fantasise'. It is important to recognise that this focuses on deficits and on looking for a lack of credibility, instead of on identifying support needs to ensure effective communication and best evidence. Therefore, it is fundamentally discriminatory—for example, people without disability-related diagnoses are never subjected to assessments of whether or not they're 'inclined to fantasise' or lie.

All the law enforcement officers stressed the importance of statutory representatives in their interviews. The role of statutory representative may be performed by parents, adoptive parents, guardians, caregivers (rūpintojai) or persons authorised by the institution which exercises guardianship or care of the victim.¹³⁴

As explained during the research interviews, the role of a statutory representative depends in each particular case on whether the victims are capable of representing themselves, and to understand what is happening. Usually a representative accompanies the victim, but in situations where the victim is 'incapable of contact' (nekontaktinis), the representative exercises all of the procedural rights of the victim, and acts in the victims' name. According to the pre-trial investigator:

They have all the usual rights other victims have; it does not matter at all whether they have a disability or not, but again, the only limit here is the level of disability and to what extent they can represent themselves, and to what extent they cannot. In the latter situation, if the disability is of that level, the representative gets acquainted with the rights of the victim, and everything happens through the representative—everything goes through the representative.

One prosecutor also remarked that:

The representative goes everywhere with the victim. If the victim is 'incapable of contact', then only their representative will be present, if we cannot call the victim. And anyway, together, well, again, unless the agent interferes.

Family members are sometimes the most problematic representatives, especially in cases of domestic violence and abuse. Moreover, some victims, due to shame, avoid opening up about crimes experienced outside of the home (especially sexual crimes), when around their family.

¹³⁴. Code of Criminal Procedure, Art. 53(2).

It should also be noted that some respondents pointed out that during pre-trial interviews, victims, especially child victims, must share their experiences in a room with several other people (a pre-trial investigator, psychologist, child rights professional, lawyer, and statutory representative). This situation can cause additional stress, which might already be quite high for people with certain types of disabilities.

Research participants also observed that law enforcement officers did not fully explain the rights of persons with disabilities, and instead stated that ‘the [statutory] representatives should do that’. Instead, officers concentrated on obtaining testimony from the victim about the circumstances of the crime and explaining their duty to tell the truth. In general, a victim-centred and empowering approach to communication was lacking. According to the pre-trial investigator:

There are fewer problems with blind people; they simply do not come. If they can come – there is always someone accompanying them. Well they don’t simply come with a white cane anyway, you usually inform them by phone immediately that they should have a representative. For persons with visual impairments, this happens in a variety of ways. They have representatives even from outside of the family. The representatives assigned to them are, I don’t know, maybe social workers, [...] but they have the power to represent them. They have a mandate, we make them copies of the pre-trial investigation materials and that’s it. They participate in questioning, and afterwards, they sign the written record.

In terms of communication with victims with disabilities, two more aspects, at least indirectly, may be relevant: the right to have an accompanying person and the right to interpretation.

In transposing the Victims’ Rights Directive, the right of a victim to have an accompanying person was introduced into the Code of Criminal Procedure. It states that the victim may be accompanied during the criminal proceedings by a person of his or her choice. The participation of an accompanying person in criminal proceedings, or parts thereof, may be restricted by the pre-trial investigating officer, prosecutor, or a judge, where their participation is contrary to the victim’s interests or impedes the investigation or proceedings.¹³⁵ Generally, in practice, this right is not willingly applied by pre-trial investigation officers, as there is no regulation on how their participation should be formalised, e.g., whether and how they should be warned that they can be held liable for unauthorised disclosure of pre-trial investigation materials. In 2018, the Human Rights Monitoring Institute, an NGO, addressed the Office of the Prosecutor General seeking clarifications on these issues. The unofficial response was distributed among police stations, but steps were not taken to issue official guidelines on the implementation of the right to an accompanying person.

Research carried out in 2018 by the Human Rights Monitoring Institute revealed that 66% of surveyed police officers (from a sample consisting of 25 police officers) indicated that victims ‘rarely’ or ‘never’ make use of this right. Of the surveyed victim’s support workers, 77% stated that victims are either ‘sometimes’ (46%) or ‘rarely’ (31%) accompanied during criminal proceedings. On the other hand, interviews conducted for this research revealed that in situations when a victim has a physical, psychosocial or intellectual disability, the participation of an accompanying person is usually encouraged.

¹³⁵ Code of Criminal Procedure, Art. 561.

From the point of view of the ‘letter of rights’, the right to have an accompanying person is mentioned in the document as number 16 out of 18 rights.

It should also be mentioned that law enforcement officers are obliged to conduct an assessment of the victim’s specific protection needs and take them into account when organizing criminal proceedings.¹³⁶ The particular requirements and criteria for such an assessment are set in the Prosecutor General’s Recommendations on the assessment of the specific protection needs of victims.¹³⁷ Concerning protection measures specifically directed towards victims with disabilities, the only provision of the Recommendations that mentions the assessment of the specific protection needs of victims with disabilities concerns the participation of an interpreter. The Recommendations state that this measure is mandatory ‘if the victim does not speak the Lithuanian language or has a speech, hearing, or mental disability’.¹³⁸ The right to interpretation and translation, however, is a procedural right, and should not be considered a special protection measure, whereas there are no explanations on what is meant by ‘interpretation’ for victims with mental disabilities.

According to the Code of Criminal Procedure, victims of crimes who do not understand the official – Lithuanian – language can make statements, give evidence and explanations, submit requests and appeals, and talk to the court in their mother tongue or any other language. Case documents which have to be served to the victim also have to be translated. In all of these cases the victim has the right to use the services of a translator/interpreter for free.¹³⁹

The interpreter/translator is granted by the pre-trial institution or a court, depending on the stage of the case (pre-trial or trial phase). Pre-trial institutions usually have public procurement contracts with interpretation and translation service providers.

According to the Code of Criminal Procedure, an interpreter is also a person who knows sign language (officially referred to as ‘a person who understands the signs of the mute or the deaf’).¹⁴⁰ Therefore, persons with hearing or speech impairments are subject to the same interpretation provisions as someone who does not speak Lithuanian.

Lithuanian sign language interpretation services are provided free of charge by the Lithuanian Sign Language Interpretation Centre, with divisions in the regions of Vilnius, Kaunas, Klaipėda, Šiauliai and Panevėžys. This centre is subordinate to the Department on the Affairs of the Disabled. Additionally, social workers from centres for people with disabilities may be contacted, or the victim may indicate a person who knows sign language. Research indicates that representatives from associations of persons with hearing impairments also provide assistance during interviews.

¹³⁶. Code of Criminal Procedure, Art. 186(1).

¹³⁷. Order of the Prosecutor General On the Approval of the Recommendations on the Assessment of the Specific Protection Needs of Victims (*Dėl Rekomendacijų dėl nukentėjusiųjų specialių apsaugos poreikių vertinimo patvirtinimo*), 29 February 2016, No. I-63. Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/86bc22f0dfa611e58a92afc65dd68e97>

¹³⁸. Order of the Prosecutor General On the Approval of the Recommendations on the Assessment of the Specific Protection Needs of Victims (*Dėl Rekomendacijų dėl nukentėjusiųjų specialių apsaugos poreikių vertinimo patvirtinimo*), 29 February 2016, No. I-63. Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/86bc22f0dfa611e58a92afc65dd68e97>

¹³⁹. Code of Criminal Procedure, Art. 8.

¹⁴⁰. Code of Criminal Procedure, Art. 43.

Case Example

Most of the direct communication with the victim happened during the interview, which was conducted in a small room at the police station, with a pre-trial investigator. The victim, who is a blind person, was not informed if anyone else was in the room, whether they were recording the interview, etc.

After around a month and a half, the person received a registered letter by post, informing him that the investigation was closed due to a 'lack of evidence'. He felt a lack of basic humanity during the whole process, and considered appealing the decision, but in the end, decided not to 'waste his time', not really believing that anything positive would come out of it.

Regarding the registered post and receiving a paper-typewritten letter from the police, as a blind person, the victim expressed that such communication demonstrates a general lack of respect and raises several issues: 1) Even if the letter is not handwritten and is possible to read using certain mobile apps, it might not be accurate; 2) Receiving information electronically, by email, would enable the person to feel respected and fully independent; 3) Having to ask someone else to read the paper letter out loud raises issues of privacy and data protection.

In general, during the proceedings, the victim, who is blind, was never asked about his preferred means of communication, and felt somewhat uncomfortable and disrespected that information about closing the pre-trial investigation came via regular post. This action stripped him of his right to privacy and data protection (as someone else had to read it out loud to him), when he is perfectly capable of using email and a phone independently.

8. Stage 3: Trial and Court Processes

General Introduction to the Trial Stage of the Proceedings:

Trial proceedings in the court of first instance consist of the preparation of a case for a court hearing, and the hearing itself. During the preparation of the case, the judge becomes acquainted with the case and decides whether there are obstacles to forwarding the case to a court hearing. Such obstacles might include a lack of jurisdiction, inconsistency of the indictment with statutory requirements, etc.^{141.}

The trial hearing consists of preparations, an examination of evidence, final speeches and the last word of the accused, and the adoption and announcement of a verdict. The main part of the hearing is the examination of evidence, as all evidence (data) has to be examined by the court directly. A court's judgement can only be based on the evidence examined during the trial hearing.^{142.} During the trial hearing, among other things, the accused, witnesses, and the victim are questioned; material objects are inspected; documents are enumerated and, where necessary, read aloud, etc. The testimonies of the suspects, witnesses or victims, which were given during the pre-trial stage to the pre-trial officer or prosecutor, may be read out (or audio and video recordings of such interviews may be heard and reviewed) during a court hearing in order to verify other data in the case.^{143.} While testimonies given during a pre-trial investigation (except those given to a pre-trial judge) have no independent, probative value, they may be relevant in verifying and assessing both the evidence given by the accused in court, and other data examined by the court.^{144.}

The Code of Criminal Procedure also provides for a summary examination of evidence. This can be applied if the accused has not been charged with a very serious crime and states to the court, after the announcement of the act of indictment, that they plead guilty, agree to testify immediately, and consent that other evidence does not have to be examined. After the accused is questioned, other evidence is announced and the examination of evidence is halted. Such a procedure can be applied if the circumstances of the case do not raise doubts, and the prosecutor and defence lawyer agree with the summary examination of evidence.^{145.}

During the final speeches, the participants of the proceedings (a prosecutor, a victim or their legal representative, a civil plaintiff or legal representative, a civil respondent or legal representative, defence lawyer, or an accused who participates without a lawyer) summarize the results of the examination of evidence and provide their positions concerning the guilt of the accused.^{146.} After the final speeches and retorts, the accused is given the last word.^{147.}

When adopting a verdict, the court decides which data should be admitted as evidence, assesses it, and uses it to support the verdict. In assessing the evidence, the principle of free evaluation applies.

^{141.} Goda, G., Kazlauskas, M., Kuconis, P. (2011) *Baudžiamojo proceso teisė (Law of Criminal Procedure)*, Vilnius: Registrų centras, p. 355.

^{142.} Code of Criminal Procedure, Art. 301(1).

^{143.} Goda, G., Kazlauskas, M., Kuconis, P. (2011) *Baudžiamojo proceso teisė (Law of Criminal Procedure)*, Vilnius: Registrų centras, p. 424.

^{144.} E.g. Lithuanian Supreme Court, decision in criminal case No. 2K-189-1073/2019, 15 October 2019; Lithuanian Supreme Court, decision in criminal case No. 2K-276-976/2015, 26 May 2015.

^{145.} Code of Criminal Procedure, Art. 273.

^{146.} Goda, G., Kazlauskas, M., Kuconis, P. (2011) *Baudžiamojo proceso teisė (Law of Criminal Procedure)*, Vilnius: Registrų centras, p. 447.

^{147.} Code of Criminal Procedure, Art. 294.

Representation of Victims with Psychosocial Disabilities

In regards to regulating the statutory representation of legally incapacitated participants of judicial proceedings, the Code of Criminal Procedure provides that ‘a statutory representative usually participates in the proceedings together with the person he/she represents’.¹⁴⁸ It further states that ‘a statutory representative has the right to accompany the person represented throughout the criminal proceedings, to take part in the proceedings in which the represented person is involved, and to assist that person in exercising the rights conferred by law’.¹⁴⁹ The role of statutory representative may be performed by parents, adoptive parents, guardians, caregivers (rūpintojai) or persons authorized by the institution which exercises guardianship or care of the victim.¹⁵⁰

Furthermore, in situations where a person is not incapacitated but nevertheless is unable to exercise their rights effectively due to old age, disability, illness or other serious reasons, the prosecutor or the court may allow a family member or close relative to participate in the proceedings as a statutory representative.¹⁵¹

Concerning legal representation, victims with psychosocial and/or intellectual disabilities may be represented either by privately practising advocates or advocates providing state-guaranteed legal aid. According to the Law on State-Guaranteed Legal Aid, persons with a severe disability, persons with 0-25% working capacity, or persons who have reached the age of retirement and have a high level of ‘special needs’, have the right to receive secondary legal aid (i.e. legal representation, including in criminal cases). These persons, as well as the guardians or caretakers representing their interests, are eligible to receive free state-guaranteed legal aid, regardless of their assets and income.

Additionally, all victims (regardless of disability) considered especially vulnerable (i.e. victims of terrorism, human trafficking, domestic violence, sexual abuse, crimes committed by an organised group or criminal association, and hate crimes) are entitled to state-guaranteed legal aid throughout the criminal proceedings. Free legal representation is also provided to child victims of crimes against a person’s health, freedom, sexual crimes, crimes against the child and his family, crimes against morals, and in other criminal cases where a pre-trial investigative officer, prosecutor, or court decides that the presence of a legal representative is necessary.¹⁵² All victims are also entitled to representation by a state-paid advocate in cases concerning the recovery of damages from the offender.¹⁵³

Otherwise, legal aid is provided based on a means test, which is rather strict. As of 2021, in order to be eligible for free state-guaranteed legal aid, the annual income of a person without any dependants cannot exceed 4,823.04 EUR (401.92 EUR per month).¹⁵⁴

The provision of secondary legal aid is organised and coordinated by State-Guaranteed Legal Aid Service. The victim can request the services of a specific advocate (their consent is required), otherwise the service itself allocates an advocate to the case. Once the advocate is appointed, the

¹⁴⁸. Code of Criminal Procedure, Art. 53(3).

¹⁴⁹. Code of Criminal Procedure, Art. 54.

¹⁵⁰. Code of Criminal Procedure, Art. 53(2).

¹⁵¹. Code of Criminal Procedure, Art. 53(4).

¹⁵². Law on State-guaranteed Legal Aid, Art. 12.

¹⁵³. Ibid.

¹⁵⁴. [https://vgtpt.lrv.lt/uploads/vgtpt/documents/files/Turto%20ir%20pajam%C5%B3%20lygio%20nustatymas%20NAUJAS\(3\).pdf](https://vgtpt.lrv.lt/uploads/vgtpt/documents/files/Turto%20ir%20pajam%C5%B3%20lygio%20nustatymas%20NAUJAS(3).pdf)

service compensates them for their work on the case. Advocates providing state-guaranteed legal aid have a very high work load (they receive an average of 20 new criminal cases a month),¹⁵⁵ and their hourly salary is 18 Euros.¹⁵⁶ The extremely high workload and relatively low pay is often cited as having a negative impact on the quality of these services.¹⁵⁷

The Code of Criminal Procedure also provides that a pre-trial officer, prosecutor, or judge may allow a person with a legal degree to act as legal representative in the proceedings of a victim who has authorized them to do so. A legal representative may participate in the proceedings together with the victim, or instead of the victim (except when it comes to testifying in court, provided that the victim with a psychosocial disability has been invited to testify).

Provision of Information to Victims of Crime

The Code of Criminal Procedure establishes a general obligation of pre-trial officers, prosecutors, and judges to explain procedural rights to the participants of the proceedings (including victims) and to facilitate their effective exercise.¹⁵⁸ In addition, the provisions establishing the course of a court hearing explicitly oblige a presiding judge to explain the rights and duties of the accused, the victim, civil defendant, and their representatives during the introductory part of the hearing.¹⁵⁹ According to the Lithuanian Supreme Court, explaining the participants' rights in the proceedings must not be limited to reading out these rights, but they must be clarified by providing brief comments that reveal their essence.¹⁶⁰ There are no specific regulations on the provision of information to victims with disabilities, e. g., psychosocial and/or intellectual.

If, following the trial, the accused is convicted and detained, the judge must clarify whether or not the victim wishes to be notified about their release or escape. If the victim does not participate in the trial, this request is provided to them in writing within five days of the rendering of the judgment, except in cases where the victim's place of residence is unknown or when the notification may result in harm to the accused (convicted). The judge will inform the penitentiary institution about the victim's wish to be notified about the release or escape of the convicted individual.¹⁶¹ The penitentiary institution will inform the victim of the convicted person's release no later than three days before their date of release, and in the case of an escape – immediately.¹⁶²

Research by the Human Rights Monitoring Institute shows that, in practice, victims are not always informed about the suspect's release.¹⁶³

¹⁵⁵. Higher Fees for Lawyers' Services. News portal kauno.diena, 09-10-2020, <https://kauno.diena.lt/naujienos/kaunas/miesto-pulsas/uz-advokatu-paslaugas-didesni-ikainiai-989686>

¹⁵⁶. Government Decree No. 364 of 13 April 2016 'On Approval of Fees and Payment Rules for the Provision, Coordination and Mediation of Secondary Legal Aid', Register of legal Acts, No. 2016-09599 (with later amendments).

¹⁵⁷. Higher Fees for Lawyers' Services . News portal kauno.diena, 09-10-2020, <https://kauno.diena.lt/naujienos/kaunas/miesto-pulsas/uz-advokatu-paslaugas-didesni-ikainiai-989686>

¹⁵⁸. Code of Criminal Procedure, Art. 45.

¹⁵⁹. Code of Criminal Procedure, Art. 268.

¹⁶⁰. Lithuanian Supreme Court, decision of 24 March 2015, in the criminal case No. 2K-165-648/2015, <https://www.infolex.lt/tp/1023323>

¹⁶¹. Code of Criminal Procedure, Art. 308(5).

¹⁶². Penitentiary Code (*Bausmių vykdymo kodeksas*), 27 June 2002, Art. 180(8).

¹⁶³. Bitiukova N., Normantaitė, K. VOClARE National Report. Lithuania, 2019, p. 26, https://victim-support.eu/wp-content/files_mf/1564677061VOClARE_National_Report_Lithuania_interactive.pdf

Case Example

A person with an intellectual disability on a date, and was assaulted and robbed. When he got up off the ground, a bystander called the police, which was the point of first contact. The victim was brought to the police station by the police, then an ambulance was called which took him to hospital to evaluate his injuries. The police visited him in the hospital for a record of his injuries. The crime happened in March. The suspect was caught in June of that year, and was later sentenced to house arrest.

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Most of the communication between the police and the victim happened during the pre-trial investigation, when the police were physically involved (they received a call, picked up the victim, took him to the police station, visited him at the hospital, etc.). Later on, the victim was informed by an official letter that the trial would take place on a scheduled day, but after the initial questioning, the victim had not been provided with any information about next steps, not even that there could be a trial. The victim was unaware of what to expect. Meanwhile, the victim's social worker was in communication with the police (as the victim's mobile phone had been stolen, he provided the police with his social worker's number).

The victim also mentioned that he lacked information on the additional support that could be provided (for example, how and when to go to the police concerning abuse cases or the need for emotional support, places or phone numbers to talk about the violence he experienced, etc.) No information was offered or available in an easy-to-read format.

...I think that they should have given [information, leaflets about where to look for help, who you could talk with in order to recover from such an experience], somehow, where to go in such a case, if you are attacked on a street. But now I can see that it is all written online, I read it mostly on the internet now ... and I can print it too now, since I recently bought a printer ... But something is missing, was missing, and also not everything was explained as it should have been really. So, I think they should have provided more information.

The victim's social worker was informed that the trial would take place, where to go and when. Neither the police nor any other judicial body offered any explanation on how the court process would work and what to expect. The victim, however, mentioned that they had been in court processes before, and thus the process was not entirely unfamiliar. The victim had to issue a statement, and after that was done, it was read aloud back to them to confirm everything was understood correctly. He mentioned that this part of the process was helpful to make sure that they understand him. The sentencing was done the same day, after a break in the court process, and was read aloud in the court room.

At one point during the investigation when the suspect was tracked down, the victim was placed in the same room with them at the police station to work out the situation and statements. The suspect repeatedly raised his voice, claiming that the victim was lying. The victim said: *'...I felt scared, when they brought me to that small room. He sat in front of me*

and said I was lying. When I was brought to the police station, he was there too. I was so frightened. I was afraid he would do the same thing to me that he had done before.'

'The policeman said, "Don't shout, you...Don't shout or you will get the same again," he said to me.'

Communication with Victims of Crime with Disabilities

Whether a victim with a psychosocial or intellectual disability will be invited to testify before the court depends on each particular case, as well as the health of the victim, whether the victim was interviewed by a pre-trial judge, etc. Usually, if the victim is able to testify, they are invited to the hearing, which is conducted either in-person, or in situations of strict quarantine, via video conference. The victim may also be granted the right to participate in an in-person hearing via video-conference.¹⁶⁴ As in the pre-trial investigation, victims are questioned using the same procedures used for witnesses.¹⁶⁵ The research for this study revealed that judges sometimes lack both knowledge about psychosocial disability and experience in communicating with them:

There was a child with mental health difficulties. He used to talk about himself in the third person, as a person named Tomukas [name changed]. Otherwise, he did not talk. Everyone who worked with this case knew that. Then, during a court hearing, the judge asked him: 'Who is Tomukas? Why are you talking about him?' That was it. The child did not say another word."

According to the Action Plan for the Social Integration of the Disabled (2020–2023),¹⁶⁶ trainings related to the specificities of disabilities should be organised for judges, court volunteers, and lawyers providing state-guaranteed legal aid. However, the number of planned participants for such trainings is not very high: 50 judges (30 newly appointed) and 10 court volunteers will participate in the trainings. Only 50 lawyers would receive such trainings during the whole period. Taking into account that lack of knowledge might complicate the proceedings and result in secondary victimisation of victims with disabilities, high-quality trainings should be offered to legal professionals, including prosecutors and pre-trial investigators.

Victims with different types of disabilities may benefit from having accompanying support. Yet, information on whether or not there are organisations accompanying and supporting victims with disabilities through criminal proceedings is lacking. Based on an interview with a representative from the National Courts Administration, the most proactive organisations are those providing support to victims of human trafficking and sexual exploitation. Members of these organisations (Lithuanian Caritas, Centre against Human Trafficking and Sexual Exploitation) often act as accompanying persons.

¹⁶⁴. Code of Criminal Procedure, Art. 279(6).

¹⁶⁵. Code of Criminal Procedure, Art.283.

¹⁶⁶. Action Plan for the Social Integration of the Disabled (2020-2023) (*Dėl Neįgalųjų socialinės integracijos 2021–2023 metų veiksmų plano patvirtinimo*), 8 September 2020. Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/8c27c230f1b211eaa12ad7c04a383ca0>

9. Stage 4: Post-Judicial

General Introduction to the Post-Judicial Stage of the Proceedings

Mediation between the victim and the convicted is possible in the post-trial phase. Mediation is organised by probation institutions, and is defined as ‘an alternative, voluntary, confidential conflict resolution process in which one or more independent, impartial persons, such as the conciliator or mediators, assist the conflicting parties in resolving the conflict peacefully’.¹⁶⁷ Mediation may be initiated by a probation officer, or a person involved in the conflict, and is conducted in accordance with national rules and the European Code of Conduct for Mediators. Mediation can be either direct, entailing direct contact between the victim and the offender, or indirect, when the mediator communicates with both parties separately.

A case is considered eligible for mediation if the following conditions are satisfied:

- a the offender is known and admits to having committed the offense;
- b the victim is known and could (based on a presumption) participate in mediation;
- c the offender and victim agree to participate in mediation;
- d the offender does not exhibit features of a criminal personality (aggressive behaviour, etc.);
- e there is no obvious risk of secondary victimisation;
- f the offender or the victim does not have obvious mental health problems that would prevent them from participating independently in the mediation process;
- g the offender or the victim is not abusing psychotropic substances or alcohol. If so, it is recommended to start rehabilitative treatment before beginning mediation.¹⁶⁸

Thus, for persons with known mental health problems, intellectual and/or psychosocial disabilities, mediation would not be applicable. Existing research shows that post-trial mediation is quite widely applied in cases of domestic violence, and mediators indicated the relevance of mediation in situations where the victim and offender live together.¹⁶⁹ This finding is potentially relevant for victims with different types of disabilities. Nevertheless, this is an area for further research on the peculiarities and effectiveness of such measures in practice and in specific individual cases.

¹⁶⁷. Order of the Director of the Department of Prisons under the Ministry of Justice of the Republic of Lithuania, ‘On the Approval of the Rules of Conciliation Mediation in Probation Services’, 8 December 2017, No. V-532.

¹⁶⁸. Ibid.

¹⁶⁹. Klasinskaitė, A., Čiuladienė G. Mediation of Domestic Violence Cases between Victim and Offender: the experience of mediators. *Socialinis darbas*. 2020, t. 18, Nr. 1, p. 80-97.

10. Key Recommendations

1. Review and revise the existing legal definitions of disability, especially the Law on the Social Integration of the Disabled, to bring them into conformity with Article 1 of the UN CRPD.
2. Review and revise all legislative provisions relating to persons with disabilities to remove language that is derogatory, and ensure they uphold the dignity of persons with disabilities as recommended by the UN CRPD Committee by using the direct language of the Concluding Observations.
3. Ensure the health and safety, and address the concerns of persons with disabilities relating to in-person hearings in light of the COVID-19 pandemic: enact guidance/regulations clarifying the formalities, ensure they take into account the specific needs of victims of crime with various types of disabilities, and with the effective participation of persons with disabilities, examine feasible solutions for preventing 'pressure' in online proceedings.
4. Review the 'letter of rights' and tailor it to the potential individual needs of persons with various types of disabilities, including a braille and easy-to-read version of the 'letter of rights'.
5. Give specific and adequate attention and regard to awareness raising and education about matters of disability, from a UN CRPD and human rights-based approach, to all law enforcement officers, at all stages of their university education, as well as in their continued professional development. This should include mandatory, quality trainings on communication with victims of crime with different types of disabilities. The way that victims with disabilities are communicated with is as important as what the communication entails.

Ensure that training courses available to judicial and law enforcement personnel cover all the barriers faced by persons with disabilities who wish to gain access to the justice system, in response to observations made by the CRPD (2016).

6. Ensure that correspondence (in an understandable format) goes directly to the victim, never to their representative, unless the victim has requested.
7. When creating the new system of Generic Victims Support Services in Lithuania, give specific importance to the specialised knowledge and skills needed to work and effectively communicate with persons with various types of disabilities. Revise the regulation on the provision of support services for victims of crime to clearly include victims with various disabilities.
8. Recognition of full legal capacity must be ensured at all stages of the justice system, together with the obligation to ensure the necessary supports (such as through a chosen, trusted support person, under the system of supported decision making, with the full and informed consent of the victim concerned).

9. Mediation in cases of domestic violence, especially with victims with disabilities, should not be used, unless it meets the criteria in paragraph 45 of CEDAW General Recommendation No. 35 on Gender-Based Violence against Women, and training be carried out to this effect.
10. Ensure that an impartial third party is part of any process focused on reconciliation, alongside the criminal justice authorities, suspect(s) and victim. Guidance for the process should ensure that there is no undue pressure to reconcile, and that full and informed consent is obtained from all parties.
11. Start collecting statistical data on the types of disabilities of victims of crime; data on the specific numbers of people with disabilities who became victims of domestic violence and hate crimes, among other crimes; data on distribution of victimisation, intensity of victimisation, and characteristics of victims, their individual and communication needs, and how those are met.
12. Prioritise, recognise and investigate disability hate crime, with appropriate regard given to the provision of information and effective communication; to victims and their individual needs, including their emotional and psychological needs, resulting from experiencing hate crime.
13. Adopt official guidelines for law enforcement officers, implementing the provisions of the EU Victims' Rights Directive on a victim's right to understand and be understood.
14. Public authorities should strive to hear directly from victims with disabilities in order to get the least distorted, first-hand information from those directly affected by the crime. Additionally, the perspectives of victims with disabilities should be heard concerning their experiences with accessibility of information and quality of communication whilst participating in the justice system. Currently, there are gaps in the provision of legal representation, especially as victims with disabilities do not automatically qualify, and often the statutory representative 'replaces' the victim in the eyes of the police and prosecution service in terms of their obligations to provide information in an accessible manner and any connected implications. A 'representative's' role should be limited to ensuring the victim understands, and the authorities understand the victim, and they should never act in the victim's name or absence.