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Author(s)

Kateřina Smolíková, Petra Klímová, Camille Latimier

Research Team

Kateřina Smolíková, Petra Klímová, Camille Latimier

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Authors

Kateřina Smolíková, Petra Klímová, Camille Latimier

Research Team

Kateřina Smolíková, Petra Klímová, Camille Latimier

Contacts in the Czech Republic

SPMP ČR
Karlínské nám. 59/12
186 03 Praha 8 – Karlín
Phone: +420 776 237 799, +420 770 626 202
E-mail: spmp@spmpcr.cz
Website: www.spmpcr.cz

Project contacts

Validity Foundation – Mental Disability Advocacy Centre
Impact Hub, Milestone Institute
Budapest, Wesselényi utca 17.
1053 Budapest, Hungary
E-mail: validity@validity.ngo

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EXECUTIVE SUMMARY

Is the justice system child friendly and flexible for children with intellectual or psychosocial disabilities?

The purpose of this report is precisely to provide evidence-based information on improving age-appropriate procedural accommodations and ensuring the participation of child victims, particularly children with intellectual and psychosocial disabilities, in criminal justice processes.

In the Czech Republic, the status of victims of crime is regulated by a special Act on Victims of Crime, which includes the term "particularly vulnerable victim". A particularly vulnerable victim is, inter alia, a child or a person with an intellectual or other psychosocial disability, if these facts, given the circumstances of the case and the person's circumstances, may prevent him or her from fully and effectively participating in society in comparison with its other members.

After studying the legislation relating to child victims with intellectual disabilities, it can be concluded that the rights of these victims are protected by law until they reach the age of majority. Thus, they have the legal right to an ex officio representative (a lawyer paid by the State), they can also choose a confidant, and they have a guardian for the proceedings (usually a representative of the child protection authorities for children). A particularly vulnerable victim has the right to protection from secondary harm[1] , i.e. they have the right to a single interview, which will be video-recorded and only this recording will be used in court proceedings. The interrogation takes place in special rooms that look like a room in an apartment.

In practice, however, these provisions are not always sufficiently used, especially for persons who are particularly vulnerable victims for reasons other than their age.

There is a lack of practice and experience with children with intellectual or psychosocial disabilities. Even the practitioners we interviewed had no more than two experiences with a child with intellectual disabilities in their working lives, and most of the people we interviewed had no experience at all. For the majority of interviewees, this was an unexplored area. Although our interviewees were in most cases persons passionate about the cause, they all agreed that they had little or no experience with the issue and were more likely to worry about messing something up. They are aware that they have no experience, even mediated through training.

Given the minimal experience with an intellectually disabled victim, there is no doubt that these victims fall through the net early on.

The most frequently cited barrier to child victims with intellectual or psychosocial disabilities entering criminal proceedings at all was prejudice and ignorance of the

issue. In particular, the issue of intellectual or psychosocial disability is not sufficiently researched from a criminal law and component perspective - for example, there are not enough studies on post-traumatic syndrome in persons with intellectual disabilities for expert evidence, even in foreign languages. This is then a problem in the proceedings themselves, because by such a person manifesting post-traumatic syndrome (hereinafter "PTS") in a different way from the tables, the consequences of the crime are downplayed, and the seriousness of the crime is judged accordingly[2] .

The absence of mandatory training for some professions that are part of criminal proceedings is another obstacle. Training of the different components of the system is at different levels. Police generally have mandatory training; they can choose which ones they take. Other parts of the system are not obliged to undertake further training, so it is up to them whether they undertake one training session per year or over their entire professional life. This includes judges, prosecutors and lawyers. In addition, the structure of the institution is not adapted to the training; no one is there to represent them at the time of the training, so they have to schedule the training in advance or retrospectively.

Legal representation - although paid for by the state but the quality of the work of the lawyers (ex-offo) is problematic its early entry into the proceedings so that the rights of the child are protected and promoted from the outset.

There is a lack of practice with procedural adjustments for children with disabilities - most actors do not imagine anything concrete except simplified communication and vocabulary.

The biggest obstacle in the system is that the support for children is not well systemised and coordinated. Thus, there is no single, coordinated procedure when a child becomes a victim of crime. And the child meets an incredible number of people[3] - thus, cannot get feelings of safety and insight. The legislation describes in detail the responsibilities of all the actors but the multiplicity of bodies that have a duty of information is detrimental to the victim in some cases, what happens is instead of everyone educating the victim, no one educates the victim and relies on the other person to do it. Moreover, cooperation between actors depends on "who you bump into" and thus there is no possibility to rely on a uniform and quality

[1] § 17 et seq. of Act No. 45/2013 Coll. as amended
[2] Interview with a psychologist, various court decisions, e.g. beztrestu.cz
[3] According to the anonymised cases' report of the LOCIKA Centre (see https://www.centrumlocika.cz/detske-advokacni-centrum):A family in which both the wife and children have been victims of serious domestic violence will come into contact with 47 different people in 15 different locations during the investigation and follow-up assistance! The children are spoken to by 29 different people throughout the investigation and resolution of the case and are subjected to 2 types of forensic examination and several types of interviews (at the child protection authorities, at the police and in court).

procedure - in general, there was quite a mistrust between actors, especially from NGOs and lawyers dealing with this issue.

The right of a child to be accompanied is not guaranteed by law, but it is highly desirable.

Research has shown that prejudice and ignorance of child victims, and the issue of intellectual or psychosocial disability is one of the most pressing barriers.

At present, a paternalistic approach still prevails, most often manifested by the "victimless victim" attitude and the fact that CSWs often do not trust these persons a priori (in interviews it emerged several times that children are still not considered trustworthy). In this case, however, it is not a systemic change, but a change in mindset, which is of course much more complex.

There has been robust awareness-raising about child victims in the Czech Republic and is ongoing on the issue of rape. There has been and continues to be several years of systematic work with all components, including media coverage of these issues.

By analogy with the gradual (albeit slow) change of attitude towards the above-mentioned victims, one solution for child victims with intellectual disabilities is probably the same media coverage and education. Since the system already knows how to work with child victims at least in a framework, the focus of awareness-raising should be on the topic of intellectual disability.

Finally, we propose nine recommendations, detailed at the end of the research, to better ensure the rights of children with intellectual or psychosocial disabilities:

1. Improve expert activities and increase quality control of forensic experts.
2. Assess the child's needs throughout the process.
3. Strengthen/introduce regular and quality training for persons who come into contact with children during criminal proceedings.
4. Coordination and case-management based on the rights and interests of the child.
5. Introduce the figure of the judicial intermediary (facilitator)
6. Punishment according to the severity of the offence and the qualified offence
7. Consolidate files and ensure their availability online.
8. Collect data on child victims and victims with disabilities.

9. Raise awareness of the issue in society and increase the perceived credibility of children, including children with intellectual or psychosocial disabilities

‘WHEN THEY NEED A PERSON AS EVIDENCE, THEY KNOW HOW TO TAKE CARE OF HIM OR HER NICELY, THEY HAVE SPECIAL ROOMS, ETC., BUT THEY DON'T SEE THAT THE CHILD HAS OTHER RIGHTS AND ANOTHER DESTINY.’

RESPONDENT FROM AN NGO

01

INTRODUCTION

The normative framework regulating the accessibility and responsiveness of the criminal justice system towards children with (intellectual or psychosocial) disabilities as victims of crime consists mainly of two laws from the field of criminal procedural law, namely Act No. 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code) and Act No. 45/2013 Coll. on Victims. While the Criminal Procedure Code contains mainly the regulation of procedural rights of persons as victims (although some rights of victims as subjects of special care by the state are also partially defined here, e.g. the right to protection of privacy in § 8a et seq. It is primarily the Victims' Act, which is already comprehensively based on the premise that the victim of a crime ceases to be conceived as a mere object of criminal proceedings and a source of information, and his or her rights and legitimate interests come to the fore. This law has thus strengthened in particular the rights of victims of a non-procedural nature (in particular the right to respect for their dignity, the right to be given and receive information, the right to be heard, the right to financial assistance and, last but not least, the right to facilitate access to comprehensive professional assistance). It should be added at this point that, although children benefit from a higher protection than other victims, which can be inferred from their status as particularly vulnerable victims *ipso facto*, their position is not regulated by a separate law (as is the case in the Czech Republic, for example, for juvenile and child offenders[4]). Some legal aspects relevant to the topic dealt with in this analysis are also contained in the substantive code of criminal law, Act No. 40/2009 Coll., the Criminal Code. These include, for example, the legal definition of the term 'child', “mental disorder” or the regulation of the commission of a crime in relation to a person with a disability as a generally aggravating circumstance. In a partial way, the issue also affects legislation outside the field of criminal law. Among the most important of these, we can mention Act No. 89/2012 Coll., the Civil Code, e.g. in the area of representation of a minor or the institution of guardianship, or some laws from the social law area (the Social Services Act, the Act on Social and Legal Protection of Children, etc.).

Other relevant sources on the topic in question are undoubtedly the case law of the courts, especially the Constitutional Court and the Supreme Court, which are binding

[4] Act No. 218/2003 Coll., the Juvenile Justice Act.

in their arguments. At the outset, it is possible to recall at this point an extract from the ruling of the Constitutional Court - Senate of 23 March 2015, Case No. I ÚS 1974/14-3, where the Constitutional Court expressed itself as follows: "...*It follows from the above that persons with intellectual disabilities have been subjected to gross violations of their human rights in the past. However, their marginalisation and denial of their human rights is no longer acceptable. The fact that persons with intellectual disabilities have historically been a vulnerable group must be matched by a particularly cautious interpretation of the legal norms concerning them, which must be fully consistent with their fundamental rights. Persons with intellectual disabilities are the bearers of all human rights, which guarantee them protection and respect for their inherent human dignity. Therefore, these persons must no longer be excluded from society, their human rights belittled and treated as mere objects of legal regulation and procedures."* This reasoning can also be seen as a message to the general courts that they should be alert in cases involving members of vulnerable groups or persons in a vulnerable situation or position and carefully consider whether certain procedural rights have been affected or compromised precisely because of the (particular) vulnerability of these persons.[5] It should be noted at this point, however, that there are not many (higher) court decisions concerning the rights of persons with disabilities within the criminal procedural law system. The reason for this, apart from the simple fact that disabled victims of crime are statistically not very numerous compared to other victims, is likely to be the high latency rate of violations of the rights of these specific victims.

It is not only for this reason that the premise advocating a change in the approach to persons with disabilities should increasingly come to the fore, whereby the current paternalistic approach based solely on the protection of these persons (as the weakest and most vulnerable) is gradually being rebalanced so that the will of these persons is also more respected.[6] This rebalancing is gradually being promoted not only by the case law of the Constitutional Court, but also by the case law of the European Court of Human Rights. Indeed, a similar premise is also emerging in relation to children's rights, as aptly expressed in the main thrust of the Council of Europe Committee of

[5] ŠIMÁČKOVÁ, K. K pojmu zranitelnost v českém právním prostředí, zejména v judikatuře Ústavního soudu *(On the concept of vulnerability in the Czech legal environment, especially in the case law of the Constitutional Court)*. Jurisprudence, ročník 2019, no. 5.
[6] MAREČKOVÁ, J.; MATIAŠKO, M. Člověk s duševním postižením a jeho právní jednání (*A person with intellectual disability and his/her legal conduct)*. 5. aktualizované a přepracované vydání. 2010.

Ministers' guidelines on child-friendly justice: '*Justice should be the friend of children. It should not go before them because they may not follow it. It should not follow them because children should not be burdened with the responsibility to lead. It should simply go alongside them and be their friend."* [7]

Unfortunately, the Czech criminal justice system does not systematically collect data on victims in general, nor specifically on child victims or victims with disabilities. Neither the Police of the Czech Republic nor the Ministry of Justice collect systematic data through the courts. Therefore, there is no way to monitor access to justice for this group of children at all, nor how the system responds to their needs. This is a 2022 report by the Forum for Human Rights which describes quite clearly[8] that the Czech criminal justice system is not accessible and effective for victims with intellectual or psychosocial disabilities. Because children are automatically classified as particularly vulnerable victims, we may question whether the system is more accommodating and flexible for children with intellectual or psychosocial disabilities. Moreover, the Alternative and Augmentative Communication (AAC) system is unknown to Czech law. According to the interviews, referrals and training are not taking place because there is no demand due to the number of children with intellectual or psychosocial disabilities who enter the justice system.

The purpose of this report is precisely to provide evidence-based information on improving age-appropriate procedural accommodations and ensuring the participation of child victims, particularly children with intellectual and psychosocial disabilities, in criminal justice processes.

On the basis of interviews with various actors in the system, we want to verify the approach to children with intellectual and psychosocial disabilities, because we believe that a rather paternalistic approach still prevails both towards children[9] , and towards

[7] See, for example, the need to balance participatory rights and child protection in the cited guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice of 17 November 2010.
[8] FORUM FOR HUMAN RIGHTS, Voices for Justice Victims of Crime with Disabilities in the Czech Republic, 2022. Available at: https://forumhr.eu/wp-content/uploads/2023/04/Obeti-trestnych-cinu-s-postizenim-v-Ceske-republice-1.pdf (08.05.2024)
[9] E.g. On the criticism of the doctrine of paternalistic approach to children in the context of the implementation of institutional education and the upcoming changes in this area of 10.4.2019. Available at: https://www.epravo.cz/top/clanky/o-kritice-doktriny-paternalistickeho-pristupu-k-detem-v-kontextu-realizace-ustavni-vychovy-a-pripravovanych-zmen-v-teto-oblasti-109148.html (5.4.2024)

people with intellectual disabilities[10] . Although in the Czech Republic the law grants legal capacity to children gradually according to their actual abilities, in practice people do not deal with children, but only with their representatives[11],[12]. Society in general has the same attitude towards persons with intellectual disabilities. And the way society in general is set up, individuals in the criminal process are also set up[13]

This report should identify deficiencies towards children with intellectual disabilities, highlight their specific needs and how the system responds or reacts to them, and conclude by offering recommendations to make the justice system more responsive to children with intellectual disabilities.

[10] E.g. LACINOVÁ, B., Working group to ensure the availability of psychotherapy, psychotherapeutic and psychosocial interventions PS PPP in Czech and Slovak Psychiatry, 2021;117(5), p. 258 -265. Available at: http://www.cspsychiatr.cz/detail.php?stat=1424 (5.4.2024)
[11] Interview with a female state representative
[12] Interview a female NGO representative

02

OBJECTIVES AND METHODOLOGY

In conducting the research, the authors combined desk research and interviews with actors from the criminal justice system. Desk research involved the identification and analysis of relevant policy documentation (e.g., national legislation, legal analysis/literature, court decisions, reports on victims of crime, mainly from NGOs and Human Rights organisation as well as different media resources, like article and podcasts) related to the system of providing reasonable and procedural accommodations in the criminal justice system for children with disabilities. In general, there are few resources and research on the topic of people with disabilities in the justice system, and on the topic of people with intellectual or psychosocial disabilities.

The research included 11 semi-structured interviews and email communication with several non-profit entities (victim support organisations) about their role and work (what support they provide to children and from what age). Even after repeatedly contacting several different NGOs, we were unable to meet any child or young adult who had experience of being a victim of criminal proceedings. Interviews were carried out between October 2023 and February 2024 with criminal justice professionals (two lawyers, one judge, one prosecutor, one specialist police officer), three NGO representatives, a representative of the Ministry of Justice and a psychologist who is also a trainer for police officers, as well as a representative of the Probation and Mediation Service (hereinafter "PMS")[14] . The interviews were recorded and most of them transcribed. The data were analysed using content analysis.

The following chapters present a combination of the main findings from desk research and field research. Chapter 3 describes relevant legislative and national strategies or texts that provide a framework for child victims in the criminal justice system.

[14] PMS can be considered part of the criminal justice professionals, but they are social workers and psychologists and have a supportive role for victims, so we count them separately.

03

LEGISLATIVE AND POLICY FRAMEWORK FOR SUPPORT, ACCESSIBILITY, AND MULTIDISCIPLINARY COOPERATION

01 International framework for children with disabilities victims of crime in criminal proceedings

The Czech Republic is bound by a number of international and EU documents in the area of child victims. Among the international conventions we can mention in particular the Convention on the Rights of the Child[15] as well as all its Optional Protocols[16] .In this context we can also mention the regular reports on the implementation of the Convention and its Optional Protocols. So far, the last one (the combined 5th and 6th periodic report) was submitted by the Czech Republic in 2018. Its consideration and issuance of the Concluding Recommendations of the UN Committee on the Rights of the Child occurred due to the COVID-19 pandemic in 2021. In the Concluding Recommendations to these reports, the Committee on the Rights of the Child expresses its concern in particular about the legal situation of sexually abused children. In terms of the topic of this analysis, the following aspects of concern expressed by the Committee can be highlighted in particular:

- Generally low rates of intervention, investigation, prosecution, and conviction in cases of child sexual exploitation and abuse,
- conducting repeated interviews of children and criminal investigations in the case of children as victims of sexual abuse, as well as the lack of specialised medical evaluation,
- Lack of legal protection for children over 15 years of age from sexual exploitation and abuse,
- Low reporting rates and lack of data on child sexual exploitation and abuse, particularly in the travel and tourism industry, which does not allow for an accurate assessment of the prevalence of this phenomenon,
- Lack of specialised services for child victims and child-friendly information on how to claim compensation.[17]

[15] Adopted into the legal system of the Czech Republic by Communication of the Federal Ministry of Foreign Affairs No. 104/1991 Coll. with effect from 6 February 1991.
[16] Communication of the Ministry of Foreign Affairs on the adoption of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict No. 45/2003 Coll., with effect from 12 February 2002, Communication of the Ministry of Foreign Affairs on the negotiation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography No. 74/2013 Coll, with effect from 26 September 2013, and Communication from the Ministry of Foreign Affairs on the conclusion of the Optional Protocol to the Convention on the Rights of the Child establishing a notification procedure No 28/2016 Coll., with effect from 2 March 2016
[17] Concluding recommendations on the combined fifth and sixth periodic report of the Czech Republic, CRC/C/CZE/CO/5-6, para 26. p. 6. Available at: Convention on the Rights of the Child | Government of the Czech Republic (gov.cz).

This is also the spirit of the Committee's calls for:

- expediting the reporting, investigation, and prosecution of child sexual abuse,
- applying a friendly and intersectoral approach to prevent the retraumatization of child victims,
- increase awareness of child sexual abuse and exploitation among both the public and professionals working with children,
- providing appropriate remedial measures, treatment, and support, as well as discouraging offenders from contacting children in the course of their occupation,
- providing specialised services for children[18]

All of these criticisms and recommendations can be applied without further ado to any other case where a child, and in particular a child with an intellectual disability, is the victim of a crime. The fact that it is not a single diagnosis but many different diagnoses with different manifestations is also seen as a limitation of functional awareness regarding intellectual disability. This makes it very difficult to provide education that is truly functional[19].

Mention should also be made of the Convention on the Elimination of All Forms of Discrimination against Women[20] , as well as its Optional Protocol[21] . Last but not least, the Convention on the Rights of Persons with Disabilities[22] and its Optional Protocol[23]. All these international conventions are part of the Czech legal system without further modification or adaptation of their texts.

With regard to EU regulations, Directive 2012/29/EC of the European Parliament and of the Council establishing minimum rules for the rights, support and protection of victims of crime was transposed into Czech law by Act No.56/2017 Coll., amending Act No.45/2013 Coll., on victims of crime, with effect from 1 April 2017. In addition, we can mention Directive 2011/93/EU of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography, which was transposed into the Czech legal system by Amendment No. 141/2014 Coll. to the Criminal Code, with effect from 1 August 2014. For Directive 2011/93/EU, a formal notification of infringement of Article 258 TFEU (incorrect transposition) was

[18] Concluding recommendations on the combined fifth and sixth periodic report of the Czech Republic, CRC/C/CZE/CO/5-6, para 27. p. 7. Available at: Convention on the Rights of the Child | Government of the Czech Republic (gov.cz).
[19] Interview with a female psychologist
[20] Adopted into the legal system by Decree of the Minister of Foreign Affairs No. 62/1987 Coll., with effect from 18 March 1982
[21] Communication of the Ministry of Foreign Affairs No. 33/2021 Coll., with effect from 26 May 2001.
[22] Communication No 10/2010 Coll. of the Ministry of Foreign Affairs, in force since 28 October 2009
[23] Communication No. 7/2001 Coll., with effect from 23 September 2021

issued on 26 January 2023, the Czech Republic expressed its opinion on 27 March 2023, and the Commission has not yet commented on the Czech Republic's opinion (procedure No. 2019/2228).

02 Intersectionality in the national legal framework

The Czech criminal justice system generally uses the term "child" or some other terms such as "minor" or "person under the age of 18", all of which have the same content based on Article 1 of the Convention on the Rights of the Child. According to Article 126 of the Criminal Law, a child is a person under the age of eighteen, unless the law provides otherwise.

In principle, there is no difference in the treatment of the rights of the child in criminal proceedings compared to other persons. However, the specific manner in which the procedural act is carried out must, of course, necessarily be adapted to the young age and the level of intellectual and psychological development (i.e. maturity) of the child. This enhanced criminal law protection is reflected in particular in the special arrangements for the child's testimony as a witness (both in the case of questioning and in the case of explanations[24]), in the child's status as a particularly vulnerable victim without further consideration, or in the extent to which the child is represented by other (adult) persons.

The difference in access to rights is not systemically set in the normative level even for persons with certain (intellectual or psychosocial) disabilities[25] . However, in the case

[24] The increased protection of children and juveniles as victims in terms of access to them in criminal proceedings is illustrated, for example, by the resolution of the Supreme Court of the Czech Republic - Senate of 20 November 2013, Case No. 5 Tdo 1241/2013, according to which "the *right of the accused to question or have witnesses questioned within the meaning of Art. 6(3)(d) of the Convention for the Protection of Human Rights and Fundamental Freedoms is limited by another fundamental right guaranteeing increased protection of children and juveniles under Article 32(1), second sentence, of the Charter of Fundamental Rights and Freedoms and under the Convention on the Rights of the Child."* In the present case, the right of the minor victim to be interviewed in a sensitive and gentle manner as a non-repeatable act prior to prosecution was weighed against the right of the accused to ask questions of the victim as a witness. In assessing the entire context of the case (the lawfulness of the procedure, including the necessary presence of a judge and an expert of appropriate expertise, as well as the fact that it was not the only incriminating evidence), the Supreme Court gave priority to the protection of children as a specific victim over the possible trauma of repeated questioning by the accused or his defence counsel.

[25] Although their disability can be (and in practice is) considered by the courts, e.g. when assessing a victim's claim for compensation for non-pecuniary damage. In this respect, see the Constitutional Court's ruling of 3 August 2021, Case No. II ÚS 3003/20 - 2, where the complainant, a person with autism spectrum disorder - Asperger's syndrome and a particularly vulnerable rape victim, was referred by the lower court to civil proceedings for part of her claim for compensation for non-pecuniary damage, on the grounds that she was unable, because of her disability, to fully understand the interference with her fundamental right. In this regard, the Constitutional Court stated that "*If an interference with the inviolability of the person and his or her privacy (Article 7(1) of the Charter) gives rise to damage,*

of carrying out procedural acts with these persons, a similar approach of application practice is applied as in the case of young children. All information should be communicated to these addressees in a simple way that is acceptable and understandable to the person concerned. There is also an increased emphasis on the interrogator and his/her professional and specialist knowledge and skills, as in the case of children. In order to communicate effectively, it is necessary to adapt to the communication level of the person with a disability (e.g. use of short sentences, expressions with which he or she is demonstrably familiar, use of alternative communication systems, pictures, pictograms or doll-like aids, etc.). In practice, however, according to the interviews, one can encounter in particular the downplaying of criminal reports of such persons[26] [27] [28]. It should be noted, however, that these persons often do not even appear at the police station because they either do not know that they have been the victim of a crime, or they feel that something wrong has happened to them, but their surroundings talk them out of further action. In many cases, this is also due to their own bad experience with the state authorities.

The Czech Republic also does not have a systemically differentiated approach to persons depending on their gender.

Children with intellectual and psychosocial disabilities

Criminal law generally does not use a uniform term to describe a person's disability. The Criminal Code contains a legal definition of the term "mental disorder" (§ 123 of the Criminal Code), which is, however, relevant only for the assessment of sanity. The Criminal Code also provides as a general aggravating circumstance for the fact that the offence was committed to the detriment of a person with a disability, as such persons are generally more easily attacked and unable to defend themselves effectively against physical attack or are more easily influenced psychologically (Art. 42(h) of the Criminal Code). However, the application of the general rules is different, and the different approach described above applies only when assessing the individual situation.

That is, only after the situation has been assessed, and the “mental state“ of the person is not always assessed correctly, both in the case of the victim and the perpetrator (e.g., the prosecutor recalled a case in which she only found out in court that the

compensation for that damage cannot be reduced simply because the injured individual is unable, because of his or her disability, to fully understand the interference with his or her fundamental right."

[26] Interview with a female state representative
[27] Interview with a female NGO representative
[28] Interview with a male advocate

perpetrator was intellectually disabled, while nowhere in the police file, even upon checking back, did she find any such mention[29].

In this context, however, the concept of "vulnerability" may be mentioned, where the concept is used, for example, in the Victims of Torture Act in relation to (among others) children or persons with disabilities (§ 2(4)(a), (b)). It can be deduced from the case law of the Constitutional Court that "*if a vulnerable person, i.e. a person with psychosocial disabilities, a child, a Roma, a foreigner, etc., takes part in court proceedings - especially if their rights or obligations are at stake in the proceedings - the general courts are obliged to pay attention and take special care to ensure that this person can fully exercise his or her rights in the proceedings, just like other parties to the proceedings. In doing so, account must, of course, be taken of the nature of the disability of the particular person concerned and any compensatory measures adopted accordingly. In the case of persons with intellectual disabilities or children, for example, the minimum appropriate measure will normally be the appointment of a legal representative in order to ensure that their rights are adequately protected'.*[30]

The concept of "vulnerability" is not always clear in practice [31, 32]. In one case, a child victim was declared not to be particularly vulnerable, contrary to the express wording of the law. In this particular case, the decision was overturned[33].

Barriers to reporting crimes.

In general, anyone, including a child with an intellectual or psychosocial disability, can report facts suggesting that a crime has been committed, but in practice, of course, such a procedure will be rather rare. The system of reporting crimes is set up quite broadly, both with regard to the permissible form in which a criminal report can be submitted (oral, written, electronic or by telephone, and it can also be sent anonymously), and with regard to the range of authorities authorised to receive criminal reports (any police authority, the public prosecutor's office[34] and the court, which,

[29] Interview with a female state representative.
[30] Ruling of the Constitutional Court - Senate of 9 February 2016, Case No. I. ÚS 2933/15 - 1.
[31] Interview with a male advocate
[32] Interview with a male social worker/special educator at a victim support organizationon
[33] Interview with a male advocate
[34] According to some opinions, this possibility of filing a report with the public prosecutor's office should be limited to certain specific groups of whistleblowers: *'Let us ask first of all what is the purpose of receiving a report in the protocol* (note: at the public prosecutor's office). *I see it mainly in dealing with exceptional cases - whistleblowers who are objectively disadvantaged compared to the general population. Examples include intellectual disability, dyslexic, dysgraphic, non-literate or illiterate. It also includes victims where the crime has clearly occurred and there is a presumption that they are in some way impaired - typically so-called 'particularly vulnerable victims' under the Victims of Crime Act. These people, who for obvious reasons find it difficult to make a submission, should certainly be interviewed in person by a prosecutor, advised of their rights and helped to formulate the report as well as possible. However, the care referred to should be - to borrow medical terminology - a kind of extra standard."*

however, sends them to the public prosecutor and does not deal with the report in substance). In short, the submission may be made orally at the police, the public prosecutor's office or the court, or in writing at the same places. The submission is free of charge. Taken together, these rules increase the accessibility of filing a criminal complaint even for people of a certain age or with certain disabilities.

According to the Czech legal system, the police must investigate every report that comes to them, regardless of who made the report, regardless of age, nationality, race, gender, or mental health.

The specifics are that if a submitter wants to know how their submission has been handled, they must specifically request it from[35] . Otherwise, they will never find out what the police found in the matter, or whether it was dealt with in any detail at all. Not everyone may be aware of this information at the time of submission.

In practice, however, some additional obstacles may arise where younger children in particular may be advised by the police to be accompanied by a legal guardian or other adult (especially if they are children with disabilities). However, under the statutory provisions, the police have a duty to communicate with the child themselves. The research report[36] by the Centre for Domestic and Gender-Based Violence also shows that children or adolescents are not aware of this right.

However, it appears from the interviews that none of the people we interviewed had experience of a child coming to the police alone. On the contrary, several persons mentioned prejudice and the resulting mistrust of law enforcement officials[37, 38, 39] towards children and persons with intellectual disabilities as the biggest obstacle to a child or a person with intellectual disabilities entering the proceedings.

From the interview with the advocate[40] and from publicly available interviews with a media-active advocate (with whom it was not possible to conduct a controlled interview),[41] , it appears that vulnerable victims in general have a particular problem at the entrance to the criminal proceedings - both of them agree on the role of the advocate (proxy) already at the time of reporting the crime (both of them did not talk

ŠŤASTNÝ, J. Máme se bavit z oznamovateli? (*Should we talk to the whistleblowers?),* Státní zastupitelství, ročník 2017, č. 2.

[35] He must request notification of the measures taken pursuant to Section 158 of Act No. 141/1961, the Code of Criminal Procedure.

[36] Centrum domácího a genderově podmíněného násilí (Moree D. a Nyklová B.) Děti a násilí v blízkých vztazích. Výzkumná zpráva*. (Children and violence in close relationships. Research report. Centre on Domestic and Gender-Based Violence)*. 2023 p.25 ff.

37 Interview with a female NGO representative from a victim support organizations

38 Interview with a female advocate

39 Interview with a female state representative

[40] Interview with a female advocate

[41] Hrdá, L., Soudy svévolně krátí odměny za pomoc obětem trestných činů. Loni jsem tak přišla o vice než million (Courts arbitrarily cut awards for helping victims of crime. Last year, I lost over a million), podcast in *Prostor X*, 4.3.2024. Available at: https://open.spotify.com/episode/2l1voXjxy8attsObUwLE3L (8.3.2024)

about intellectually disabled children, but about rape and domestic violence victims, both children and adults), and according to them, victims are discouraged by the police from reporting these crimes, e.g. (Even in the case of the media-published case of an intellectually disabled adult being locked up in a shed in the backyard, arguments were made that it was understandable, since his mother had sacrificed her whole life and was obviously exhausted by the whole situation.[42]) According to the words of the above-mentioned attorneys, without the victim's cooperation with the attorney, access to criminal proceedings is very difficult, e.g., there is the labelling of these acts (meaning domestic or sexual violence) as misdemeanours or continuing offenses if reported repeatedly. The role of the advocate as an agent of a particularly vulnerable victim is then to make sure that such acts are labelled as a criminal offence in the first place and dealt with as such[43].

As for the interception of reports of crimes committed against these victims, according to the interviews, there is "a *big difference depending on which police station the victim comes to and who specifically will receive the report*"[44]. Good practice is therefore more related to individuals, a systemic setting does not guarantee good practice.

The Victims Act provides that if there is a so-called particularly vulnerable victim[45] , he or she has the right to a representative (usually a lawyer), who may be appointed by

[42] *"The police told me they didn't really see why they were coming here," the woman said. But her son was taken away. "They said it was so they wouldn't get another report. When everything is explained, I will want him back," the woman recounted.*
"Psychologist and forensic expert Karl Bröckl said in response to the case that imprisonment alone does not automatically mean abuse. "If he was only restricted in his movements, he may not have perceived this as a severe harm that would have burdened him in any significant way physically or psychologically. On the other hand, he is a human being who has rights and should not be treated in this way. It really is borderline," Bröckl said. It would be different, he said, if the mother had physically harmed her son, or perhaps starved him. "Then there would be nothing to discuss," Bröckl added.
"Her neighbours are cautious about making categorical judgements. "It's a rant for her. She has to change him, feed him and wash him every day. On top of that, she is plagued by her own health problems, she has cancer and goes to Prague for chemotherapy," said an elderly woman from the house across the street. But she would not comment on her son being locked in a pigsty. "It's hard to say, but it probably wasn't right," she shrugged." Quoted from Biskup P., Žena zavírala postiženého syna do chlívku (A woman locked her disabled son in a pigsty), in *Novinky,* 20.5.2020. Available at: https://www.novinky.cz/clanek/krimi-zena-zavirala-postizeneho-syna-do-chlivku-40324673, (8.3.2024)
[43] Interview with male advocate
[44] Interview with a female advocate
[45] § Section 2(4) of Act No 45/2013 Coll., as amended
(4) For the purposes of this Act, a particularly vulnerable victim means, subject to the conditions set out in subsection (2) or (3)
(a) a child,
(b) a person who is elderly or has a physical, intellectual or psychosocial disability or sensory impairment, if these facts, in the light of the circumstances of the case and the person's circumstances, are likely to hinder his or her full and effective participation in society in comparison with its other members,
(c) a victim of the crime of trafficking in human beings (Section 168 of the Criminal Code), the crime of rape (Section 185 of the Criminal Code), the crime of abuse of a person entrusted to one's care (Section 198 of the Criminal Code), the crime of abuse of a person living in a common dwelling (Section 199 of the Criminal Code) or the crime of terrorist attack (Section 311 of the Criminal Code),

the court or a public prosecutor at the initiative of the police. The representative of the particularly vulnerable victim can accompany the victim throughout the entire process, i.e. from the very first acts in the case. The appointment of proxies for child victims is already the rule, while for adult victims of particular vulnerability it is at the discretion of the authority. The work of the commissioner for a particularly vulnerable victim is paid for by the State[46] .

The interviews show that the essential condition for a victim with intellectual disabilities to enter the criminal proceedings at all is the victim's environment, especially the caring person[47,48, 49] . These persons, on the one hand, direct the victim whether or not he/she should address his/her situation through the police and the court; if they then recommend this, it is these persons who give the victim credibility in front of all the persons representing the state. Last but not least, it is also these persons who help the law enforcement authorities to communicate with such victims. However, although

(d) a victim of a sexual offence against human dignity, an offence involving coercion, violence or threat of violence, an offence committed because of membership of a nation, race, ethnic group, religion, class or other group of persons, or a victim of an offence committed for the benefit of an organised criminal group, if, in a particular case, there is an increased risk of causing secondary harm, in particular with regard to his or her age, gender, race, nationality, sexual orientation, religion, state of health, intellectual maturity, ability to express himself or herself, his or her living situation or with regard to his or her relationship to or dependence on the person suspected of committing the offence.

[46] 51a of Act No. 45/2013 Coll., as amended
(1) If the injured party certifies,
(a) who is a particularly vulnerable victim under the Victims of Crime Act,
(b) to whom serious bodily harm has been caused by an intentional criminal offence; or
(c) who is the survivor of a victim whose death has been caused by the offence,
that he or she does not have sufficient means to meet the costs incurred in engaging a legal representative, the President of the Chamber of the court hearing the proceedings at first instance and, in the preparatory proceedings, the judge shall decide, on his or her application, that he or she is entitled to legal aid provided by a legal representative free of charge or at a reduced fee. The same decision shall be given in respect of such an application by an injured party who has asserted, in accordance with the law, a claim for compensation for damages or non-pecuniary loss or for the recovery of unjust enrichment, unless, in view of the nature of the damages or non-pecuniary loss claimed or the amount thereof or the nature and extent of the unjust enrichment, representation by an agent is manifestly superfluous.
(2) An injured person under the age of eighteen years shall be entitled, unless the offence of neglect of maintenance (section 196 of the Criminal Code) is involved, to legal aid provided by the commissioner free of charge, even without fulfilling the conditions under subsection (1).
(3) The application for a decision under subsection (1), including the annexes to prove its validity, shall be submitted by the victim in the preparatory proceedings through the public prosecutor, who shall attach his or her statement to it, and in the proceedings before the court to the competent court hearing the case.
(4) In the event that the victim does not choose his or her own attorney, the President of the Chamber and, in pre-trial proceedings, the Judge shall appoint an attorney registered in the Register of Providers of Legal Assistance to Victims of Crime under the Victims of Crime Act as the attorney under the conditions referred to in subsection (1) or (2), according to the place of jurisdiction and in the order of precedence therein. If this is not possible or expedient, he shall appoint another lawyer as the commissioner; the provisions of section 39(2) and (3) shall apply mutatis mutandis. The costs incurred in the appointment of such an agent shall be borne by the State.

[47] Interview with a female state representative
[48] Interview with a female psychologist (trainer)
[49] Interview with a male advocate

international research shows that persons with intellectual disabilities can be easy victims, there are very few criminal proceedings with these persons as victims (in the order of units, at most in the lower tens). The exact number is not traceable, no official statistics are kept.

Conflict between a child and his/her legal representative

If a conflict of interest arises between the child and his/her legal representative (which is most often a parent, for which purpose Art.45(1) of the Code of Criminal Procedure in conjunction with Art.892(1) of the Code of Criminal Procedure), the court appoints a guardian for the child. This is especially the case if the parents are in the position of being accused of a crime against their child. A guardian can only be appointed by the court in civil proceedings in matters concerning the care of minors on the initiative of the court in criminal proceedings. However, if this normal procedure for the appointment of a guardian by the court would cause serious complications in criminal proceedings (in particular in relation to the risk of delay), the Code of Criminal Procedure empowers the president of the criminal court chamber and the prosecutor in pre-trial proceedings to appoint a guardian by his or her own decision (Article 45(1) of the Code of Criminal Procedure). In such cases, the guardian of the victim will usually be one of the child's other relatives (but not the other parent, due to the possibility of a conflict of interest between the parents and the child), or an employee of a municipal or regional authority, a local administration body, a lawyer, etc. Each guardian must agree to his or her appointment, except in cases where a lawyer is appointed as guardian, since in relation to this professional group of persons, the provision of legal services is for a fee. The appointed guardian is then entitled by law to exercise all procedural rights which, under the law, belong directly to the victim.

A minor victim may also be represented by his/her attorney. This may be a natural person or a legal person. The victim's proxy is legally entitled to broader powers than the guardian (e.g. to be present in principle at all investigative acts intended to clarify facts relevant to the exercise of the rights of the persons he or she represents and the result of which may be used as evidence in court proceedings).

The Constitutional Court also commented on the extent of representation of persons with disabilities in general terms in its ruling of 5 December 2017, Case No. IV. "*The substitution of the individual's will (denial of his or her legal capacity and appointment of a representative) should, on the contrary, give way to support or assistance in decision-making and actions with legal consequences, while individuals with disabilities should be allowed, inter alia, to take the risks associated with such decision-making and actions and bear the consequences of their possible mistakes.*"

03 National framework to provide information, procedural accommodations and support for children with disabilities who are victims of crime

On a normative level, the requirement for an individual assessment of the situation of each victim is expressed in the basic principles interrelated in the Code of Criminal Procedure and the Victims of Crime Act. Pursuant to Article 2(15) of the Code of Criminal Procedure, throughout the criminal proceedings, the Law enforcement authorities are obliged to conduct them with due consideration for the victim and in the investigation of his or her personality. According to the Victims of Crime Act (Article 3(2)), the various authorities must adopt a respectful, sensitive and individual approach towards the victim, adapted to the victim's age, state of health, including “mental state”, intellectual maturity and cultural identity, so as to prevent the victim from suffering harm caused by the crime or from secondary victimisation. This obligation is not only incumbent on the Law enforcement authorities, but also on other public authorities, bodies registered in the register of providers of assistance to victims of crime, health service providers, experts, interpreters, defence lawyers and the media.

This general rule is then translated into specific legal measures:

- a respectful, courteous, considerate and considerate approach on the part of the individual authorities and entities that come into contact with the victim during the criminal proceedings (Art. 3§2 of the Victims of Crime Act)
- the timely and **comprehensible provision of basic information to** the specific victim (§ 8 in conjunction with § 13 of the Victims of Crime Act),
- Significant limitations on the possibility of asking questions directed at the intimate area of the victim being questioned, including the right of the victim to object to the focus of the question at any time during the questioning or explanation (§ 18 of the Victims of Crime Act),
- the possibility of arranging for the victim to be interviewed by a person of the same or opposite sex during the pre-trial phase, including arranging for an interpreter of the same or opposite sex to interpret the victim's testimony (§ 19 Victims of Crime Act),
- Establishing legal rules for interviewing and giving explanations to a particularly vulnerable victim, e.g. a **trained interviewer, specially adapted premises for conducting the interview, striving for non-repetitive questioning,**
- **the right to prevent contact between the victim and the perpetrator** (§ 17 (2) Victims of Crime Act) **the right to prevent visual contact between a particularly vulnerable victim and the suspect** (§ 20 Victims of Crime Act),

- the possibility for the victim **to be accompanied by the** victim's **confidant** to individual acts of the criminal proceedings and to give explanations (§21 of the Victims of Crime Act),
- the possibility at any stage of the criminal proceedings to make a statement about the impact of the offence on her life to date (Art. 22 of the Victims of Crime Act). The police of the Czech Republic must also inform the victim, without request, of the fact
- where and under what conditions to seek **professional assistance, under what conditions he or she has the right to free professional assistance, including the provision of contacts to such entities** (§ 8(1)(b) of the Victims of Crime Act),
- the nearest shelters, intervention centres or other social service facilities providing residential services (§ 8(1)(h) of the Victims of Crime Act),
- the nearest **health service provider** to whom you can turn if necessary (Section 8(1)(i) of the Victims of Crime Act).

The requirement for individual attention is also closely linked to the obligation to present information in a comprehensible and appropriate manner. In addition to the law enforcement authorities, this obligation also applies to entities registered in the register of providers of assistance to victims of crime.

Compensation for damage and injury

The victim of a crime has the possibility to claim compensation for damages or non-pecuniary harm caused by the crime. This damage or non-pecuniary harm may be claimed from the perpetrator of the offence, already in criminal proceedings. In such a case, the court, together with the decision on guilt, shall also decide on the obligation of the perpetrator to compensate the victim for the damage or injury suffered (Art. 43(1) of the Code of Criminal Procedure).

If the court has awarded the victim less or no compensation for damages or injury, the victim may pursue his or her claim (or the remainder of the claim) in civil proceedings under the general damages institute.

In addition to the offender's obligation to compensate the victim financially, the victim is also entitled to financial assistance to the victim of the crime. This entitlement arises from section 23 et seq. of the Victims of Crime Act. This assistance may be granted up to CZK 200,000.

In all cases, the victim must proactively request or assert these claims either in court or with the Ministry of Justice (financial assistance). According to the interviews, they

do not always receive information about the possibility to claim compensation for damages or injury[50] [51] [52].

04 Individual assessment

In the Czech Republic, there is no conceptually or normatively differentiated approach to victims depending on gender and age, as is the case, for example, with offenders (the Juvenile Justice Act as lex specialist). We did not identify any obligations or specific procedures, either from law or practice that would lead to the assessment and identification of support needs or accessibility for children with disabilities or other characteristics of children.

However, in relation to children (i.e. persons under the age of eighteen), the institution of the particularly vulnerable victim (section 2(4)(a)) applies without further conditions. This concept is based on the notion that while every victim is vulnerable and requires sensitive treatment, there are victims who are particularly vulnerable in terms of the risk of secondary harm or intimidation by the perpetrator. These victims thus need special measures beyond the standard rules to keep the risk of further victimisation to a minimum.

The category of particularly vulnerable victims is linked to some of their rights or the extent of those rights (see previous paragraph). A vulnerable victim is also a person who suffers from a physical, intellectual, or psychosocial disability or sensory impairment, where these factors may, in the circumstances of the case and the person's circumstances, have prevented him or her from exercising his or her full and effective participation in society in comparison with other members of society. However, here (as opposed to automatically considering a child to be a particularly vulnerable victim without more) it depends on the circumstances of the case and the circumstances of that person whether, in the particular case, they are of such a nature as to actually prevent him or her from enjoying a full participation in society in comparison with its other members.

As mentioned above, the legal framework in the Czech Republic is set up favourably for particularly vulnerable victims, but it depends significantly on who the particular victim encounters, and there is no guarantee of the same minimum level of knowledge and skills of those involved in criminal law proceedings in the area of recognising persons with intellectual disabilities, or in working with them.

[50] Interview with a female professional, probation and mediation services
[51] Interview with a female advocate
[52] Interview with a female NGO representative

05 Information Provision and Coordination

One of the fundamental rights guaranteed to every victim of a crime is the right to information, which is contained in the Czech legal system and further elaborated in Sections 7 to 13 of the Victims of Crime Act. In general, no distinction is made as to which victims are provided with this information, i.e. all victims have the right to information to the same extent. However, in addition to this, the statutory requirement, already mentioned several times, applies to the form and manner in which the information is provided by the obliged authorities, so that it corresponds to the specific circumstances of the case and the personal circumstances of the victim (§ 13 of the Victims of Crime Act). In practice, this means that the scope and form of information provision may vary depending on the specific case and the specific victim.

On the one hand, the victim should be able to have a realistic idea of his or her rights and what is expected of him or her in criminal proceedings, but on the other hand, he or she should not be overwhelmed with excessive amounts of information that are not relevant to his or her case. It would be wrong, for example, simply to quote all the provisions of the law. In particular, the knowledge of the language used to provide the information, the victim's age, maturity, intellectual and emotional capacity, literacy and intellectual or physical disability will be taken into account. A particularly sensitive and specific approach should be given to victims with certain types of disabilities (e.g. hearing or speech impairment). To the extent that the victim is unable to understand the instruction even when this individual approach is applied, the victim's representative (legal representative or guardian) shall then be instructed.

These rules **apply to all entities that come into contact with the victim of a crime at any stage of criminal proceedings, as well as before they are initiated, i.e. not only to the Police of the Czech Republic, police authorities and other law enforcement authorities (prosecutors' offices, courts), but also to entities registered in the register of providers of assistance to victims of crime**, the customs office, medical facilities that provide health care to the victim after the commission of a crime, etc.

The Ministry of Justice maintains a list of providers of assistance to victims of crime - the actors of the system[53, 54 ,55] are aware of the list and can recommend these organisations. Non-profit organisations focus on supporting victims of crime and also on supporting children who have been or are witnessing domestic violence or complicated divorces or parental separations[56] .

[53] Interview with a female judge
[54] Interview with a female professional, probation and mediation services
[55] Interview with a female advocate
[56] E.g. Bílý Kruh Bezpečí, Centrum Locika, z.ú., Archdiocesan Charity Prague-Magdala Centre, ACORUS, z. ú.

However, this multiplicity of bodies that have a duty to inform is to the detriment of the victim in some cases; in some cases, instead of everyone instructing the victim, no one instructs the victim and relies on the other person to do it.

Another case of not-so-good practice is only formal instruction, either in writing, which is a difficult format (not only for the child), or the individual OCRCs may put the instruction in their own words, but it is still not language that is understandable to a layperson, let alone a child [57].

On the other hand, it is necessary to highlight the practice (which, however, is not set up in a systemic way, it is a good practice of some police departments), where the victim leaves with a card on which the victims' support organizations, possibilities of shelters, etc. are listed, so that the victim or his/her representative can also review the information in peace, not only at the police station or in the office of the representative (usually a lawyer).

In this context, we can also mention the conclusions of the Constitutional Court expressed in its ruling of 2 April 2021, Case No. I ÚS 2134/13. Although this was a ruling relating to the wording of the provisions of the Civil Code (and not a criminal law provision), the general conclusions of the Constitutional Court with regard to disabled or otherwise handicapped persons can also be applied to the issue of accessibility of the penal system for such persons: "*The Constitutional Court has stated many times in its constant case-law that it does not tolerate public authorities and especially general courts to follow an excessively formalistic procedure using essentially sophisticated justifications of obvious injustice....In interpreting and applying legal provisions, one cannot ignore their purpose and meaning, which cannot be sought only in the words and sentences of a particular provision, but also in the translation of those words into the actual protection of the disabled in the ordinary reality of everyday life, with its pitfalls, which these persons are unable to recognise because of their disabilities."* The Victims of Crime Act also contains a detailed list of what information and subsequent types of professional counselling are provided to victims of crime by the relevant bodies. Examples of the most important of these are

- **information regarding the criminal complaint** (who can file, how, with which authority, including the transfer of information to that authority, [§ 8(1)(a)],
- an intelligible explanation of the **stages of the criminal proceedings** following the notification and the **role of the victim** in these stages (§ 8(1)(e)),
- prompt information on the **conditions under which he is entitled to free professional assistance** (§ 8(1)(b)),

[57] Interview with a female state representative

- immediate information about the nearest **shelters, intervention centres and other social service facilities** providing residential services he/she can turn to (§ 8(1)(h)),
- information on which entities registered in the register of providers of assistance to victims of crime **the victim may contact to request professional assistance** and under what conditions he/she is entitled to receive free professional assistance, including the contact details of such entity (§ 8(1)(b)),
- under what conditions he or she has the right to have security measures taken (§ 8(1)(c)),
- information on the nearest health service provider to which the victim may turn to request the provision of such services (Article 8(1)(i)),
- information on what measures the victim may request to protect their interests if the victim resides in another Member State of the European Union (Article 8(1)(k)),
- **information on the course of the specific criminal proceedings** - information on the initiation and further development of the proceedings, on the offence with which the offender is charged and its legal qualification, on the time and place of the public hearing and on the final decision (Section 11(1)),
- **information on the restriction of the offender's personal liberty**, where changes in this restriction may have a significant impact on the victim's life - e.g. information on his release or escape from custody or imprisonment, on the interruption of the imprisonment (Section 11(3)).

The information provided to the victim can also be distinguished according to its form, into those provided to the victim in writing or orally. The Victims of Crime Act in the matter at hand (§ 7 - 11 of the Victims of Crime Act) explicitly regulates by enumeration what specific information will be provided to the victim by which specific entity, as well as in what form (oral or written) this information will be provided. As a rule, it can be provided in both ways, depending on the victim's preference.

The right to information is also available to the person concerned without a request (information on which entities can be contacted with a request for professional assistance and under what conditions the victim has the right to free professional assistance and information on the services provided and their possible free provision by these entities).

Another barrier to reporting a crime is the form of information and communication with children with disabilities. Although there is a rule that specially trained police officers always work with children, they may not always be present at the initial contact with

the child when the child reports a crime. Similarly, exercising the right of access to information when the reporting person is also the victim, or the victimizer can be problematic in the case of children (with or without disabilities). Although reporting points are obliged to approach such persons taking into account their age and health, including their “mental state” and intellectual maturity (Art. 3(2) of the Victims of Crime Act), there is no official form of an *easy-to-read* information form. There is only a general principle that information of a basic type should be provided in writing and at the same time should be explained orally in a comprehensible manner (Art. 8(2) of the Victims of Crime Act). In general, however, in these cases, the institutes providing for the representation of the child will be approached, where this obligation will only be fully fulfilled in relation to these representative persons.

According to the psychologist, as well as the lawyers and the probation and mediation service, the information is often given inadequately or in an inappropriate form[58] . As regards the form, in some cases the information is given only in writing or paraphrased, but still in professional language that is not fully understandable to lay people[59,60].

The interviews and depositions should always be conducted by specialists - there is a specialist in each district who is involved and has the responsibility to inform the child in a clear manner about the procedures of the criminal procedure. In the judge's words, "*And they have a tremendous amount of experience in interviewing both children and juveniles*."[61]. There are those in the system who speak directly to the child and are trained to do so. "*And I have to say for myself that those police specialists approach them very nicely. They even have to instruct the child, for example, that he is testifying as a witness and that he should tell the truth, so of course they can't explain it to him in the words of the law because it's often not as understandable even to an adult, but they can explain it to the child in a way that he just understands, yeah, so that's the lesson."* [62] The special police officer we met for the purpose of this report also had a vast amount of experience.

Interviews with lawyers, the probation and mediation service and psychologists show that the victim is not always sufficiently informed about the process. If the victim does not get to a good lawyer or other good representative, it is quite likely that at least some information will be missed. This may happen for two different reasons: firstly, she may receive information at a time when she is unable to receive it, let alone process it, due

[58] Interview with a female psychologist (trainer)
[59] Interview with a male advocate
[60] Interview with a female state representative
[61] Interview with a female police officer
[62] Interview with a female police officer

to stress; the second reason may be that one authority will rely on the other to communicate the information[63,64,65].

Although there are no explicit normative rules of communication aimed specifically at children with disabilities, it can be assumed that law enforcement authorities will resort to applying the relatively detailed and already functioning rules aimed at child victims in general[66] . However, given the specific needs of children with disabilities, an even more careful and sensitive approach (manifested, for example, by an interrogation in a special interrogation room where the interrogation is videotaped[67] , the use of demonstrative aids such as dolls or puppets if the testimony is given by a person who is unable to describe the facts, the presence of a person experienced in the education of young people, the presence of a psychologist if appropriate, for example, for the purposes of a follow-up expert examination). Persons who need support in exercising their procedural rights in criminal proceedings (i.e. in particular child victims with disabilities) are normally represented in criminal proceedings by a legal representative or guardian, or by a proxy. In addition, particularly vulnerable victims, who are always children (Section 2(4)(a) of the Victims of Crime Act), are guaranteed free legal representation by a lawyer as their proxy. The legal representative or guardian represents the child victim throughout the criminal proceedings and exercises his/her rights (Section 45 of the Code of Criminal Procedure). In addition to instructions to the child himself or herself appropriate to his or her age, intellectual and moral development or personality, the legal representative or guardian will always be informed, in view of his or her lack of full legal capacity, of the rights which he or she may exercise for or on behalf of the child. This means that the degree of representation, and therefore the extent of communication by the authorities to the child victim, will vary depending on whether the child is five or 17 years old. Of course, the situation is different in the case of a child with a disability, where the extent of the representational powers and the extent of communication towards the child and towards his or her representative will depend not only on the age attained but also on the form and level of the disability.

It should be noted at this point that the majority of the judicial docket, including the criminal docket, continues to be maintained in the form of a paper file. Pursuant to Article 65 of the Criminal Procedure Code, the victim (or his/her legal representatives, guardian, or attorney) has the right to inspect the case file, make extracts, notes and copies of the case file from the very beginning of the criminal proceedings. In principle,

[63] Interview with a female advocate
[64] Interview with a female psychologist (trainer)
[65] Interview with a female professional, probation and mediation services
[66] However, this is clearly where people with intellectual disabilities who are no longer children fall through the cracks. Here there are neither the tools to recognise them nor, consequently, the procedures to communicate with them.
[67] Except when it is not appropriate to transport the child to a special room. This is the case, for example, with autistic children, children in children's homes, etc.

access to the files may only take place in the rooms designated for this purpose by the relevant law enforcement authority which is in charge of the files at a given stage of the proceedings, in the presence of an employee of that body and at a time to be agreed in advance. The exercise of this right in the case of child victims or victims with a disability will thus be exercised mainly by the victim's representative (parent, guardian, proxy, defence counsel, etc.).

06 Responsible authorities

Child protection authorities

In general, it should first be mentioned that, in terms of the main principles of social and legal protection of children, the bodies designated to protect children are the courts and, more specifically, the bodies designated to provide social and legal protection are specialised bodies called OSPODs, which are most often municipal authorities with extended competence. These specialised bodies exercise a range of rights, and in relation to the terms of reference of this analysis, particular mention may be made of the tasks assigned to them in criminal proceedings.

If a person under the age of 18 is questioned as a witness to a crime, it is obligatory that either a child welfare authority or another person experienced in the education of young people be present during the questioning to contribute to the proper conduct of the questioning, taking into account the subject matter of the questioning and the degree of intellectual development of the person being questioned. Therefore, if the law enforcement authorities consider that a person other than a representative of the child protection authorities would be suitable to question the child, it may call this other person to question the child - e.g. an educator, psychiatrist, psychologist, sexologist, etc. (see Section 102 of the Code of Criminal Procedure).

Systemically, however, these bodies are underpaid, in the words of the lawyer: '*Another problem is at the OSPODs, which are overcrowded, understaffed, underpaid, either right out of school or waiting for retirement. There is no motivation.*"[68] .

In general, the position and quality of the work of the child protection authorities was frequently criticised in the interviews. This is because the child protection authorities can intervene in the proceedings both as a guardian of the child and as a proxy[69] . However, the child protection authority is staffed by social workers, not lawyers, who are supposed to provide quality legal representation for children. And at the same time, the reports from the child protection authorities do not contain a "*critical perspective*"[70]

[68] Interview with a female advocate
[69] Interview with a female advocate
[70] Interview with a female advocate

or are typical reports of "a *civil servant and are not in line with modern trends in child victim support*" [71].

Other specialists focused on victims

In the Czech Republic, assistance to victims of crime is provided by both state authorities and non-state (non-profit, church, charitable, commercial) institutions, with the state (the Ministry of Justice or the Ministry of Labour and Social Affairs) supporting the area of assistance to victims of crime through subsidy programmes from the state budget. On the website of the Ministry of Justice, data on providers of assistance to victims of crime are published electronically in the form of a register (Section 48 of the Victims of Crime Act). The purpose is to enable any victim seeking professional assistance to easily find out information on the entities providing such assistance, to which group of victims, to what extent and at what location. Vocational assistance is defined as psychological counselling, social counselling, legal assistance, provision of legal information or restorative programmes. The victim is entitled to receive professional assistance before, during and after the criminal proceedings, as long as its purpose requires it (Art. 4 of the Victims of Crime Act). The register lists (a) entities that have been accredited by the Ministry of Justice to provide legal information and/or restorative programmes, (b) all regional centres of the Probation and Mediation Service, (c) entities providing social services (psychological and social counselling) at their own request, and (d) lawyers who meet the conditions for providing legal aid. Some of these entities focus on supporting child victims of crime (e.g. the LOCIKA Centre, Bílý Kruh Bezpečí, People in Need, the Children's Crisis Centre, In Iustitia, La Strada ČR, Persefona, proFem[72] , etc.).

There are no other specialised persons within the criminal procedure. Rather, such persons can be found in the child's everyday life and may be persons who point out the child's problems or who accompany the child directly to the police station. These are both doctors, and the Czech Republic has specialised paediatricians, both in the district and in hospitals. Then there are teachers, and every school should have an educational adviser - a teacher who specialises in working with children with various problems, and a prevention officer. All of these people have reporting obligations. However, it also sounds from all these professions that when they reported a suspected crime against a child in their care, they ended up having more problems themselves (e.g. with an abusive parent who got their name and address and threatened them for a while).

[71] Interview with a male social worker/special educator, victim support organisation
[72] Some organisations work with young people aged 16 and over, but not with children (such as Persefona), and most have little if any experience with children with disabilities. It is also important to note that not all organisations have a national remit.

The legal system currently guarantees disabled children a full range of rights ensuring their increased protection. Any systemic deficiencies that do not consist of individual excesses and can only be remedied by legislation can only be changed by Parliament in its legislative power. However, in removing bottlenecks in the accessibility of children with disabilities to the criminal justice system, it is more expedient (and often quicker) to focus first and foremost on the application practice that interprets and applies the statutory rules in specific cases. In particular, this will involve a legal, professional and sensitive approach by individuals who come into contact and communicate with these victims - police officers, social service and probation and mediation workers, lawyers, prosecutors. The way in which the relevant bodies approach the victims plays an absolutely crucial role in the fulfilment of their rights and legitimate interests, as well as in the degree of their active involvement in the criminal proceedings as a whole.

This area currently falls under the competence of 5 ministries (Ministry of Labour and Social Affairs: social services and social-legal protection of children, Ministry of Interior: police agenda, Ministry of Justice: courts and criminal legislation agenda, Ministry of Health and Ministry of Education). With regard to mandatory training and greater transparency of court decisions, the Ministry of Justice can also help directly by issuing a sub-legal norm - a decree - which could set out certain obligations, in a quicker way than the parliamentary process. As regards the agenda of social and legal protection of children, it is also possible to issue a sub-legal norm from the Ministry of Labour and Social Affairs (e.g. methodological materials).

07 Training for professionals

Due to their specialisation, ongoing training and professional activities, all the authorities concerned (or their staff) have special training in working with child victims or victims with specific needs. Only specialised police officers have systematic training, namely for working with children. Members of other legal professions are trained only on a voluntary basis.

In practice, however, this is insufficient preparation, as none of the people we spoke to had received training in working with people with intellectual disabilities who manifest themselves in non-standard ways. In the interviews, the more sensitive ones then take advice from the persons who brought the victim to the police, while the less sensitive ones act "correctly" according to their own ideas. The consequences can be seen both in the fact that there are a minimum of victims with intellectual disabilities in the Czech Republic whose cases would be decided by the courts, and in the number of possible punishments for the perpetrators, where the harm to the victim is often downplayed.[73]
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[73] "An abused woman has the advantage of being intellectual disabled, according to the court. A raped child with autism is not entitled to compensation, according to several courts, because he does not

During the interview with the police officer, she described clearly how this takes place in practice: "*in each territorial department, in the former districts and in each regional directorate there are specialists directly who work on the vice line, as we say, and they are actually trained to work with children and with particularly vulnerable victims, which are actually children, people with some needs, so it should not actually happen, that a child who on the face of it has some special needs or even an adult is actually questioned by a police officer in a basic unit or it should not happen, he receives the first report and if it is actually a moral offence, a serious moral offence, then a specialist should be called immediately, that is, a call-out is called*."[74]

know what has happened to him, and it is worse for him to walk through the door to the photo booth than to be anally raped. An abused intellectual disabled girl is unaware of what has happened, hence probation for the perpetrator." Quoted from Hrdá, L., Sama si za to mohla. Jak a proč se u nás (ne)trestá sexualizované a domácí násilí (It was her own fault. How and why sexualised and domestic violence is (in)punished in our country), in *Reportér magazín*, č. 3, roč. 2024, podcast 10.3.2024 . Available at: https://reportermagazin.cz/74665/sama-si-za-to-mohla-jak-a-proc-se-u-nas-netresta-sexualizovane-a-domaci-nasili/?article_id=74665 (18.3.2024)

[74] Interview with a female police officer

04

ICT AND AI IN CRIMINAL JUSTICE SYSTEM FOR ACCESSIBILITY AND MULTIDISCIPLINARY COOPERATION

The Czech Republic has a vision in the IT field, which it is currently trying to fulfil. According to a representative of the Ministry of Justice of the Czech Republic, which is responsible for this issue[75], work on some projects is currently in the pre-completion phase, but some are yet to be put out to tender.

The Czech Republic faces numerous problems in the area of electronic justice (lengthy or stagnant implementation of key projects, problems with financial, technical and personnel capacities). For example, the current state of the digitisation of the Register of Providers of Assistance to Victims of Crime has been described as unsatisfactory[76] . Slightly better (satisfactory) is the state of digitisation in the field of expert activities (lists of experts, Judicial Authentication and Authorisation System), as well as the state of the Victims' Fund Information System (also satisfactory)[77] .

However, as detailed later in this chapter, the vision is ambitious and some of the sub-steps are already beginning to be realised.

01 Technology in use in criminal justice by criminal justice professionals, child protection units/professionals and court staff to share information about what has been done in the case

In the Czech Republic, there is no electronic file; the individual levels keep their own electronic records, but no other files are connected to them (except for the quasi-connection between the police and the prosecutor's office, but even here the official file is kept only in paper form at both levels.

As far as file management is concerned, the Police of the Czech Republic uses its own electronic file management system, which it develops itself, the so-called Information System for Criminal Procedure Records. This system is not public. The supervising prosecutor then has access to secure remote access in a particular case, but at the end of the investigation the police prepare and hand over the criminal file to the prosecutor in analogue form. The file then remains digital in the police electronic filing system. However, the information system should be the basis for a so-called electronic case file based on the export of relevant data between the police and the prosecutor's office.

A more significant shift in the area of computerisation of justice would be of great benefit to all participants in court or administrative proceedings, as the need to physically visit the office would largely be eliminated. This would also make the whole

[75] Interview with a female IT expert
[76] See page 27, Information concept of the Ministry of Justice for the period 2023-2028. Available at: https://www.dataplan.info/img_upload/7bdb1584e3b8a53d337518d988763f8d/msp_informacni_koncepce_1.0.pdf
[77] ibidem

system much simpler and more accessible for people with disabilities, including children with intellectual or psychosocial disabilities.

Among the specific projects that have the potential to significantly improve the position of such persons, mention should be made of the key project e-Spis, which would remedy the current unsatisfactory situation where some branches of the judiciary keep only paper files[78]. The deadline for the completion of the implementation of this project is set for 2025. This circumstance further does not allow for the implementation of more modern processes and services for the parties to the proceedings. In particular, the service of remote viewing of the file by the authorised subjects of the proceedings or the possibility of electronic communication with the institution or office in the relevant agenda, ideally through a single self-service portal, which would also include the possibility of adapting to clients with specific needs (e.g. enlarging the font). This would also increase the convenience for justice workers themselves, given the possibility of sharing data between the various information systems. Another project that can be mentioned in the context of the protection of victims of crime with specific needs is the increased use of videoconferencing in court hearings, for which sufficient technical facilities need to be established[79] (according to the material, the project to strengthen this method of communication was already completed by the end of 2022).

The state of electronization and digitalization is also insufficient in the area of administration itself - essential documents and decisions in a case should always be provided in an accessible format or there should be services for filing via a smart form, which is not possible in most cases at present. "For disabled litigants, 'accessible format' does not mean 'mere' electronic access to these documents, but also the provision of alternative means of communication (e.g. the possibility of reading these documents through a programme known as a screen reader).

Going down each floor:

- The Police Department maintains an electronic file, but it is a program that is incompatible with programs on other levels of the system. However, the original case file is in paper form.
- The Public Prosecutor's Office also has its own closed system in which it maintains its case files. However, the original case file is in paper form.
- It's the same with court filings. However, the original case file is in paper form.
- If the victim or his/her representative wishes to inspect the file, he/she must physically appear at the relevant Police Department, the relevant prosecutor's office or the relevant court (and make an appointment in advance) and inspect the documentary file there.

[78] Op. cit. p. 8
[79] Op. cit. p. 85

- If one file wants to see the file of another file, it must request that the file be sent to it.

Electronic systems are fragmented not only at the individual levels but also at the courts themselves. The first level courts have one system for all the agenda, but the higher courts have another system for the insolvency agenda, another for the agenda for legal entities (courts of registry), and another system for civil, criminal, and administrative agenda.

The goal of the comprehensive plan for the computerization of the judiciary is to unify these disparate court systems and create a single electronic docket.

Furthermore, work is currently underway on a so-called "mandate register", which should clearly indicate who can consult which file (including lawyers and other agents) and would allow (ideally, when the entire judiciary is computerised) online consultation of a file only on the basis of the fact that the viewer is assigned to a specific file in this mandate register.

When creating the new web interface and the computerization of justice in general, we see it as positive that the team dealing with this issue at the Ministry of Justice of the Czech Republic includes an expert who deals with ESR. Furthermore, a methodology (standards) is being developed, the adherence to which should ensure that the website will meet the conditions of easy reading and that it will be compatible with various devices to assist persons with disabilities (e.g. for reading aloud, etc.).

02 Technology in use in criminal justice in order to inform the citizens or to support citizens' filing criminal complaints to courts or obtain information about their case, rights or proceedings

There are several places in the Czech Republic where a victim can report a suspected crime. The most common are verbal notification at a police station, at a prosecutor's office, or the notifier can file a report in court.

Another common way of submitting a notification is by sending it electronically to the address of one of the above-mentioned authorities.

The procedure for filing a report is described both on the website of the Police of the Czech Republic80 , and on the website of the Ministry of Justice of the Czech Republic[81] .

A novelty regarding the involvement of IT in criminal proceedings is the so-called Polpoints[82] (at the moment several branches in 1 of the 14 regions of the country)

[80] https://www.policie.cz/clanek/oznameni-trestneho-cinu.aspx
[81] I became a victim of a crime - Portal of justice of the Czech Republic - Portal of justice
[82] POL POINT - police contact point - Police of the Czech Republic

thanks to which it is possible to interrogate particularly vulnerable victims via videoconference. Through PolPoint[83] it is possible to report suspicions of a crime, or a witness or victim can give evidence through them. PolPoints are non-contact or semi-contact rooms in which a reporter or witness can make a report, give a statement or give an explanation. PolPoints can also be used online, through a SW client - after sending an email with name, surname and ID number, a reply will be sent with access information and time.

A person can be alone in these rooms unless they bring a supporter or another person with them. The person communicates with the police officer online, the advantage should be that they do not have to wait in the duty station, someone should always be present online.

The disadvantage of PolPoints is that nobody knows about them. The only one who talked about them was the IT representative at the Ministry of Justice. None of the attorneys mentioned them, nor did the judge, nor the police officer, nor the NGO representative, nor the PMS worker. So, this is perhaps an interesting alternative for the testifier, but one that is not known to anyone.

The Ministry of Justice also operates an electronic Register of providers of assistance to victims of crime[84] . In this register, a victim can search for both legal aid providers and non-profit providers. There is also contact information for the Probation and Mediation Service. However, the register of providers of assistance to victims of crime is not a straightforward application. If a victim is looking for someone to support her, it will be very helpful if she knows the professional name 'crime victim assistance providers'. Otherwise, finding this register is very unintuitive.

According to a conversation with an IT representative, an application for a grant to computerise the criminal case file is being submitted at this time. If this application is approved, the system is expected to be launched in 2027[85].

Another project that has been launched but is not yet fully used in practice is the publication of anonymised decisions. While the aim is to make court decisions more predictable, one of the objectives is to provide some oversight of how courts generally rule in different situations. These decisions are anonymised, using AI. These decisions have been converted into a machine-readable form in which they can also be downloaded, making it easier to search the decisions. It should be noted that anonymisers do the basic work, but it is always up to a human to check the final version of the anonymised decision being published. This is not only because of the GDPR,

[83] https://www.policie.cz/clanek/stredocesky-kraj-pol-point-kontaktni-misto-policie.aspx
[84] Register of providers of assistance to victims of crime (justice.cz)

[85] Interview with a female IT expert

but also, and especially, because of respect for the dignity of the individual participants in criminal proceedings, especially the victims.

Last but not least, automated protocols are provided in the courts, as well as AI-assisted voice transcription - here it was necessary to develop special software for Czech language transcription called Bee.

According to the information of the IT representative at the Ministry of Justice of the Czech Republic, under which the courts and prosecutor's offices fall, the accessibility of the court system for people and children with intellectual disabilities will be solved in 2030[86]. This shows that the Czech legal system is currently solving problems at a basic level, e.g. accessibility for all, interconnection of files, etc. Superstructures, e.g. accessibility for persons with specific needs, can be addressed once the basic systems are operational.

In the Czech Republic, there is no linked information system, nor is it possible to consult the file outside the office of the unit currently working on the file.

Each component of the criminal procedure system has its own PC program in which it keeps a file, but the official version of the file is only a paper file. The police, as the investigating authority, and the prosecutor's office, as the body that supervises the work of the police, are partially linked. The police keep a file in the so-called Criminal Procedure Register, which can also be consulted by supervising prosecutors since 2015, and they can also give instructions to the police during the investigation.

A citizen may obtain information collected by the police in the register on the basis of a request for information pursuant to Act No. 106/1999 Coll. on Free Access to Information.

The public prosecutor primarily maintains the file in documentary form and subsequently forwards this documentary version of the file to the court. The court shall again keep the file in paper form. Each of these files has its own electronic system, but these are only supportive; they are not the official maintenance of the case file.

If the victim, the victim's proxy or the perpetrator or his/her representative wishes to inspect the file, he/she must request that the file be prepared and subsequently appear at the seat of the competent authority to inspect the documentary form of the file.

The Ministry of Justice of the Czech Republic, as the creator of IT systems in the judiciary, has approved a subsidy for the computerization of the prosecutor's office, after which judges will also be able to consult the files.

[86] Interview with a female IT expert

03 Artificial intelligence projects in the civil and criminal justice sector that improve victims' access to justice

This is the new thing that the Police representative talked about is the training of interrogations with special victims thanks to artificial intelligence. "*They are starting the process and they will be using artificial intelligence, actually an avatar that they will have, which will actually be psychologists on casework. (...) Actually, those police officers are really going to have 3D glasses and they're going to have a case study where they're going to have to walk into a room where there's a traumatized child and they're going to have to interrogate that avatar, they're going to have to interact with that child and really that child is going to have all the trauma elements, it's going to be able to actually program the social environment that it's going to come from, so that's how it's going to be trained within the AI, so we're waiting for the money now within the project, so it should actually be in a police school, (...) It should be used to interrogate particularly vulnerable victims*."[87]

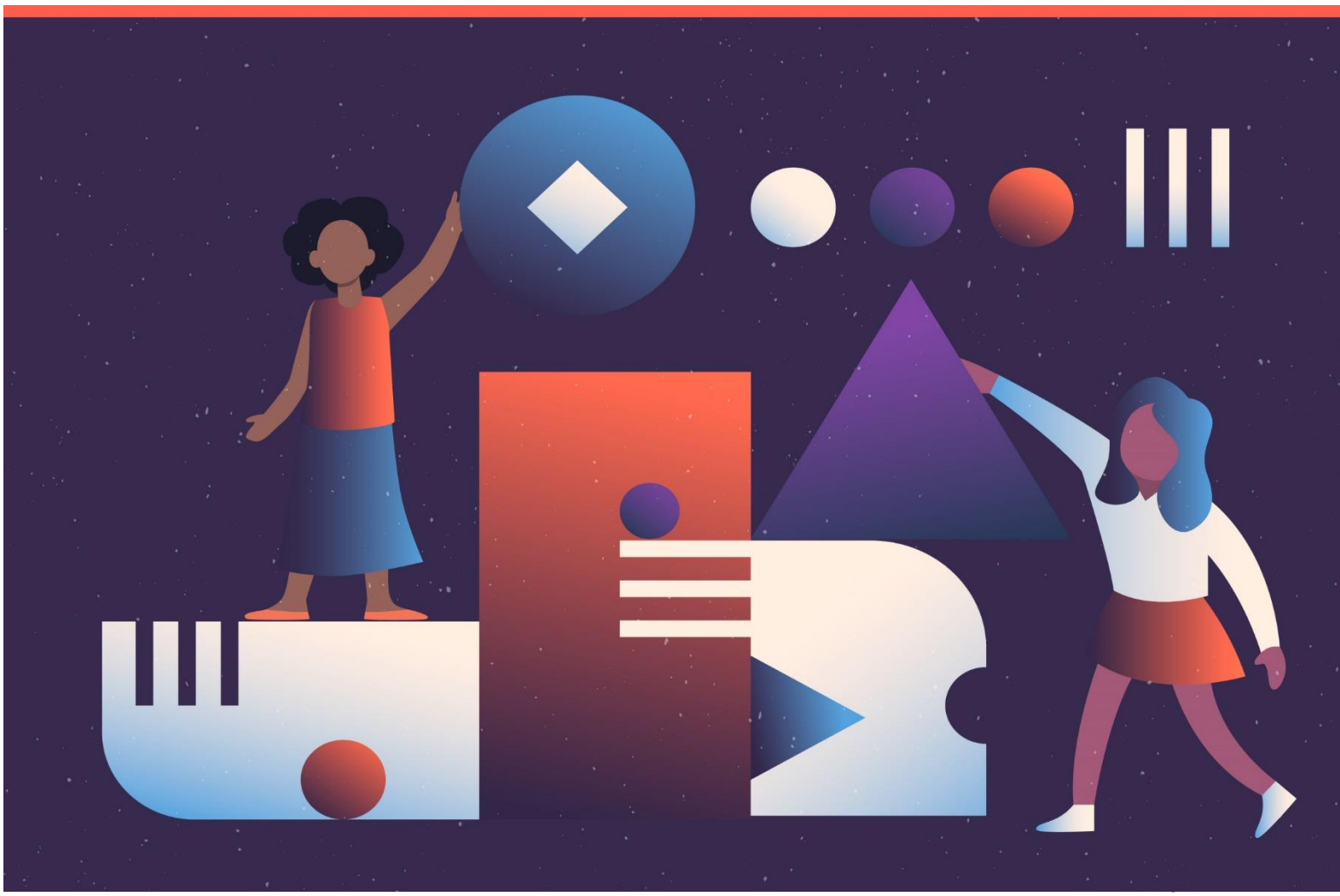
04 Technical accessibility for persons with disabilities

The use of information technology in (not only criminal) justice is recommended in the literature, but so far it has not been effective in practice, *"...electronic communication, videoconferencing and other facilitation of information transfer between the participant and the court can have a significant positive effect in this respect. In our conditions, they can address not only the situation of litigants with limited mobility.... Another obstacle that technology can remove is the lack of knowledge of the official language. The use of simultaneous interpretation or advanced machine translation of electronic documents can facilitate the equal status of linguistically different parties to proceedings. Where the barrier is a sensory hearing or visual impairment, the computerisation of proceedings and the related digitisation of documents and evidence can bring both improvements to the current situation and new challenges and obstacles. The transferability of information into another format can greatly facilitate the familiarisation of disabled people with the content of documents, but it imposes new requirements for the existence of appropriate mechanisms and accessibility, including in the context of cost barriers to access to the courts*".[88]

On the basis of Chapters 3 and 4 and a study of the legislation relating to child victims (with intellectual disabilities), it can be concluded that until the age of majority, the rights of these victims are protected by legislation. In practice, however, not all the principles and rights mentioned above are applied. The existing provisions are not always sufficiently used, especially for persons who are particularly vulnerable victims for

[87] Interview with a female police officer
[88] KASL, F., Některé problematické aspekty současného vývoje eJustice *(Some problematic aspects of the current development of eJustice)*. Správní právo. Ročník 2018, č. 4.

reasons other than their age, such as the existence of a disability. The interviews show that only the most passionate try to use them in practice. Chapter 5 shows us the shortcomings of the system as well as some examples of good practice.



05

PRACTICAL FUNCTIONING OF THE CRIMINAL JUSTICE SYSTEM

Results of the Qualitative Study

01 Introduction

As mentioned above, the minimum number of participants in our interviews had encountered a child victim with a learning disability, and we are aware that we have addressed mostly proactive representatives of individual professions. Nevertheless, they have minimal experience with this type of victim. Just as there are districts where there are only minimal records of domestic violence[89], and it cannot be assumed that only non-aggressive individuals live in those districts, it cannot be assumed that there are no child victims with intellectual disabilities in the Czech Republic. The reason they are not known is the low percentage of victims who go on to report such acts and the even lower percentage whose cases go to court 90 .

Research of Acorus' clients on the topic "Children, parents and domestic violence"91 also shows that many cases do not make it to the criminal justice system: "The client herself filed a criminal complaint against the abuser in one third of the cases. (...) The accusation and eventual conviction was very rare, in the order of individuals." Regarding the accessibility of criminal proceedings for child victims with intellectual disabilities, the lawyer noted that it is already significant that he, although he cooperates with several police stations that contact him about representing particularly vulnerable victims, has not yet represented any such victim[92].

In this context, it should also be noted that at the moment (February, March 2024) there is a well-publicised dissatisfaction of lawyers representing particularly vulnerable victims with the way the courts remunerate their work, with the amount reported for their work usually being divided by three to ten. They are also dissatisfied with the fact that they receive their remuneration from the state only after the end of the whole procedure, i.e. with a delay of several years. The consequence is that these lawyers have now stopped representing particularly vulnerable victims. The likely consequence will be that acts against particularly vulnerable victims will be more likely to be classified as misdemeanours, so that although the Czech Republic will officially have a lower number of such acts, they will in fact increase, they will just not be reported or will be delayed by the police[93] .

[89] Interview with a male advocate
[90] By analogy with the issue of domestic and sexualized domestic violence, see the interview Hrdá in the podcast
[91] BARVÍKOVÁ J., PALONCYOVÁ J., Děti, rodiče a domácí násilí výzkum klientely Acorusu, z.ú., (*Children, Parents and Domestic Violence research of Acorus*) VÚPSV, v.v.i., Praha 2016, dostupný online z: https://www.centrumlocika.cz/pro-odborniky/metodika-a-vyzkumy
[92] Interview with a male advocate
[93]Op. Cit. Hrdá, L., in *Prostor X*, note 26.

02 Individual assessment and referral

In the case of the duty to carry out an individual assessment of the child's support and protection needs, there is no such specific duty, it is only a general duty to tailor communications to the needs of any victims. Neither for children nor for adults is there a mechanism to identify the barriers that may arise by virtue of that person's disability unless this is explicitly said and offered. We can surmise from the interviews that generally the source of information about these children tends to be an expert. From the judge's words, an interview with a child with an intellectual disability would not have taken place without the expert's opinion[94]. According to the information given by the police officer, the police have a simple laminated chart on duty[95] , according to which they identify a particularly vulnerable victim in general. It should be noted that the law states that if there is any doubt as to whether a victim is particularly vulnerable, then the law enforcement authorities are to treat the victim as particularly vulnerable until proven otherwise.

Expert opinions

Taking into account the fact that anyone can be a victim, or a victim who also testifies as a witness in criminal proceedings, including a child or a person with a disability, Section 118 of the Code of Criminal Procedure provides for the possibility of examining the “mental state” of a witness. This procedure occurs in the event of doubts as to whether the witness is properly able to perceive, remember the perceived event, testify, etc. with regard to his/her (either permanent or negatively developing) “mental state”, and his/her testimony is particularly important for the decision. These two conditions must be satisfied cumulatively. In practice, the interrogator should determine at the beginning of the interrogation, by means of appropriately posed questions, whether the procedure under Section 118 of the Code of Criminal Procedure is to be applied, the decision to bring in an expert being taken by the prosecuting authority by means of a measure. This examination should be carried out by a single expert in the medical field (branch of psychiatry)[96] , but if a particularly important fact needs to be clarified, it may be two psychiatric experts or one psychiatrist and one psychologist, pursuant to Article 105(4) of the Code of Criminal Procedure. However, unlike the accused, the witness cannot be observed in an institution, so the examination will always be of an outpatient nature.

In the case of an expert examination, it must be borne in mind that it is not for the expert to evaluate the evidence and resolve questions of law. The questions to the expert should therefore be formulated in accordance with Section 118 of the Code of Criminal Procedure as follows, for example: 'Does the witness have a “mental disorder”

[94] Interview with a female judge
[95] This tool is not publicly available. We only know about it based on conversation.
[96] The decision of the High Court in Prague of 14 July 1994, Case No. 4 To 82/94, the procedure of § 116 per analogiam can also be applied.

affecting his ability to perceive and reproduce correctly the events experienced? What is his personality structure, intellect, psychological state? Does he/she have a tendency or motivation to distort events? [97]"

In an interview with a psychiatrist who does expert evaluations of victims and perpetrators and trains not only the police on particularly vulnerable victims, one crucial piece of information emerged. This information conditions the further perception of persons with disabilities in criminal proceedings - there is a minimum of research on the experience of persons with intellectual disabilities, not only in the Czech Republic but also internationally. Therefore, experts do not have enough relevant bases for determining the degree of trauma of the victim, as it manifests itself differently than the tables assume. Courts then often consider the degree of trauma caused to the victim by the act instead of setting sentences according to the gravity of the act. And because trauma manifests itself differently on a victim with an intellectual disability (the psychologist's reasoning is that the changes should be in behaviour rather than, for example, re-experiencing. It can also be a change in daily functioning - more/less eating, changes in hygiene, etc.), it is not treated as trauma, or the extent of the trauma is downplayed. The following reasoning appears in judgments: the abused woman has the “advantage” of being intellectual disabled, according to the court. A child with autism who has been raped is not entitled to compensation, according to several courts, because he does not know what has happened to him and it is worse for him to walk through the door to the photo booth than to be anally raped. An abused intellectually disabled girl is unaware of what was happening, hence probation for the perpetrator[98] . Such convictions are not the exception, in another case for the long-term rape of an intellectually disabled girl using a threat the offender was sentenced to 30 months suspended with 4-year probation (i.e. the offender will only go to prison if he commits any offences in the next 4 years)[99] .

Relevant case law includes a relatively recent decision of the Supreme Court[100] , which stated that the need for an examination of the of a witness (who is often also a victim of crime) will "usually be established during the proceedings and will be signalled by certain objective facts indicating, inter alia, that the witness suffers from a “mental disorder“ or illness (e.g., a medical report, the witness's inability to express himself logically on the matter). However, it may also be a situation where the witness's ability to perceive correctly is limited by age (e.g. a child, an elderly person) or a witness who has limited capacity. The conclusion that it is necessary to proceed to an expert examination of the witness in the case pursuant to Section 118 of the Code of Criminal Procedure must therefore be based on the existence of the above-mentioned prerequisites, where it is not sufficient merely to state that the accused proposes the

[97] For more on this see ŠVARC, J. Assessment of mental state in criminal proceedings and provision of psychiatric care. Psychiatry for practice, 2014, 15 (1).
[98] Op. cit. Hrdá, L., in Reportér magazín, note 34
[99] see judgement number 1T 12/2017-391 from 30.11.2017 available at https://www.beztrestu.cz/rozsudky/rozsudek-38 (the last paragraph before the instruction is important)
[100] Resolution of the Supreme Court of the Czech Republic - Senate of 29 June 2022, Case No. 4 Tdo 549/2022.

taking of such evidence or that there are certain contradictions or inaccuracies in the witness's testimony, which, however, are not of such a nature as to cast serious doubt on the witness's testimony and can be objectively explained."

With regard to the topic at hand, one can also point to the problem of a noticeable and critical shortage of experts, especially in the field of psychiatry and psychology, and especially specialists in the field of paediatric patients. As a consequence, the capacity of existing experts is overstretched and the deadlines for the preparation of expert reports are significantly prolonged; it is now common for expert reports to take several months.[101]

This then significantly delays the first (and only) interrogation of such a person if the interrogator is waiting for an expert opinion and only then conducts the interrogation according to it - thus several months may pass between the reporting of the crime and the interrogation of the victim.

Nor are experts obliged to keep themselves continuously educated and therefore update their knowledge according to the latest findings[102] .

So-called "general witness credibility"

In this context, it may be added that the term "general credibility of the witness" has been used in Czech judicial practice, focusing on the evaluation of the personality of the person being questioned. All people with a “mental disorder”, sensory disability or victims traumatised by a crime are considered "generally unreliable". Although this designation is in no way related to whether or not a particular witness is telling the truth, such a designation has been criticised by some psychiatric experts as a highly confusing concept carrying with it an inappropriate stigmatization of certain witnesses (victims), without any practical benefit.[103] . This was confirmed to us by a representative of a non-profit organization that "*children may be isolated, they may not have sufficient means of expression, there may be prejudice. Often, they are primarily untrustworthy, and we need to find a professional to give it the stamp of credibility*"[104] . A social worker from an NGO even described this as "the *biggest barrier in the system*" that needs to be worked with[105].

[101] Report on the activities of the Public Prosecutor's Office for 2022
[102] Act No. 254/2019 Coll., on Experts, Expert Offices and Expert Institutes, available e.g. at https://www.zakonyprolidi.cz/cs/2019-254
[103] ŠVARC, J. Posuzování duševního stavu v trestním řízení a poskytování psychiatrické péče. Psychiatrie pro praxi, *(Assessment of mental state in criminal proceedings and provision of psychiatric care)* 2014, 15 (1).
[104] Interview with a female NGO representative
[105] Interview with a male social worker/special educator, victim support organisation

03 Procedural accommodations

The child as a particularly vulnerable victim

The Czech legal system can work relatively well with children. Children are identified as particularly vulnerable victims, and it is easy to identify them as such, as it is only necessary to determine their age. Police officers have a specialisation in interrogating children, as described in Chapter 3. In most cases, children are interviewed in special rooms by only one person with special training, and this interview is ideally the only interview of the child in the case. The interview is recorded (the police officer who participated in the interview always also records the interviews on her mobile phone and can use this recording in case the official technique fails[106]). The perpetrator's lawyer has a transcript of the interview, and the prosecutor and the judge have a CD which also contains a video recording showing all the child's non-verbal communication.

From this perspective, the child is protected from inappropriate, manipulative, belittling and ridiculing remarks or questions by the perpetrator or his/her representative. On the other hand, however, alleged perpetrators complain that they cannot properly defend their rights in this way, since in most cases neither the perpetrator's representative nor the perpetrator is present during the first (and only) interview of the child victim. (Often it is only during this interview that the law enforcement officer learns who committed the crime against the victim and what it was).

The second disadvantage is that [107] [108] the judge who will decide the case cannot ask additional questions. As it follows from the interview with the judge, in this interview, as a non-repeatable act, a different judge is usually present than the one who will then decide the case. The judge present at the non-repeatable hearing is there in particular to ensure that the rights of neither party are infringed, but it is not usual for that judge to ask supplementary questions. This may then be lacking in the proceedings themselves, where the deciding judge must in the vast majority of cases rely only on the questions and answers asked by the questioning police officer[109] [110] [111].

The interrogation

First, only the police officer can ask the questions, not the psychologist. The other people who are accessible can ask questions through the police specialist "*So we are (...) lucky that my colleague who is a police officer is a trained psychologist, so actually*

[106] Interview with a female police officer
[107] Interview with a female judge
[108] Interview with a female police officer
[109] Interview with a female judge
[110] Interview with a female advocate

my colleague who works on the vice line is a psychologist, so it's kind of a two-in-one. Otherwise, we have crisis interventionists within the police, which are psychologists, but they can't actually interrogate, they can be present, but they can't interrogate."[112]

It further describes *"The ideal case is to have the information such that I'm going to prosecute right away, appoint a defence attorney, I am, and do a regular interview in the presence of the defence attorney, just one single one where it's about the child. And can't the defence attorney just get mad that he wasn't allowed to. Like really unrepeatable."*[113]

In interviews with representatives of various professions, it is repeated that the most important aspect of reporting a crime committed against a particularly vulnerable victim is the person who will accompany the victim during the reporting process. It was often echoed that such a person gives the victim credibility[114] [115] [116] [117] and furthermore that this person is a great help to the interrogator if the victim is a victim with a disability, as he/she can advise him/her on how to communicate or even point out the disability[118] This was specifically described by the Police representative as follows: "if the *parents were not among the suspects, it would be very easy for us. We would interview the parents first on the witness interview protocol so that we would actually have the parents' statement first and then we would actually use the parents as intermediaries to interview the child because they would actually provide us to interpret and if the parents were as suspects, then we are lost*."[119]

Lack of training

Very closely linked to this point is the ongoing training of the law enforcement authorities. Only with the knowledge of the existence of this issue can these persons be approached with an adequate approach, only with knowledge of the issue can, for example, the amount of punishment (which in the Czech Republic is often determined not according to the seriousness of the offence, but according to the harm to the victim) be based on correct premises. For example, according to the psychologist, there are not enough studies that reflect the PTSP of people with more severe intellectual disabilities (CZ/PSY/F/10), and according to Hrdé[120] experts often assess the PTSP of

[112] Interview with a female police officer
[113] Interview with a female police officer
[114] Interview with a female state representative
[115] Interview with a male advocate
[116] Interview with a female advocate
[117] Interview with a female psychologist (trainer)
[118] Interview with a female police officer
[119] Interview with a female police officer
[120] E.g. Hrdá, L., Znásilnění je vražda duše (Rape is murder of the soul), in *Koulí podcast*, 4.7.2022. Available at: https://www.youtube.com/watch?v=aXNqNJ_AENU, (5.4.2024)

victims too early, so that they are labelled as victims with minimal or no consequences, while the PTSP only develops e.g. 6 to 12 months after the crime[121] .

In the matter of training, the best situation is at the police level, where continuous education and training is mandatory - specifically, training on how to recognise and work with a vulnerable victim is something that police officers go through every year (see interview with a police officer). "*We train the methodologists and the main methodologists, which are actually 14 plus the orderly, so 28.*[122]

Also, the Police have a platform for sharing practices to respond to new challenges:

"We actually have a coordination mechanism, once a month we have a meeting or a videoconference within the framework of the methodologists on vice crime, but we share our practice"[123].

In general, there is a need to separate practice regarding children and regarding children (or adults) with intellectual disabilities. Practice towards children is improving, although it has to be said that this is happening from the bottom rungs of the system - at the moment, police officers are the best and most systematically trained.

The second level is the prosecutors. Here training is not mandatory. From the prosecutor's point of view, this is time that he has to work for, and no one will take his place at that time. They can choose from the training offered by the Judicial Academy, which trains civil servants of the judiciary (i.e. prosecutors, prosecution staff, judges and court staff) free of charge. Commercial training is not recommended for economic reasons; the prosecutor we interviewed has no experience with it in her position.

The third level is the judges. Even they are not obliged to undergo training in any way - that is, not only are they not obliged to undergo training in their current specialisation, but they are not obliged to undergo training at all (i.e. they are not obliged, for example, to undergo 2 training courses of their choice per year). There are no benefits attached to further training, rather they are bound to the same disadvantages as prosecutors - the obligation to catch up on work they were unable to do during training. The practice varies from court to court, depending always on the approach of the court president.

Since the obligation to train is not systematically embedded in the work of the prosecutor or the judge, if the latter wants to undergo any training, he or she has to

[121] For example, the case of a girl who had been raped by her stepfather for a long time, who started to self-harm after the expert opinion was drawn up, and attempted suicide several times, was widely publicized, but the Court of Appeal nevertheless based its decision on the expert opinion and imposed only a suspended sentence, i.e. without imprisonment. Svobodá, T., Krasenská, D., Svědectví znásilněné dívky po pokusu o sebevraždu. Podle znalce netrpěla (Testimony of a raped girl after a suicide attempt. According to an expert witness, she did not suffer), in *Seznam Zprávy,* 18.1.2024. Available at:https://www.seznamzpravy.cz/clanek/domaci-zivot-v-cesku-po-znasilneni-je-temer-bez-nasledku-rekl-znalec-divka-se-predavkovala-leky-243873, (6.4.2024)

[122] Interview with a female police officer

[123] Interview with a female police officer

face minor obstacles that make the whole process difficult rather than encouraging the judge or the prosecutor to undertake further training.

There is certainly room for change here, in a system setting that would support or directly require training[124] .

The second issue is working with children with disabilities and especially with intellectually disabled children. As mentioned above, this issue is almost unknown to the law enforcement officers, and even those who are more interested in the issue of particularly vulnerable victims (e.g. police officers, lawyers, psychologists) have not had training on it.

Although the theory assumes that in the Czech Republic there is a great emphasis on specialization and continuous professional training of persons who come into contact with children as victims of crime, that all the law enforcement staff are professionally trained in this area and in practice these specialists are preferably selected when carrying out procedural acts with child victims and these experts are educated in the field both in theory and in practice, especially in the mediation of knowledge from the field of criminology, developmental psychology, child psychiatry, special pedagogy, social work, etc., From the interviews (all of them) we found out that only the police undergo systematic training and no other profession has to undergo training, on the contrary it is a question of time and in some cases even finances, which they have to spend extra for such training.

In addition to these persons, Probation and Mediation Service officers and social workers working in youth criminal matters are also continuously trained. Specifically, some specialisation courses of the Police of the Czech Republic can be mentioned in this context, where it is usually the police officers who first come into contact with the victim and whose professional training and sensitive approach to the victim seems to be quite essential (this is the specialisation course on "particularly vulnerable victims" held ten times a year). In addition, specialised police officers meet once a year for an instruction and methodology course. Specialist training and preparation for working with victims includes, for example, the provision of initial psychological support, round-the-clock telephone support provided by a crisis intervention group, and the mediation of contact between the victim and an external organisation providing follow-up psychological, psychosocial and socio-legal assistance. The police authorities also have several methodologies for dealing with the child. In order to improve the quality of police work with the child, the methodology Interrogation of a child in a special interrogation room (instructions on how to work with interrogation aids and how to approach the child) has been developed. The aim is for police officers to communicate the instructions in such a way that the children understand the content of what is being communicated and at the same time the instructions are sufficient for criminal

[124] Op. Cit., Hrdá L. In Reportér magázin, Note 34.

proceedings.[125] In the words of the judge, "*And I have to say for myself that those police specialists approach them very nicely. They even have to instruct him, for example, that he is testifying as a witness and that he should tell the truth, so of course they cannot explain it to him in the words of the law, because it is often not as understandable even for an adult, but they can explain it to the child in such a way that he just understands, yes, so that is instruction.*"[126]

Subjects accredited for the provision of services to victims of crime (pursuant to § 39 et seq. of the Crime Victims Act) must, when applying for accreditation to the Register, provide a description of the staffing of the services provided (provision of legal information to victims) and restorative programmes, as well as the professional competence of the persons who will provide these services (education, training, professional training, experience), see § 41 of the Crime Victims Act. These organisations have the particular task of supporting the victim to navigate their rights and obligations, to go through the necessary documents with them, to accompany them to meetings with the authorities, to recommend a suitable legal representative, etc. They also offer psychosocial counselling and provide other services such as debt and family counselling.

04 Provision of support, information, and communication

Interviews with both lawyers and, for example, the probation and mediation service or a psychologist show that the victim is not always sufficiently informed about the process[127] [128] [129]. If the victim does not get to a good lawyer or other good representative, it is quite likely that at least some information will be missed. This may happen for two different reasons: firstly, she may receive the information at a time when she is unable to receive it despite the stress, let alone process it (mainly because of the level of stress); the second reason may be that one authority will rely on the other to communicate the information. Repeatedly during the interviews, respondents said that it depends on who the child finds: "In terms of *the rights of the child, there are a lot of actors in the process, so somewhere in the system the rights of the victim can get lost - it's a lot about who the victim comes across as an advocate or as a representative of the child protection authorities."* [130]

Although, according to the law, anyone can file a complaint for suspicion of committing a crime, children and other persons who are disadvantaged in some way (by age, intellectual ability, social status, membership of a social or racial group) have, in fact,

[125] Initial Report of the Czech Republic on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, p. 21: Avalible at: Convention on the Rights of the Child | Government of the Czech Republic (gov.cz).
[126] Interview with a female judge
[127] Interview with a female NGO representative
[128] Interview with a female advocate
[129] Interview with a female professional, probation and mediation services
[130] Interview with a female professional, probation and mediation services

a relatively limited opportunity to report the crime of which they are victims. As is also evident from other organisations' research on children, children often do not receive support from the adults to whom they confide their problems. Often nothing has happened afterwards, or the adult has not responded to the child's report at all[131] .We see this as the biggest barrier to the child's entry into the proceedings - when the child tells what is happening at home and the response is, for example, a recommendation to clean the house more[132]. Disrespecting the child, their needs and more often than not the situation, the child's views and needs are completely ignored. There is still a paternalistic approach prevalent, where the child is talked about, not with, or without the intellectually disabled child.

The wishes of the respondents in the survey quoted above also show that children are not well informed about their rights (and responsibilities) - as a suggestion for improvement they stated that they would like someone other than their parents to be able to report domestic violence[133] . This is contrary to the Czech legal order, which requires the police to deal with every report, even anonymous ones, and therefore also with those made by children. The low awareness of children about their rights is also one of the significant obstacles for a child victim of a crime (perpetrated by those closest to him/her) to enter into criminal proceedings.

In conclusion, the NGO representative summarised the situation as follows: the system can work with the child as evidence but not as a victim. *"when they need a person as evidence, they know how to take care of them nicely, they have special rooms, etc., but they don't see that the child has other rights and another destiny - for example, I'm not sure that a proxy is appointed for the child, if there is a parent-child dispute, the child protection authorities are usually appointed, but there are not lawyers.*" [134]

[131] Centrum domácího a genderově podmíněného násilí (Moree D. a Nyklová B.) Děti a násilí v blízkých vztazích. Výzkumná zpráva*. (Children and violence in close relationships. Research report. Centre on Domestic and Gender-Based Violence)*. 2023, p.25.
[132] ibidem p.25
[133] ibidem p.50.

[134] Interview with a female NGO representative

06

CHILDREN'S EXPERIENCES OF THE CRIMINAL JUSTICE SYSTEM

First of all, it should be noted that no child with intellectual or psychosocial disabilities who has experience of criminal proceedings could be found. On this issue, we came across the fact that the NGOs were not willing to give us any contact details of any of the clients they work with (without knowing whether they were clients who had been involved in criminal proceedings in the position of a victim, or whether they had come into their care without the situation having been dealt with on a criminal legal level).

We tried to contact children or young adults with experience of criminal proceedings through victims' support organisations. However, none of them provided us with any contact despite repeated requests, the preparation of texts to distribute for children or young adults or the provision of an incentive to participate (financial reward). The reasons are multiple: on the one hand, protection against retraumatization and data protection of their clients were often mentioned by NGOs. We also presume the lack of time and capacity (economic situation of NGOs), the lack of interest in this group of children and some organisations argued that they do not provide legal support/support trough the justice system but only psychological support. Because of a recent participation in another study one organisation also declined participation. At this time, we have not used social media to reach child victims.

This section will therefore draw on reflections from the interviews conducted with professionals and our own experience with victims and the point of view of children as reported in analysis conducted earlier by other researchers.

As already mentioned above, the Czech legal system knows the institute of a so-called particularly vulnerable victim, and this category includes both a child and a person with an intellectual disability, so the subjects of this analysis are theoretically protected by this institute twice.

However, it is clear from the interviews that the law enforcement authorities are able to work in some way with the category of child, but there is a significant problem with the category of intellectual disability, which is then reflected especially in the justifications of court judgments.

In this matter, we can only speak about the experience of reporting crimes against persons with mild intellectual disabilities whose relatives contacted our organization (SPMP CR). After reporting a suspected crime of fraud, in both cases the report was postponed after the victim came to the police station and said that she was happy to give money to the person. No one assessed the "mental state" of this victim, nor did they take into account the victim's potential manipulation or the understanding of the consequences of their actions.

As is evident not only from our interviews but also, for example, from earlier analysis[135], the biggest barrier for a child in reporting a crime is the distrust of adults. As mentioned above, in the Czech legal system, the established term "generally untrustworthy" is

[135] Centrum domácího a genderově podmíněného násilí (Moree D. a Nyklová B.) Děti a násilí v blízkých vztazích. Výzkumná zpráva*. (Children and violence in close relationships. Research report. Centre on Domestic and Gender-Based Violence)*. 2023, p.25.

then considered all people with "mental disorders", sensory disabilities or victims traumatised by a crime. Although experts argue that this designation has nothing to do with whether or not a particular witness is telling the truth, such a designation is clearly stigmatizing and a priori denigrating to certain groups of people[136] . This is also related to the practice where one of the basic questions to be answered by an expert opinion is, in addition to the type and degree of disability, the credibility of the person being assessed.

If a child with a disability is lucky enough to have people around them, then there is some likelihood that the crime will be reported, investigated and adjudicated in court. However, we have already stated above that the systemic set up is in place for the child, but for the disabled this systemic set up does not work. There is minimal knowledge of this issue, and among those who are interested in it (see interview with police officer and psychologist). From the various cases reported in the media, there is a clear attempt to downplay the situation, both at the level of the courts and often also at the level of the police[137] .

In terms of system settings, there are many different bodies that have reporting obligations. Whether it is doctors, schools (teachers) or social protection authorities. However, these professions do not always detect the situation, either because the child moves frequently or because not all the clues can be interpreted correctly and a relationship established with the child so that he or she opens up.

When asked whether there is a systematic and coordinated effort across the proceedings to adopt age-, gender- and disability-appropriate procedural adjustments in criminal proceedings to overcome barriers for children with disabilities (e.g. judges or other actors trying to explain to children in language that is adapted to their needs what is happening in the proceedings, efforts to write child-friendly judgments or summaries, etc.), the answer is no. At the moment, the Czech Republic is learning to work with children as such (except for trained police officers) and with other prejudices and the downplaying of trauma in able-bodied victims; people with intellectual disabilities are a great unknown to most law enforcement.

The research team describes the main needs from the perspective of young adults who were victims in childhood as follows: *"Survivors are aware that they had few options to resolve the situation precisely because they were minors. The situation therefore required 'someone' to intervene from the outside, to stop the violence and allow them to live normally, i.e. without violence. In their case, such a "someone" was not found, and when it did appear, its action was either not aimed at stopping the violence at all (e.g. it was supportive, but not overtly interventionist), or it was one-off,*

[136] ŠVARC, J. Posuzování duševního stavu v trestním řízení a poskytování psychiatrické péče. Psychiatrie pro praxi, *(Assessment of mental state in criminal proceedings and provision of psychiatric care)* 2014, 15 (1).
[137] Zabloudilová T., Posadil mě do auta a ujížděl. Nejhorší bylo, když mi znásilnění nevěřili (He put me in the car and drove off. The worst part was when they didn't believe I was raped), in Podcast *Hranice Násilí*, 27.9.2022, Radio Wave, Available at: https://wave.rozhlas.cz/posadil-me-do-auta-a-ujizdel-nejhorsi-bylo-kdyz-mi-znasilneni-neverili-8836089 (8.3.2024)

or it was isolated and thus failed to start a systemic stop to the violence. The question, to which research participants did not immediately relate, remained who that potential 'someone' might be. We therefore focus on the specific situations they outline." [138]

They go on to describe the need for someone to like them. "*Beyond the basic setup of a secure supportive relationship, the need for someone to intervene from the outside is crucial - often without a specific idea of who that would be. However, survivors reflect that it was not possible to handle the situation in the role of a child on their own, while being forced to remain in the situation was also unacceptable. But change could not be achieved without outside help.*" [139]

As we have already described in the research, "*another parameter of the survivors' needs was the experience that when they did talk about the violence somewhere, no one believed them and their willingness to talk did not have the appropriate effect. (...) So there is also a need on the part of the survivors to be believed that violence is happening to them.*"[140]

One of the possible causes may also be the mind-set of society - until 2014, people with intellectual disabilities were completely deprived of their legal capacity and all actions were taken on their behalf by their guardians. This perception of people with intellectual disabilities as those who are unable to act legally even in the most common areas, and therefore all decisions are made for them by someone else, is still deeply rooted in society. Even in other areas, we are only very slowly abandoning this paternalistic thinking (in relation to children, to people with disabilities and other vulnerable groups).

[138] CENTRUM DOMÁCÍHO A GENDEROVĚ PODMÍNĚNÉHO NÁSILÍ (MOREE D. a NYKLOVÁ B.) Děti a násilí v blízkých vztazích. Výzkumná zpráva*. (Children and violence in close relationships. Research report. Centre on Domestic and Gender-Based Violence)*. 2023, p.45.
[139] ibidem p.47.
[140] ibidem p.47.

07

CONCLUSIONS AND RECOMMENDATIONS

01 Promising practices

In the course of preparing this report, we came across three interesting and promising practices.

The **first** is the potential of the Probation and Mediation Services, which are low-threshold, free and available in every district: “I would like to see a change in the position of particularly vulnerable victims - the police always tell us about them, they have the right to a free lawyer, but we have university-educated people, we can accompany them throughout the proceedings. We provide legal information on how criminal proceedings are conducted, what they can do, what they are entitled to, that they can give evidence in the absence of the perpetrator, that they can ask to be interviewed by a person of the same sex. We can write down all their requests, that they want to be informed about the release of the perpetrator, that they want to testify in absentia, ... We can be an escort as a confidant, for example. I'd like the police to give those victims the information right from the start. I mean, I would like the police to be legally obliged to inform the victims that they can contact us and we can support them with that, guide them through the procedure, help them navigate it. For myself, I would see it as the victim needs advocates, we are not advocates, we are more like social workers in the justice system, but they also need us as a confidant, as a guide through the procedure."[141]

The **second** is comprehensive professional support for children, adolescents and their parents who have experienced or are experiencing domestic violence, comprehensive professional assistance aimed at overcoming their adverse social situation and living a life free from the presence of violence. FOR CHILDREN: - crisis intervention - long-term individual therapy - group therapy - movement therapy - art therapy - video interaction training for parents with children FOR ADULTS: - 24-hour telephone line - chat and email counselling - counselling for people at risk of domestic violence - residential services for women and mothers with children

This wide range of support allows the involvement of children without verbal communication (art therapy, movement therapy) and in several types of therapy at the same time, where they can respond to children with different differences (autism, different mother tongue, etc...). The special educator just praised the interdisciplinary collaboration within the organization (clinical psychologist, psychiatrist, therapist, social worker and special educator and the simultaneous collaboration with the child and the parent [142].

[141] Interview with a female professional, probation and mediation services
[142] Interview with a male social worker/special educator, victim support organisation

The **third** example of promising practice is the first Children's Advocacy Centre for complex and specialised assistance to child victims of violence (especially in the family) - e.g. physical, psychological or sexualised. It works on the basis of the Barnahus method, according to the Swedish model. It has been fully operational only since 1 January 2024.

In the Children's Advocacy Centre, it is possible to listen to a child in a specially equipped and friendly environment so that he or she does not have to go to the police station, court, doctor or child protection authorities. The interrogation room is equipped with scanning technology that enables full-fledged recordings to be made for investigation and court proceedings. An experienced team of professionals trained to interview children, provide trauma-focused therapeutic support, and work with at-risk families is present at the centre. The Children's Advocacy Centre is designed for multidisciplinary collaboration of professionals and institutions involved in child-focused case management provided in one child-safe location.

02 Conclusions

In the Czech Republic, the status of victims of crime is regulated by a special Act on Victims of Crime, which includes the term "particularly vulnerable victim". A particularly vulnerable victim is, inter alia, a child or a person with an intellectual or other psychosocial disability. This particularly vulnerable victim has increased protection against retraumatisation, secondary victimisation, the right to a lawyer paid for by the State, etc.

However, the system is completely inaccessible to children with intellectual or psychosocial disabilities because in practice not all the principles and rights listed are applied so that their rights are effectively protected and enforced.

Even the practitioners we interviewed did not have more than two experiences with a child with intellectual disabilities in their working lives, but most of the people we interviewed had no experience at all.

The most frequently cited barrier to child victims with intellectual or psychosocial disabilities entering criminal proceedings at all was prejudice and ignorance of the issue. This is firstly in terms of the need for adequate information and support in the criminal justice system (not available from professionals). Expert opinions are lengthy and often unhelpful. Generally, communication with the child is inadequate and this still emerges as a greater obstacle for the child with intellectual or psychosocial disabilities. In particular, the issue of intellectual disability/psychosocial is not sufficiently researched from a criminal law and component perspective - e.g. there are insufficient studies on post-traumatic syndrome of persons with intellectual disabilities for the purposes of expert evidence, even in foreign languages. This is then a problem in the proceedings themselves, because by such a person manifesting post-traumatic

syndrome in a different way from the tables, the consequences of the crime are downplayed and the seriousness of the crime is judged accordingly.[143] .

There is a lack of practice with procedural adjustments for children with disabilities - most actors do not imagine anything concrete except simplified communication and vocabulary.

The biggest obstacle in the system is that the support for children is not well systemised and coordinated. Thus, there is no single, coordinated procedure when a child becomes a victim of crime. And the child meets an incredible number of people[144] - thus, cannot get feelings of safety and insight. The legislation describes in detail the responsibilities of all the actors but the multiplicity of bodies that have a duty of information is detrimental to the victim in some cases, what happens is instead of everyone educating the victim, no one educates the victim and relies on the other person to do it. Moreover, cooperation between actors depends on "who you bump into" and thus there is no possibility to rely on a uniform and quality procedure - in general, there was quite a mistrust between actors, especially from NGOs and lawyers dealing with this issue.

Accompanying a child is not guaranteed by law, but it is highly desirable.

Legal representation - although paid for by the state but the quality of the work of the lawyers (ex-offo) is problematic its early entry into the proceedings so that the rights of the child are protected and promoted from the outset.

Research has shown that prejudice and ignorance of child victims, and the issue of intellectual or psychosocial disability is one of the most pressing barriers.

At present, a paternalistic approach still prevails, most often manifested by the "victimless victim" attitude and the fact that CSWs often do not trust these persons a priori (in interviews it emerged several times that children are still not considered trustworthy). In this case, however, it is not a systemic change, but a change in mindset, which is of course much more complex.

[143] Interview with a psychologist, various court decisions, e.g. beztrestu.cz

[144] according to the anonymised case report of the LOCIKA Centre (see https://www.centrumlocika.cz/detske-advokacni-centrum):
A family in which both the wife and children have been victims of serious domestic violence will come into contact with 47 different people in 15 different locations during the investigation and follow-up assistance!
The children are spoken to by 29 different people throughout the investigation and resolution of the case, and are subjected to 2 types of forensic examination and several types of interviews (at the OSPOD, at the police and in court).

03 Recommendations

Recommendation 1: Improve expert activities and increase quality control of forensic experts

- To ensure a sufficient number of experts, which is very dismal, especially in the field of psychiatry and psychology, also by setting more flexible conditions or increasing their motivation.
- To ensure that they are sufficiently monitored, as the quality of some reports is poor (e.g. use of the possibility to remove experts who perform poorly from the list of experts).
- To develop methodologies that include children with specific needs.
- To carry out studies on post-traumatic syndrome of people with intellectual and psychosocial disabilities for the purpose of expert opinions.

Recommendation 2: Assess the child's needs throughout the process

Support for victims should be unconditional and timely. Therefore:

- Create simple input material (e.g. a "checklist") to immediately capture the victim's support needs - his/her disability, how his/her involvement may be complex, what communication needs he/she has, what support he/she uses in daily routine (school, family, services can be used to supplement information). It is not possible to wait for an expert opinion to work with a victim with a disability,
- signpost what then needs to be done so that all actors in the system respond in a unified way,
- include an assessment of need as part of the file for all files,
- have universal materials in easy-to-read and pictogram format for easy communication with children with cognitive disabilities,

- be able to require specialised one-to-one support from an independent professional with specialist skills in supporting people with communication and cognitive impairments (e.g. an AAC specialist).

Only early identification of the need for support allows for effective support to be provided to these persons, which ultimately leads to a more consistent (and often faster) fulfilment of the purpose of the entire criminal proceedings.

Recommendation 3: Strengthen/introduce regular and quality training for persons who come into contact with children during criminal proceedings

Anyone who comes into contact with these victims, or even makes decisions about them, should be properly trained, because currently the traumas of these victims are greatly downplayed and minimised.

- Introduce regular training for the legal profession on the needs and rights of children, not only those with intellectual disabilities:
  a. Extend regular training for police officers to recognise children's support needs beyond their vulnerability as a child. As the first point of contact with a victim is most often a police officer, it seems appropriate to create regular and high-quality training as well as to develop clear methodologies for the law enforcement authorities in this area.
  b. Introduce training (both professional and skills) for advocates to improve communication and treatment of children so that they can adequately advocate for their rights whether they represent them as a proxy or not.
  c. Introduce training for prosecutors and judges when they have an agenda concerning children and a specific section for children with disabilities. It is necessary that they do not rely only on expert opinion and that they have the possibility to set procedural adjustments according to the needs of the child.
- Develop recommendations and methodological materials for all professional groups to ensure that they have adequate uniform and quality material at their disposal.

Recommendation 4: Coordination and case-management based on the rights and interests of the child

- Ensure that there are low-threshold persons (outside of institutions) available to act as an authority figure to whom children can confide.
- Set up a victim-centred approach - research has shown that the child is primarily the object of the legal process and the type of witness.
- Effective use of the capacity and competence of the PMS for child victims, especially in regions where there are not enough victim support services (the PMS operates in all judicial districts of the Czech Republic. In total, there are 74 centres)[145].
- Extend the good practice principles of case-management or Barnahus methods, which work so far only in some organizations.
- Increase cross-sectoral collaboration between actors and opportunities to jointly develop systemic changes in practice, across ministries.

Recommendation 5: Introduce the figure of the judicial intermediary (facilitator)

- If the child has a disability a facilitator or mediator may be needed to interpret the way the child communicates, and a mediator is needed to "interpret" the child's speech so that it is more understandable to the professional, and vice versa.

[145] https://www.pmscr.cz/pro-obeti/

Recommendation 6: Punishment according to the severity of the offence and the qualified offence

- Harm and consequences may occur differently for children with intellectual or psychosocial disabilities, so the severity of the offence should be taken into account, not the consequences.
- Include, through amendments to the Criminal Code, disability as a ground for increased rates for individual offences (whereas currently, an offence against a person with a disability is only an aggravating circumstance, which means that it will only affect where in the range of the base rate the sentence will be determined).

Recommendation 7: Consolidate files and ensure their availability online

- Allow online access to files to ensure their availability in time, place and costless.
- Consolidate files to guarantee continuity in victim support and the provision of procedural adjustments.

Recommendation 8: Collect data on child victims and victims with disabilities

- Collect data on victims, disaggregated by age, gender, residence and personal characteristics (including type of disability).
- Collect data on procedural adjustments to establish practice-based recommendations.

Recommendation 9: Raise awareness of the issue in society and increase the perceived credibility of children, including children with intellectual or psychosocial disabilities

- Investment in public space is needed to improve access for children, including those with intellectual and psychosocial disabilities in mainstream society.
- Pay more attention to victims with disabilities in all activities.
- Map who the child victims are and publish official police and justice statistics.
- Create awareness-raising campaigns for children with disabilities, for those who care for them (at school, at home, in social services) and for the wider public.
- Expand programmes and services for child victims to include approaches that take into account the needs of people with disabilities.
- Involve children with intellectual and psychosocial disabilities because it is their right and because it will help to increase the effectiveness of any systemic measures and changes.

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