



Preliminary Submission:

European Union Victims' Rights Directive and the Rights of Persons with Disabilities

In response to the Evaluation of the Victims' Rights Directive – open public consultation – questionnaire

EUROPEAN UNION

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1. Introduction

1. The [Validity Foundation](#) is an international non-governmental human rights organisation that uses legal strategies to promote, protect and defend the human rights of people with mental disabilities worldwide.

2. Over the past two decades, Validity has gained substantial experience into the nature of the barriers and challenges experienced by people with disabilities in accessing justice. Given the extent of the barriers and the appalling experiences of so many people with disabilities in the justice system, enhancing access to justice for persons with disabilities is a key strategic priority for Validity. Further to this, Validity is currently coordinating two EU-funded projects on access to justice for victims of crime which are focused on how the EU Victims' Rights Directive (Directive 2012/29/EU) supports and upholds the rights of persons with disabilities in 8 EU member states. The projects are 'Child Friendly Justice: Developing the Concept of Social Courts Practices' (878552 – CFJ-DCSCP) and 'Voices for Justice: Information and Communications for Victims of Crime with Disabilities' (878604 — InfoComPWDs).

3. Validity's approach to the rights of victims with disabilities rests on the rights and obligations established by the United National Convention on the Rights of Persons with Disabilities (CRPD). The CRPD has been signed and ratified by all EU member states and has also been confirmed by the European Union itself, making it an "integral part of the EU legal order."¹ Validity therefore seeks harmonious interpretation of the EU Victims' Rights Directive in accordance with the broader obligations created by the CRPD, and in respect of the latter, specifically Article 5

¹ <https://fra.europa.eu/en/cooperation/eu-partners/eu-crpd-framework/promotion> (accessed: 10 Oct 2021).

(equality and non-discrimination), Article 12 (equal recognition before the law), and Article 13 (access to justice). Beyond this, a number of other sources of international human rights law provide normative expression to connected guarantees related to access to justice, and fair trial rights for adults and children with disabilities, including notably the UN Convention on the Rights of the Child (CRC) and the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). This paper assesses and reviews the impact of the EU Victims' Rights Directive within this broader framework of normative standards. The views presented here are preliminary, in that the positions advanced draw in part on findings from the two abovementioned ongoing projects, both of which will be completed in 2022. This report is structured along 3 of the evaluation criteria set out by the European Commission, namely: 1) Relevance; 2) Effectiveness; and 3) Coherence.

2. Summary

4. Asserting and upholding the rights of victims with disabilities is crucial, especially given how clearly Validity's work demonstrates that persons with disabilities are disproportionately targeted for some of the most heinous crimes, including those which amount to torture and other forms of ill-treatment: see for example Validity's recent report '[Tackling Torture: Victims with Disabilities in COVID-19 Outbreak](#)'. Additionally, initial findings from two EU co-funded projects coordinated by Validity have found that victims with disabilities are practically invisible in the justice system and are struggling to access even the preliminary stages of justice due to systemic barriers that deny them the ability to access complaints systems, receive independent support, advocacy and legal assistance, and the lack of willingness of investigative bodies to act on complaints made by victims of crime with disabilities.

5. Arguably, victims' rights have not been a core concern of justice systems across Europe, and the Directive is an important acknowledgement that justice is better served through a more victim-centric approach. As such, the Victims' Rights Directive represents a positive and important vehicle for further eliciting the minimum standards necessary within criminal justice processes in order to enhance respect for the rights of all victims of crime. The Victims' Rights Directive has led to important legislative and practical changes in several countries, and in particular the establishment of specialist services for victims of crime.

6. Nevertheless, the Directive has had little practical impact specifically for victims of crime with disabilities, be they adults or children. In Validity's assessment, the Victims' Rights Directive in its current form is not fully in alignment with the international human rights framework described above, and our view is that standards more specifically addressed and responsive to the specific barriers faced by victims of crime with disabilities are necessary. There are also major shortcomings with the implementation of the Directive at the Member-State level, and a near absence of disability-responsible accommodations, adjustments and support-provision which may be necessary to ensure effective participation and recognition of victims of crime with disabilities.

7. Validity's key concerns about the Directive include the following:

- The Directive fails to acknowledge and protect the right to legal capacity of persons with disability within criminal justice procedures, instead tacitly accepting deeply paternalistic notions of protection and best interests of victims of crime with disabilities, this representing one of the most widespread and systematic ways in which victims with disabilities continue to have very low status within criminal justice processes;

- The Directive does not explicitly acknowledge the discrimination experienced by persons with disabilities or the barriers that they experience in accessing justice, be these environmental, attitudinal, structural, or as a result of ‘disabling’ and exclusionary legal rules and procedures;
- The Directive does not acknowledge that the rights of victims with disabilities must be positively upheld nor provides explicit guidance on how to do that, nor does it make explicit that the provision of procedural accommodations within justice processes are of immediate effect and are never subject to a ‘reasonableness’ test;
- The Directive does not fully and unambiguously ensure that persons with disabilities in Member States are provided with accessible information, physical access to premises, interpretation or communications assistance, or any other support necessary for equal access to justice in a non-discriminatory manner;
- The status of victims in criminal proceedings could be more explicitly outlined and strengthened, in a manner that promotes a right-based and victim-centric approach founded in the principles of direct participation, recognition, and redress for harms that have been suffered; and
- The Directive is insufficiently sensitive to victims of crime with disabilities who experience multiple and intersecting forms of discrimination, such as for girls and women with disabilities, persons with disabilities from national or ethnic minorities, persons with psychosocial, intellectual and multiple disabilities, and persons with disabilities resident or detained in residential or other institutional settings.

8. Bearing in mind the key concerns outlined above, Validity makes the following preliminary recommendations:

- Ensure that the Victims' Rights Directive and its implementation complies with the international obligations of Member States under the CRPD Article 4 (General Obligations), and other relevant rights guaranteed under the CRPD, in particular Articles 12 and 13;
- Review the Victims' Rights Directive and its implementation with reference to the [International Principles and Guidelines on Access to Justice for Persons with Disabilities](#) which provides a practical tool to support the design and implementation of justice systems enabling equal access to justice for persons with disabilities;
- Ensure full recognition of the right to legal capacity of all persons with disabilities in explicit terms, both for adults and children with disabilities;
- Provide detailed policy and implementation guidance on key issues of implementation of the Directive, to ensure that Member States are fully informed on the detail of their obligations, including, among other issues, procedural accommodations, reasonable accommodations, accessibility, support in the exercise of rights, the provision of accessible information, and guaranteeing effective communication in a manner that is disability, gender and age-sensitive;
- Provide guidance on the status and role of victims in the criminal proceedings in order to better uphold their right to participate in all stages of the criminal justice process, and placing a particular focus on identifying and dismantling barriers that prevent persons with

disabilities from initiating complaints and accessing the preliminary stages of criminal justice processes;

- Emphasise the obligations of equality and non-discrimination as these apply to persons with disabilities, and their implications for the justice system. This is likely to include universal accessibility, mandatory training for practitioners within the justice system, independent monitoring especially focused on discrimination, and collecting relevant statistics.

9. Additional and more detailed recommendations will follow completion of the Child-Friendly Justice and the Voices for Justice projects in 2022.

3. Assessment

3.1 Relevance

10. The Directive aims to provide a common minimum standard of victims' rights and protection across the EU and ensure equal protection for all victims. The aspiration and principles of the Directive support the rights of victims with disabilities in terms of equality and non-discrimination. However, the Directive does not draw attention to the specific rights of persons with disabilities and the obligations of Member States to ensure equal access to justice and non-discrimination. In respect of victims of crime with disabilities, these principles cannot remain passive normative obligations, but require sustained, practice and systemic actions on behalf of practitioners and professional in the justice field. Validity would argue that strengthening the practical obligations and rights within individual cases are both essential given the routine discrimination experienced

by people with disabilities in the administration of justice, and the extent of the barriers people face in accessing justice.

11. The clearest and most direct reference to persons with disabilities in the Directive is in Recital 15:

'In applying this Directive, MS should ensure that victims with disabilities are able to benefit fully from the rights set out in this Directive, on an equal basis with others, including by facilitating the accessibility to premises where criminal proceedings are conducted and access to information'.

12. This is important guidance, however, by giving the example of physical access to premises, the Directive arguably fails as a vehicle to protect the wide range of barriers faced by victims of crime with disabilities which go far beyond physical and sensory accessibility.

13. A further example is Recital 9, which identifies disability as a ground 'to be taken into account' by all competent authorities. This fails to uphold the rights of victims with disabilities to equal access to justice and does not meet the standards of non-discrimination, particularly with respect to the provision of procedural accommodations in the justice process. The Directive does not explicitly recognise the right to procedural accommodations in line with Article 13 of the CRPD. Indeed, it is essential that criminal proceedings be adjusted as necessary to enable participation in the justice process, in harmony with the will and preferences of the persons concerned. Instead of adopting a welfarist approach, it would be helpful if the Directive made it explicit that individual assessments should be understood as universal screening processes which, with the informed consent of the person concerned, are used to identify barriers and specific procedural accommodations required to guarantee effective and real participation. As is clear from the text of

the CRPD, procedural accommodations (as opposed to *reasonable accommodations*) should never be conditioned by a proportionality or reasonableness requirement. In fact, the language repeatedly used in the Directive of ‘taking into account’, ‘taking appropriate measures’, as well as deferring to national laws is unclear and confusing and does not adequately protect the rights of victims with disabilities, nor does it adequately convey the legal obligations of Member States under international human rights law.

14. As such, while the Directive is relevant to victims with disabilities, in effect it fails to provide a strong enough framework to identify and overcome the high barriers to justice faced by persons with disabilities in a manner consistent with the CRPD.

3.2 Effectiveness

15. The preliminary research in both projects found that transposition of the Directive by Member States is inconsistent and highly variable. For example, in Italy, the criminal procedure code was amended to include narrow assessments of vulnerability and interviews revealed a concern by criminal justice professionals to ensure child victims are protected against secondary victimisation. In some Member States, provisions were transposed verbatim (Lithuania), or were not accompanied by an allocation of sufficient resources to ensure the provisions can be complied with in practice (Bulgaria, Romania).

16. This situation is not conducive to an environment that would lead to the consistent and appropriate implementation of victims’ rights. Early findings concerning implementation of the Directive include:

- Lack of awareness and buy-in by criminal justice professionals and support workers on the contents of the Directive;
- Lack of information available in a language that victims can understand, including plain language, easy-to-read, sign language, audio, and braille;
- Lack of expertise and training to support professionals and practitioners in the justice system to understand their obligations viz victims of crime with disabilities, and a lack of theoretical and practical grounding in order to fulfil these obligations;
- Lack of financial support to support services designed to respond to the needs of victims of crime generally, and an overall lack of sensitivity and responsiveness of those services that do exist to the specific issues faced by victims of crime with disabilities; and
- Lack of coordination between support services, police, prosecutors, and other relevant actors – this has had repercussions on the ways in which people access justice in the first instance, and on the implementation of the right to individual assessment.

17. The effectiveness of the Directive is hampered by:

- i) the failure to explicitly state the rights of persons with disabilities, and
- ii) ambiguous language and the lack of clear guidelines.

- i) Failure to explicitly state and promote the rights of persons with disabilities

18. Most fundamentally, the right to legal capacity is not guaranteed or even referred to in the VRD. In fact, references to ‘capacity’ in the Directive have the effect of undermining the rights of people with disabilities in practice, and further limiting their access to justice. This is because ‘capacity assessments’ focused on cognitive functioning is frequently used in a manner that excludes persons with disabilities from justice processes, including within rules of evidence. These practices violate the right to legal capacity and access to justice of persons with disabilities under Articles 12 and 13 of the CRPD.

19. The term ‘capacity’, including ‘emotional’ and ‘intellectual’ capacity, is referred to in the Recitals as a factor to be ‘taken into account’ when deciding, for example, *whether* to involve a victim in restorative justice, and when ensuring that a victim can be understood in proceedings. Referring to capacity in this way, without prefacing States’ obligations to guarantee legal capacity on an equal basis with others, implicitly allows disablist, paternalistic and exclusionary approaches towards victims of crime with disabilities, including that any perceived ‘lack’ of capacity are acceptable grounds to curtail or reduce victims with disabilities’ participation in criminal justice proceedings.

20. The Directive prohibits discrimination on the grounds of disability, however, discrimination on the disability is not defined in the Directive and Member States are not obliged or guided to define disability discrimination in their criminal law or criminal procedure. Indeed, welfarist approaches to persons with disabilities historically viewed the exclusion of people from proceedings as a protective measure, without recognising that such practices in reality undermine and violate the right to access justice.

ii) Ambiguities and precision of guidance

21. Commission guidance regarding Article 3 of the Directive is the most specific regarding the need to consider people with disabilities, and there are also some references in Articles 4, 5, 6 and

7. Relevant points where guidance is lacking or is ambiguous are the following:

The Directive	Validity's remarks
<p>Article 3(1) the Directive seeks to ensure that victims – based on their personal characteristics (e.g. disability, etc.) – understand and can be understood during criminal proceedings (linguistically or otherwise) and that authorities pro-actively assist victims to do so throughout the criminal proceedings</p>	<p>There is no identified mechanism to ensure that the authorities proactively assist. Notably there is no communication/information barriers assessment. This could be enhanced through adopting an approach based on universal screening.</p>
<p>Article 3(2) to take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood and is intended to cover explicitly the personal situation of a victims regarding literacy, hearing, speech, sight impairment, etc</p>	<p>The right to sign language is not mentioned in Article 7 (right to interpretation and translation) and the right to a proactive assessment of procedural accommodations such as an intermediary or augmented communication are not mentioned anywhere in the Directive or Guidance.</p>
<p>Member States ‘are invited to consider developing procedures allowing authorities to</p>	<p>The Guidance includes a reference to ‘Easy Read’, however it is presented as a good</p>

<p>assess the communication needs and constraints of each individual victim, from the victim's first contact with the criminal justice system. The assessment process should look at all factors affecting the victim's ability to communicate and include any language requirements or other needs that must be met to ensure the victim understand the information provided and is able to be understood. This assessment should also include all factors affecting the victim's ability to cope with the consequences of the crime'.</p>	<p>practice, not as a reasonable or procedural accommodation that should be required under at the national level. Sign language/ augmented communication are not identified anywhere in the Directive as being included in the term 'any language requirements or other needs'.</p>
<p>Article 7 guarantees a specific right to interpretation and translation</p>	<p>Sign language is not mentioned in the Directive, Recitals or detailed Commission guidance.</p> <p>No other form of communication support is mentioned such as intermediaries or augmented communication. These two points are major oversights, considering the purpose of Article 7 is to facilitate participation in formal proceedings.</p> <p>Even if the right to sign language interpretation could be inferred, it would only</p>

	<p>apply for victims with a formal role in the proceedings. For those countries where victims do not have a formal role, this right is not available and/or unenforceable.</p>
<p>Article 8 on the right to access victim support services, ‘in accordance with their needs’</p>	<p>Commission Guidance says that needs assessment is possible and can be combined with the Article 22 (individual needs assessment), but it is not required. Article 22 is focused on protection needs rather than support needs or even communication needs or procedural accommodations, and participation.</p>
<p>Article 22 on individual assessment of specific protection needs against secondary and repeat victimisation</p>	<p>The most relevant measure is (a): ‘interviews with the victim being carried out in premises designed or adapted for that purpose’.</p>
<p>Article 23 on the right to protection of victims with specific protection needs</p>	<p>Commission guidance does not refer to any disability considerations to be taken into account with regard to any Article 23 protections.</p>

22. Taken together, in practice, the lack of clarity in terms of rights, together with the ambiguous language and lack of concrete guidelines, undermine the potentially positive impact of the Directive on the extent and quality of participation of victims within criminal justice processes specifically, and more generally insufficiently support advocacy in the development of more targeted support services that are geared up for and responsive to the needs of victims of crime with disabilities.

3.3 Coherence

i) Concerns over coherence within Victims' Rights Directive

23. There are three main concerns with the internal coherence of the Victims' Rights Directive:

- Recital (20) and Articles 6, 11, 14 only covers partial participation rights, by deferring to the role of the victim in accordance with national laws, which themselves often reduce or overlook the crucial importance of victim-centred approaches within criminal justice. Indeed, national legislation in different Member States means victims, both children and adults, are primarily treated as evidence, with narrow participation rights. This is not in alignment with the reparative component of criminal justice as foreseen within international children's and disability rights discourse and standards. Validity believes that there is a real need to strengthen more comprehensive and holistic forms of participation of victims of crimes with disabilities in such processes, as set out in Article 1, without deferring to defective national laws which continue to confer a lower status on injured parties.

- There is no provision for an assessment of needs in terms of procedural accommodations, provision of information, how to facilitate effective communication, and any other support needs. This is a missed opportunity and risks undermining the implementation of the Directive as there is no clear basis on which to protect many of the needs identified in the Directive.
- There is no monitoring mechanism with regards to prevention of discrimination on the basis in terms of how the Directive is implemented. This is necessary in order to be confident of the Directive's implementation across Member States and its relevance and effectiveness for all victims.

ii) Concerns over coherence between Victims' Rights Directive and EU legislation and policy

24. There are two main areas where the Victims' Rights Directive as it applies to victims with disabilities intersects with other EU legislation and policy. First is in relation to specific crimes, such as human trafficking and terrorism; second is in relation to disability rights.

EU Directives applying to specific crimes

25. There is a degree of complementarity between Directive 2012/29/EU and Directive 2004/80/EC on compensation, 2011/36/EU on human trafficking, 2011/93/EU on sexual exploitation of children and Directive (EU) 2017/54 on combatting terrorism. Positively, several provisions implementing the rights to assistance, support and protection of victims of crime described in the Victims' Rights Directive were implemented, albeit partially on account of the above directives.

26. It has been found that reform by Member States has often been piecemeal and not holistic. Indeed, given the specific nature of the crimes that these Directives target and implementation in connection to only these specific crimes, preliminary research has found that in some member states there are very different measures in criminal proceedings depending on the crime under investigation. Measures that could and should be extended to other crimes. For example, in Italy, while criminal procedure sets out different safeguards and protective measures for children who are victims of sexual exploitation or human trafficking, including questioning to occur with the support of a psychologist, such is not mandatory for other crimes. In Lithuania, there is only evidence of specialised victim support services for gender-based violence, sexual exploitation or human trafficking. We found no evidence of specialised services that cater specifically to the specific situation of person with disabilities and for other crimes.

27. In order to ensure a holistic victim-centric approach, rather than crime-centric, the relationship and consistency between the Victims' Rights Directive and other EU Directives focused on specific crimes should be reviewed and streamlined. The Victims' Rights Directive establishes the minimum rights for victims of crime in general, and as such should be the reference for all victims, with additional rights granted where appropriate through other legislation, depending on the nature of the crime.

European Commission Strategy for the Rights of Persons with Disability, 2021-2030

28. The European Disability Strategy aims to progress the implementation of the CRPD across the EU, including equal access to justice and legal protection. It acknowledges the requirement for investment, action and coordination within the EU and across Member States. The proposals in the strategy include strengthening support for victims of crime in line with the Victims' Rights

Strategy (2020-2025) and providing guidance to Member States on access to justice for persons with disabilities to comply with the CRPD.

29. As stated previously, the OHCHR ‘Principles and Guidelines on Access to Justice for Persons with Disabilities’ provides structured and comprehensive guidance on the rights of persons with disabilities and their implementation, and would support coordination within the Commission to ensure that the approaches to victims’ rights and disability rights are consistent and holistic. In all reviews, reports, events, etc., there should be representation on both disability and victim rights.

- iii) Concerns over coherence between Victims’ Rights Directive and international disability and human rights law.

30. Positively, the Victims’ Rights Directive shows some sensitivity to different barriers and situations that children and adults with disabilities may face in criminal proceedings. Particularly, most Member States have identified, at least in legislation, the availability of interpretation in criminal proceedings and materials in braille. There is also evidence that, in a few countries, appropriately trained professionals have been able to give information, which children felt it was sufficient, respectful and helped them understand the proceedings.

31. However, the lack of explicit and clear wording in some provisions hampers coherent implementation of the Directive that is tailored to specific situations and personal circumstances of child or adult victims with disabilities, or in migration, or when deprived of parental.

- i) Articles 1 and 3 - Despite Article 1 prescribing that all victims of crime should receive information and support, only Article 3 mentions a need to “take into account the personal characteristics of the victims, including any disabilities” for the adoption of measures to

ensure their right to understand and be understood. It unfortunately does not go as far as setting out a right to procedural accommodations, which is paramount to enable participation of victims with disabilities, both adults and children, and as required under the CRPD (Article 5, 7, 12 and 13). Adjustments could include regular breaks, emotional support, communication support through intermediary and the use of alternative or augmentative forms of communication. Procedural adjustments should be disability and gender sensitive, and age-appropriate, and not subject to a proportionality or reasonability judgement. Without these adjustments, persons with disabilities are unable to exercise their right to legal capacity.

- ii) Article 7 – Considering the aims of ensuring participation, it is paradoxical that the right to sign language interpretation is not explicit in the Victims’ Rights Directive. Other forms of interpretation through intermediaries or alternative or augmentative communication are also not laid out, as required by Articles 5, 7, 12 and 13 CRPD.
- iii) Article 4 and 6 – “accessible” should be anchored to CRPD obligations. Principle 3 of OHCHR guidelines go as far as listing 10 different ways on how access to information may be fulfilled: including sign language, video and audio guides, telephone line advice and referral services, facilitated communication, braille, etc. This article should be open-ended to enable the provision of information through augmentative forms of communication (Article 5, 7, 12 and 13 UNCRPD), and much more comprehensive information should be

reviewed as provided by the Committee on the Rights of Persons with Disabilities in its General Comment No. 2 on accessibility.²

- iv) Article 22 – the focus on “protection needs” under Article 22 suggests a protectionist approach, which seems incompatible with guidance provided by the CRC (General Comment no. 13). Contracting parties are required to ensure participation of all children, in line with their evolving capacities, to ensure decisions are made in their best interest and for their purpose provide age and gender-appropriate procedural accommodations (see General Comment no. 13 of the CRC, and General Comment no. 1 on Article 12 of CRPD).
- v) Furthermore, individual assessment should be conducted to identify participation barriers and determination of the supportive measures to enable participation and decision-making by persons with disabilities. This is consistent with OHCHR International Principles and Guidelines on Access to justice whereby national authorities are required to “create an actionable and enforceable right to receive the individually determined procedural accommodations, including support, necessary to enable persons with disabilities to participate effectively in all proceedings in any court, tribunal or forum’ (1.2.i)”.
- vi) Barriers can arise in many forms, including physical, social, economic, family background, nationality, care arrangement and living situation. Right to individual assessment should give an opportunity for criminal justice professionals to be aware of situations such as lack of contact with or mistreatment by guardians, or violence within institutions against adults and children.

² https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/2&Lang=en (accessed: 20 Oct 2021).

vii) We urge the European Commission to update the Victims' Rights Directive to be closer in line with its own and other international obligations. The International Principles and Guidelines on Access to Justice for Persons with Disabilities developed by the Office of the High Commissioner for Human Rights (OHCHR) provides a strong framework for the interface between access to justice and UNCRPD that should be used as well by the Victims' Rights Directive.

Case Studies

32. Two case studies are presented here to illustrate the actual experiences of people with disabilities in the criminal justice system. The first is from Lithuania, and second from the Czech Republic.

Lithuania

This is an extract from the Lithuanian national report from the Voices for Justice project (878604-InfoComPWDs). The research was conducted by Psichikos Sveikatos Perspektyvos (Mental Health Perspectives – PSP) based in Lithuania.

33. A blind person was travelling in Vilnius in a taxi and as he was getting out of the taxi, he noticed that his mobile phone was gone. The taxi driver responded by saying that the mobile phone probably fell in between the seats and how it is too difficult to reach it, and that she will return the phone to him after going to dismantle the seats, and to get to the mobile phone. She never came back to him with it; the police was informed but notified that the person himself must somehow make it to the nearest police station. Nothing was ever really done about the theft, the victim gave his statement and even though the taxi company had all the details of the driver, nothing much happened. The pre-trial

investigation seemed to have been started but the victim only found out about that when he decided to share the situation with the press, a month or two later. The victim was never directly informed if the pre-trial investigation was even started, he eventually found out more details via the press. Later, the investigation was closed due to a 'lack of evidence'. The final information was conveyed to the victim via a registered post letter.

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34. The person has expressed how the mobile phone for him, being a blind person, is not just a phone – it is his whole life and his main (and often only) means for communication, navigation, orientation, managing and using his money, etc. (*„Aš kaip neregys, praradęs telefoną, galima sakyti, prarandu viską. Prarandu ir piniginę, ir navigaciją, tai reiškia ir orientavimosi priemonę, ir susisiekimo, kaip ryšio priemonę, aš prarandu viską... Visa informacija yra telefone. Visas informacinis pasaulis.“*). He felt that this fact was completely ignored by the Police and not taken seriously.

35. Additionally, having all the above in mind, the Police did not even arrive at the place of the incident, they asked the person (who had no ID with him at the time, being not in his home city, having just lost his means of navigation) to come to them, i.e., to the nearest Police Station. (*„Tai tuo tarpu, kad bent jau pareigūnai atvažiuotų į įvykio vietą, man pareiškė, kad aš pats pas juos nuvykčiau į artimiausią komisariatą.“*)

36. During all the proceedings, most communication took place by telephone, online, and during a physical meeting for the interview at the Police Station. Before the questioning at the Police Station, the pre-trial investigator phoned the Association of Blind and Partially-Sighted People of Lithuania to inquire whether they are OK to conduct questioning (legally) without any additional representative from the association. It was apparent to the victim that they had never interviewed a blind person before and did not know

what to do in that type of a situation. No support or accommodations were offered or provided, in the end. (*„Pirmiausiai ten paskambino į Lietuvos aklujų ir silpnaregių sąjungą, paklausė ar gali tyrėjas mane apklausti be kažkokio tai aklujų atstovo, nu žodžiu, tyrėjas pirmąkart buvo susidūręs su tuo.“*)

37. According to the person, the Police were not helpful with providing information or communicating at all, most of the help was received from the victims' friends, who had themselves previously been in similar situations, as victims of theft. The Police did not inform the victim that pre-trial investigation had started, nor what would happen from there on.

38. The person expressed that he observed extreme carelessness and negligence of their duties, their work was carried out very bureaucratically, without any real interest or willingness to help. (*„Tai, kas liečia teisinę sistemą, iš pareigūnų buvo matomas labai didelis atsainumas, galų gale, kai buvo iškviesta, tai buvo padarytas toks biurokratinis aparatas, paprasta apklausa, bet faktas, kad ten nieks niekuo nesidomėjo, niekam buvo neįdomu.“*)

39. He also remembers that he had to call the Police of his own accord in order to find out what was happening with the pre-trial investigation, and who was his pre-trial investigator. (*„...dar labai gerai atsimenu, kad aš skambinau į komisariatą, pats turėjau aiškintis kas mano tyrėjas, kol aš išsiaiškinau koks mano tyrėjas, kol aš su juo susisiečiau, tiktai po to mane iškvietė į apklausą.“*)

40. The person expressed that in general, he does not feel like the material damage was great for him, however, he felt that the emotional damage was significant: he missed a humane attitude from the Police, he was frustrated and disappointed that even though all evidence was there and easily accessible or obtainable, nothing was done about it, and that his victimisation was of no interest to the Police. (*„Šita visa istorija, mano galva, svarbiausia tuo, kad aš, sakykim, kaip pilietis aš nesijaučiu nukentėjęs materialiai, bet jaučiuosi nukentėjęs emociškai: viskas padėta ant lėkštutės yra, yra įrodymai, kaltininko visi duomenys*

asmeniniai, kurie yra tikrai, arba jei būtų norėtąsi, būtų pateikiami teisėsaugai. Teisėsauga pažiūrėjo pro pirštus ir jiems turbūt pasirodė mano istorija, neva, visiškai neįdomi.”)

Czech Republic, a victim with a psychosocial disability

This is an extract from the Czech Republic national report from the Voices for Justice project (878604-InfoComPWDs). The research was conducted by FORUM for Human Rights based in the Czech Republic. This case study was selected as it is one of the few cases identified of someone with a psychosocial disability who experienced the criminal justice system as a victim from reporting a crime, through the investigation and court proceedings, to post-judicial.

41. The Victim (hereinafter “the Victim”) in the described case, was a woman with a psychosocial disability which made her anxious and distinctly submissive to the authorities. She became a victim of sexual coercion. Her case is significant because she reported the crime shortly after the Victims Act came into force, in December 2013.³ The case was dealt with by criminal courts – the district court and the regional – appellate court between 2014 and 2016.⁴ At that time, particularly vulnerable victims did not have automatically the right to free legal representation by an attorney in the criminal proceedings by an attorney⁵, which was enshrined in the Czech legislation only in 2017.⁶

³ The most significant part of the Victims Act came into force in August 2013.

⁴ Between 2017 and 2018 the case was dealt with by the Supreme Court and the Constitutional Court, but these proceedings did not concern victims as the injured parties.

⁵ Except for children. Other particularly vulnerable victims had to prove that their material and financial condition does not enable them to afford a lawyer.

⁶ Amendment to the Victims Act and the Criminal Procedure Code no. 56/2017 Coll., effective since 1/4/2017.

Reporting:

42. The Victim reported the crime personally at a police station. She came accompanied by a neighbour who waited with her until the Police investigator came. Then she continued alone. The first contact with the Police took 7 hours and included giving statements and being interviewed. She had to describe very precisely all the details of the sexual violence committed against her. She had also to explain the specific context in which the sexual violence took place (Church environment) which was unfamiliar to the investigator.

“This was difficult because of what had to be talked about. And that it had to be described in detail. And it took so long because it's not sexual violence that happens from hour to hour. The questioning was also challenging for me because the investigator wanted me to explain everything from the Church environment – every term, every concept I used. Although he could find their meaning on the Internet...”

43. The Victim was not offered the support by a Police psychologist or expert in crisis intervention, but she emphasised that the investigator treated her well (compared to what she had to experience in the court stage of the criminal proceedings). The interview took place only between the Victim and the investigator.

“The investigator was decent. He could have done more, but... Well, I thought it would be worse. I went there with great fear.”

44. The Victim was provided with the information required by the Victims Act and the Criminal Procedure Code, but only in the form of being given an information document for victims. She was not given any specific information about available victim support services, even though in a

nearby town there was an office of one of the most well-known victim support organisations in Czechia. She was not even informed about the existence of the national register of providers of help to victims of crime which already existed at that time,⁷ and she was not given the information even later in the proceedings. Until the interview with the researchers in 2021, she did not know that such a register existed.

“The Police always give the victim a document informing her about her rights, but... You understand... When you go to report a crime for ... to put it accurately ... for sexual coercion, you just can't think about what your rights are. You're glad that you are able to describe what happened.”

45. After about a month, the Victim had to complete her report and was subjected to another interview that lasted about 5 hours. Again, she was not offered any procedural accommodation, neither in the form of the involvement of a Police psychologist or expert in crisis intervention. She was not given any additional information.

Investigation and pre-trial stage:

46. Being only handed the information document, the Victim had to search for all the relevant information about the proceedings herself. With the financial support of her family, she found an attorney to represent her in the criminal proceedings. However, she was only able to do it a certain time after she reported the crime to the Police, during the pre-trial stage of the proceedings. Since she was not informed about the national register of providers of help to victims of crime which include also attorneys who specialise in victims' rights, she chose an attorney who was much more

⁷ Although the register has been and still is criticised for its inaccessibility (for more information see below).

experienced in defending offenders. The attorney did not actively provide the Victim with information and communicate with her. The Victim had to search for information about criminal proceedings largely on her own via the Internet.

“I don’t think the attorney specialised in victims’ rights. On the website, she informed that she specialised in criminal law, but she told me that she was more used to defending “little thieves”. I had to ask for everything - if she’d go to the file, ask about everything...” I hardly knew anything. I really had to search for information on the Internet, what was going to happen. I had no idea. The criminal proceedings were very stressful for me.”

47. During the pre-trial stage the Victim was questioned by the Police once again and at that time the interview was video-recorded. She was informed by the Police that she might not be interviewed again before the court since the video-recorded interview took place in the presence of the defendant’s defence counsel. But unfortunately, all the victims in the case had to be heard again by the court, except for one who was minor at that time.

Trial and court process:

48. The Victim was informed about the court hearing and her duty to give testimony directly in the courtroom by her attorney. The repeated questioning in the courtroom was her worst experience during the whole proceedings. Since the evidence against the defendant was based predominantly on the victims’ testimonies, the defence counsel tried to discredit them. He was very rude, asked questions in a way that anticipated the Victim’s unreliability, and forced the Victim to respond to questions about her intimate, sexual life that had no relation to the case. When the Victim tried to explain the context, she was alerted by the defence counsel that she was not answering the question and strictly asked to do so and to “just answer the questions”. The court failed to control the

defence counsel's defaming approach to the Victim and a lay judge himself asked the Victim very inappropriate questions concerning the defendant's body.

"I'll tell you how it went. I was the victim of a crime, that he forced me to have sexual intercourse in different forms on four occasions. And the defence counsel asked why I let the defendant into the apartment repeatedly. Or why I didn't fight back harder and longer, why I only fought back for two minutes. Why didn't I fight back physically, like I'd beat him up or something. I understand why he asked these questions. But then he started asking questions about my intimate and sexual life. They played on my implausibility. They wanted to present me as a whore who had been through this with someone else. And the defendant defended himself afterward: "Well, those are her sexual fantasies, she's been with someone else, but it wasn't me.""

49. The only procedural accommodation in the courtroom was that the hearing was held in private, and the defendant was not personally present but was represented only by his defence counsel. However, even though the Criminal Procedure Code empowers the court to adopt the accommodation in the form of the defendant's absence from the courtroom, in this case, the court did not need to consider it particularly, as the defendant himself decided to waive his right to be in the courtroom.

50. The Victim was heard by the criminal court of the first instance once again later when the appellate court revoked its first decision.

51. The Victim was not specifically informed about her right to make a statement about the impact of the crime on her life, she had to find the information on the internet.

52. The Victim was also subjected to expert examination of her credibility – both the credibility of her person (so-called “general credibility”) and the credibility of her testimony (so-called “specific credibility”) by two experts. The defendant tried to refer to the Victim’s psychosocial disability due to which she was on a third-degree disability pension.⁸ When the case returned from the appellate court to the court of the first instance, the Victim had to undergo another expert examination – this time by one expert. The new expert examination was required by the defence and was ordered also due to the Victim’s impaired condition (post-traumatic stress disorder). All the experts assessed the Victim and her testimony as credible, and the court relied on these findings.

53. In the criminal proceedings, the Victim claimed compensation for her immaterial harm. Even though she specified the claimed amount, submitted to the court medical reports, and was examined by experts who diagnosed her with post-traumatic stress disorder, the court decided that she failed to properly substantiate and quantify the claim and referred her to civil proceedings. The court ruled as follows:

“Although the court takes into account that she [the Victim] is a particularly vulnerable victim and is covered by the relevant law on the protection of injured parties (sic), it is not possible to decide without all appearances and award her compensation for immaterial harm in the sum of CZK XX, as she has claimed, when, to reach that conclusion, the court would have to take further evidence, but which would already be beyond the scope of the ordinary procedure. That left the court with no choice but to refer the injured party to civil proceedings.”⁹

⁸ The highest degree of disability in the pension framework associated with more than 70% decrease in work capacity. – See Act no. 155/1995 Coll., on Pension Insurance, § 39 (2) (c).

⁹ Cited according to the judgment.

54. In the final judgment, the court provided the Victim only with the information about her right to appeal, but only against the part on her claim for compensation of the immaterial harm. The information was part of the grounds of the judgment and was formulated in legal language. The Victim finally did not appeal, her attorney did not even offer her to do so.

55. The court also informed the victim about the right to request information about a parole hearing that she would be granted only if the court awarded her any compensation for her immaterial loss, at least partially.

56. The judgment which had to be announced publicly contained the summary of the victims' testimonies, including their intimate parts. According to the Czech legislation, final judgments in their anonymised version may be requested on basis of the Act on Free Access to Information.¹⁰ The Victim did not feel good/comfortable about it.

Post-judicial stage:

57. The Victim filed a civil action for compensation for immaterial harm but then she learned that she would have to repeat the whole story again in the courtroom in the perpetrator's presence. The special measures of protection that should be ensured to victims in criminal proceedings do not apply in civil proceedings. She found that she could not do it mentally and decided to withdraw her action. She was not compensated and finally she had to reimburse the perpetrator for his legal representation costs.

"I don't know if I'll ever get compensation. Because now it's only going through civil proceedings, there's really no other choice. Even the Criminal Procedure Code provides that

¹⁰ Act no. 106/1999 Coll., on Free Access to Information, § 11 (4) (b).

compensation should be awarded directly in the criminal proceedings, but the practice is different, the courts mostly refer to civil proceedings. (...) If he [the offender] did not waive again his right to be present, I'd have to repeat it all in front of him."

58. The victim was not specifically informed about her right to apply for financial support by the State before the Ministry of Justice even though she was likely to qualify for it.

59. Until the interview with the researchers, the Victim did not know that she could require to be provided with information about the offender's release or escape from the detention. The offender was first placed in pre-trial detention, then imprisoned, but in both cases, the Victim learned that he was released from the Internet media.