VOCIARE

SLOVENIA

NATIONAL REPORT

Victims of Crime Implementation Analysis of Rights in Europe

VOCIARE Victims of Crime Implementation Analysis of Rights in Europe
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EXECUTIVE SUMMARY

Although the deadline for the implementation of the Directive 2012/29/EU (the Directive) was on 16 November 2015 Slovenia is still far from implementing it into its legal system. As the research has shown, implementation is fragmented, partial and insufficient, leaving different groups of victims with different rights and solutions.

One of the problems is the unwillingness of the Ministry of Justice to regulate this area, and shifting responsibility to other actors. With the uncertain political situation (in June 2018, the National Assembly elections take place. Polls show the success of the Conservative Party, which has traditionally shown less interest in human rights) the future of the implementation is worrisome. For this reason, victims suffer the most.

In practice, it is still visible, that competent authorities are still derived from old beliefs and views about victims that the world has long since surpassed. For example, victims are treated only as a tool in the hands of prosecutors and NGOs, as authorities' helpers, whose task is to persuade victims to participate in proceedings, regardless of their own wishes.

If there are some provisions that are transposed into Slovenian legislation, one can find problems in practical implementation. The overall impression is that the treatment of victims and their rights are too much subject to the good will of decision makers. It shouldn't be so. As the example of the agreements[1] in the field of working with victims of trafficking in human beings shows, adequate treatment of victims is possible in all phases of the proceedings.

Changes are slow and unfortunately depend on the active involvement of the civil society. Where there are no NGOs the progress is even slower.

1 In 2003 and 2004 the Association Ključ – Centre for Fight against Trafficking in Human Beings, the Supreme State prosecutor's Office, the Ministry of the Interior and the Police signed agreements and committed themselves to cooperating in the provision of assistance to victims of trafficking in human beings. Through the agreements, some situations regarding the victims that caused difficulties in practice were regulated. They also committed to joint trainings, which proved to be one of the best practices in the field of victim protection.

INTRODUCTION

The aim of the report is to take a closer look at how the provisions of the Directive were transposed into Slovenian legislation. It is clear that Slovenia is late with the implementation. On 27 January 2016, Slovenia had already received an official warning from the European Commission due to the untimely transposition of the Directive into the legal order of the Republic of Slovenia. Slovenia submitted its response to the European Commission on 25 March 2016 and since then, to our knowledge, nothing has happened.

For the completion of this research the following tools were used:

- desk research
- online survey and
- interviews.

Desk research included research of legal and policy instruments, existing studies, opinions, discussions and other sources which are relative to victims' rights.

31 stakeholders replied to the online survey. One of them (NGO) completed the survey after the planned deadline, so her answers are not included in the survey. 15 out of 30 stakeholders included in the research results come from various NGO. Geographically, they are coming from all over the country. 3 respondents come from Social Work Centres, 3 from prosecutor offices, 3 from the police, 2 from district courts and 2 are attorneys working with victims.

Two interviews were made over the phone – with a member of the Section for Safe Houses, Maternity Homes and Related Organizations in Slovenia at the Social Chamber of Slovenia and with a president of an NGO.

For the first time, we sent invitations to answer the online survey at various addresses at the end of April 2018. As the following week was filled with national holidays, we sent invitations for the second time in the middle of May 2018. Desk research was conducted throughout May 2018, as well as interviews.

The main body of the report is divided into 16 sections: each section corresponds to an Article in the Directive. At the beginning of each section, there is a brief summary of the Article under analysis, followed by the analysis itself.

BASIC OVERVIEW OF THE LEGAL FRAMEWORK

According to the information about the state of transposition of directives in the legislation of the Republic of Slovenia and the open proceedings on infringement of the EU law prepared by the Government of the Republic of Slovenia (27 July 2017) following Acts transpose the Directive in Slovenian legislation:

- Social Assistance Act
- Domestic Violence Prevention Act
- Criminal Procedure Act
- Cooperation in Criminal Matters with the Member States of the European Union Act
- State Prosecutor Act
- Police Organisation and Work Act
- Police Tasks And Powers Act
- Criminal Code
- Courts Act
- Witness Protection Act
- Crime Victim Compensation Act
- Judicial Service Act
- Legal Aid Act
- Obligations Code
- Bar Association of Slovenia Statute
- Court Rules
- State Prosecutor's Order

In February 2018, the Act Amending the Enforcement of Penal Sentences Act was passed. This law, in accordance with Article 6(5) of the Directive provides a way to inform victims about the escape and release of detainees.

Only three out of these Acts - Domestic Violence Prevention Act, Enforcement of Penal Sentences Act and Court Rules - have a direct reference to the Directive.

The Ministry of Labour, Family, Social Affairs and Equal Opportunities, which was responsible for the preparation of the Domestic Violence Prevention Act (the official translation of the Act), endeavoured to the maximum extent possible to introduce into the legislation as many provisions of the Directive as possible. But the results are limited, as the criminal procedure does not fall within its scope. Therefore, the Domestic Violence Prevention Act only partially implements the provisions of the Directive into Slovenian legislation. Unfortunately, the law only applies to victims of family violence.

On the other hand, the Ministry of Justice, which is in charge of criminal proceedings, is very reserved - at times even negative – in relation to the transposition of the provisions of the Directive.

The Directive contains some provisions that jeopardize the legal tradition and/or understanding of criminal proceedings in Slovenia (for example, protective measures are rarely used because they "threaten" the principle of directness of the procedure[2]). In our opinion, that is one of the biggest reasons the provisions of the Directive are not transposed yet.

Victims are viewed merely as a tool in the hands of the prosecutors, and by no means as active parties to the proceedings. They do have some rights as injured parties, but can be even discouraged to exercise them (for example, if a state prosecutor discards a criminal complaint, the injured party can take over the prosecution. But in the event that she/he does not prove the defendant guilty, she/he has to bear the costs of the criminal proceedings. Or, indemnification claim is rarely decided by criminal courts, and victims have to bring an action for damages to civil courts.).

The Government of Slovenia does allocate money for matters related to victim's rights, mostly for victims' support services. In other areas there is plenty of room for improvement. To illustrate this, the Crime Victim Compensation Act regulates the right to compensation for victims of violent intentional acts and their families. However, the Act is not widely known, and compensation victims receive based on this Act is reprehensible - if they are lucky, victims of family violence get 50 - 150 EUR (official statistics are not available; these amounts are amounts received by users of the Association for Nonviolent Communication).

In our opinion, the transposition of the Directive is inadequate, partial and fragmented. This complicates the work of professionals, and inflicts even more harm to victims, because they are poorly aware of their rights (or not at all), and do not even know where to look for them.

2 The principle of directness means that the court may found its decision only on facts directly perceived by it and on evidence concluded from the means of evidence directly examined by it (adapted from Harsagi, V. (2015): Evidence in Civil Law – Hungary, page 5, available at https://www.dlib.si/stream/URN:NBN:SI:DOC-S6ECDI7A/7ab5ebac-1778-4d20-b1f7-c62ae4309fe8/PDF). Protective measures are said to jeopardize the principle because the judge cannot receive a personal impression of evidence. For example, the judge cannot fully receive a personal impression of a witness if the witness is being heard through videoconference.

EVALUATION OF PRACTICAL IMPLEMENTATION

ARTICLE 2 - DEFINITIONS

For the purposes of the Directive a 'victim' is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence or a family members (the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim) of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

There is no definition of a victim in the criminal legislation, only that of an injured party. The injured party is the one to whom any of his/her personal or property rights has been violated or endangered with a criminal offense (**Article 144 of the Criminal Procedure Act**).

There is no definition of a victim in any other legislation except in the **Crime Victim Compensation Act (Article 2)**, but the definition of a victim for the purposes of this Act is very limited. It states the victim is a person who suffered a harm recognized under this Act due to a **violent intentional** act. Additionally, it establishes that the victim of domestic violence is a family member recognized under the Domestic Violence Prevention Act and against whom another family member has committed a **violent intentional** act. In the scope of this Act, the violent intentional act is an act committed by a direct attack on life and body using force, or violation of sexual integrity, and for which a penalty of one or more years of imprisonment may be imposed under the Criminal Code (for example, that does not include criminal offenses of criminal coercion, threatening the security of another person, some cases of false imprisonment...). This means that the Crime Victim Compensation Act does not cover all victims of crime.

Some problems are reported with identifying victims of trafficking in human beings, especially if victims are trafficked for purposes other than prostitution (for example, victims of forced labour are almost never seen as victims of trafficking).

The competent authorities have difficulties to recognize economic violence (as a part of domestic violence), especially if it stands alone – in cases where there is no accompanying physical, mental or emotional harm. Thus, they don't prosecute such cases and victims of such acts are not viewed as victims.

Similarly, family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death are not viewed as victims of the crime. But if an injured party or a private prosecutor[3] dies during a time limit for a proposal of the prosecution or a private lawsuit or dies during the proceedings, her/his spouse, or the person with whom she/he lived in an unmarried community, children, parents, adoptive children, adoptive parents, brothers and sisters, can submit a proposal, file a private lawsuit or state that they will continue the proceedings in the three months following her/his death (**Articles 55 and 6/60 of the Criminal Procedure Act**).

Article 4 Paragraph 2 of the Domestic Violence Prevention Act (which is a part of a civil procedure) states a child is also a victim of violence even if she/he is witnessing violence against another family member or lives in an environment where violence takes place.

3 Depending on who starts and conducts criminal proceedings, we know several types of criminal offenses:

- offenses prosecuted ex officio: those initiated and conducted by the state prosecutor irrespective of the will of the victim.

- offenses prosecuted on the proposal: Criminal offenses prosecuted on a proposal are those in which the injured party must file a criminal complaint, on the basis of which the state prosecutor can initiate the prosecution of a criminal offense. Once the proposal is submitted, the prosecution of the offense continues on an official duty, but the injured party may withdraw the prosecution proposal by the end of the main hearing. In this case, a criminal complaint for this particular offence can no longer be made, and the costs of the criminal proceedings must be paid by the injured party, unless the defendant declares that she/he will pay them herself/himself; and

- crimes that are prosecuted on a private lawsuit: those in which the victim herself/himself is persecuting the perpetrator of certain criminal acts, she/he is charged with the burden of proof and in the event of failure she/he bears the costs of the proceedings.

The Criminal Code specifies the type of the offense.

ARTICLE 3 - RIGHT TO UNDERSTAND AND BE UNDERSTOOD

Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings. Communications with victims should be provided in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim, including (but not limited to) any disability. Victims should, in principle, be allowed to be accompanied by a person of their choice in the first contact.

Authorities do not have any special tools or measures to assess the communication needs and constrains of each individual victim. Also survey respondents recognized that there are no sufficient measures to help all the practitioners involved to recognize the individual communication needs of the victims. Majority of them stated that the measures are insufficient or rather insufficient. Interestingly, there is no significant difference in answers from NGOs and state authorities (including Social Work Centres, Police, prosecutors, court officials, and attorneys).

If authorities see that victim's understanding is impaired they provide her/him with translation. This is more true at courts, but less at police stations. Because the Slovene language is similar to languages from former republics of Yugoslavia, police officers often assume that victims who are nationals from these countries understand them enough, especially if victims are living in Slovenia for a long time.

There is no special "easy-to-read" versions of documents for victims with intellectual disabilities. Victims are informed by the judge on what are their rights in a very uniform way. If the judge (or other official) is sensitive enough they can explain the rights to the victim in a simpler way, but usually it is not so.

Victims don't get any document where their rights would be listed. Usually they don't learn about their rights before the procedure starts, unless they seek information with NGOs, Social Work Centres (information they get in NGOs and Social Work Centres may or may not be accurate or whole, since usually there is no person with the specific knowledge of victims' rights; this varies from one institution to another, attorneys and similar).

Victims with hearing impairments are given adequate access to information (e.g. sign language).

There are several brochures for children (for different ages) where their rights and the procedure are explained. It was meant that every child victim or witness will get such brochure. The brochures proved to be a great tool for conveying the information to children. Unfortunately, they were not sent to every child victim/witness due to costs constraints. Association for Nonviolent Communication addressed a letter to the Supreme Court regarding this issue with the proposal that courts send at least the link to the online brochures in the invitation letter if there are no more hard copies. The Supreme Court responded they will consider the proposal, and they also informed the Association that the Supreme Court is preparing many more booklets and brochures about the rights and other information not only for children but for all parties to all the proceedings. The booklets are said to be ready for use in June 2018.

According to them, the Supreme Court is also preparing new such tools (brochures, online animations) not only for children and for criminal procedure, but for the public in general and for all procedures. The project is said to be finished by the end of June 2018.

A lot of victims do not know about the possibility of an accompanying person, especially if they are not in contact with NGOs. The **Criminal Procedure Act (Article 65 Paragraph 4**) states that in pre-trial investigation and in the criminal proceedings a minor can be accompanied by a person whom she/he trusts. Such a person can also accompany other victims of violence. There are some problems with this provision in practice. Not every police officer or examining judge allows the accompanying person to accompany a victim. That is even more true in police stations and courts outside of the capital. Sometimes accompanying persons have difficulties even to get in the court because the security services do not allow them to enter stating the public is not allowed in those particular hearing (for example, in criminal investigations).

The **Domestic Violence Prevention Act** states in its **Article 7** that the victim of family violence can choose a person who can accompany her/him in all procedures related to violence and in the procedures where the perpetrator may be present. This include also pre-trial proceedings and the criminal procedures, but in practice courts don't use it (at least not aloud) – they allow accompanying person on the ground of the Criminal Procedure Act, but they avoid the provision from the Domestic Violence Prevention Act (interestingly, the same is true in civil proceedings, where they rather use provisions of the Contentious Civil Procedure Act). Courts, police and (especially) Social Work Centres act as if the Domestic Violence Prevention Act doesn't apply to them in this respect.

According to the survey answers, professionals regularly inquire victims to ensure they have understood the information they are provided with.

Information is also adapted to be understood, especially for children and people with hearing impairments, but slightly less for persons who do not speak the language in which the proceedings are conducted.

Survey results also show that NGOs offer to accompany victims who are their users. But victims in general rarely have such persons by their side. They don't even know about this right as well as some authorities don't allow accompany despite clear legal provisions. The issue with accompaniment by a person of victims' choice is also that authorities mostly allow only NGO workers or other professionals to accompany victims, but not family members or friends.

The main reason for refusal of accompaniment for the victims is that this would be contrary to the interests of the victim. Survey respondents also answered they would refuse the accompaniment if the perpetrator of violence would like to be present, when there would not be possible to assure safety (for example, if safe house workers would accompany victims, other residents of the safe house might be in danger, because the workers would reveal themselves).

The majority of respondent answered that the entire communication with victims is not made easy to understand. As already said, victims' rights are explained in a rather uniformed way, and the language that is used by authorities is not easy to understand.

ARTICLE 4 - RIGHT TO RECEIVE INFORMATION FROM THE FIRST CONTACT WITH THE COMPETENT AUTHORITY

Member States shall ensure that victims are offered, without unnecessary delay, from their first contact with a competent authority, information about the type of support the victims can obtain and from whom; the procedures for making a formal complaint; how and under what conditions they can obtain protection, access legal advice and legal aid; access to compensation; entitlement to interpretation and translation; special measures if they are resident in another Member State; contact details for communications about their case; available restorative justice services; how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

Domestic Violence Prevention Act in its **Article 9 b** (Informing Victims) states:

"The authorities and organizations and non-governmental organizations shall ensure that victims receive appropriate and timely information on available support services and remedies in a language they understand."

The provision was implemented into the Slovenian legal system in the end of 2016 as part of the implementation process of the Directive. However, there are some points of concern about the provision.

For a start, the Act addresses only victims of family violence, and leaves all other victims of crime out. Secondly, the provision is very open and leaves a lot of space for an arbitrary interpretation – all authorities, organizations and NGOs are responsible for providing information, but none in particular. Additionally, is not clear what information exactly do they have to provide.

There is no list of information victims should receive, so they are often left with no proper and/or all information. That is especially true for the information on the access to compensation (according to the Crime Victim Compensation Act), since a lot of professionals don't even know

about the existence of this Act. Victims (of family violence) often report they didn't receive any of the relevant information and the first place they got them were NGOs.

After making an oral complaint at the police station, victims receive a report about their complaint (not always, though – see Article 5). At the back of the report there is a passage about victims' rights, written in fine print, that states:

"As a victim of a crime you have the right:

- to use your own language or a language you understand,

- to the presence of a confidential person who you can choose yourself in the procedures before the police, courts, Social Work Centres and elsewhere where you wish to,

- that you are familiar with the course of the police investigation,

- that you are aware of your role in the police investigation,

- to the copy of the report about the criminal complaint you are giving to the police,

- that at the time of reporting a crime to the police, you can file a motion for the enforcement of a indemnification claim,

- that you are acquainted with the provisions of the Crime Victim Compensation Act, the procedure and conditions for exercising the right to compensation for victims of violent and intentional criminal offenses,

- to appeal,

- to provide legal assistance from a lawyer,

- that you are familiar with governmental and non-governmental organizations that provide assistance and support to victims,

- that you are familiar with the options that you have under the Domestic Violence Prevention Act."

Unfortunately, police officers do not explain the rights to victims, and majority of them are not familiar with the rights.

There are some leaflets about the rights and support services victims can get at police stations and Social Work Centres. But they are available on stands and victims have to seek them out themselves. Leaflets are also available in e-version.

The Supreme Court of Slovenia prepared brochures for children victims and witnesses about the court procedure and their role in the procedure (see under Article 3).

Information regarding victims' rights in courts and about how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed are given to the victims at the main hearing. Some NGOs inform victims about their rights even before the hearing.

There is a lot of room to improve in what concerns the provision of information to victims of crime since until now the area is somewhat arbitrary. The authorities don't spend much time to explain the rights. There also haven't been any surveys undertaken to assess how victims perceive the information that is provided by authorities. Authorities don't have any special service for giving the necessary information – they are given by the person handling the case. That could be the reason they don't spend much time giving the information and explaining the rights, as well as the fact that they don't know all the relevant information (for example, authorities – except social work centres – can be quite unfamiliar with the support services). Some NGOs provide information in languages that victims understand (that is especially true for NGOs working mostly with victims who don't speak Slovene).

Survey respondents consider that victims do receive some information upon first contact with the relevant authority, but the information is rarely complete. Since there is no list of information that victims should receive, some information can be quickly forgotten.

In what concerns the way victims receive information, when a victim comes into contact with an authority the usual way to get information is orally, followed by leaflets, brochures or similar. They can also receive information through phone. Only occasionally they receive information online and almost never through video.

The information is offered without the need for a request from the victim, but that mostly depends on the victim's role in the proceedings. For example, an injured party has the right to examine the file, but this right may be waived if she/he has not yet been heard in the investigation.

ARTICLE 5 - RIGHTS OF VICTIM WHEN MAKING A COMPLAINT

Member States shall ensure that victims receive written acknowledgement of their formal complaint. Where they do not understand or speak the language of the competent authority, they should be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance. The acknowledgement should be translated free of charge where the victim doesn't speak the language.

When they make an oral complaint victims usually receive a report about their complaint. Victims are not necessarily aware of this right, but they are just given the report, usually without any problems. Often enough it happens that police officers don't hand the report to victims right away. In such cases, when victims return to collect the report, according to the law, they usually don't get it. If a victim makes a written complaint and sends it through mail, she/he doesn't get any report or confirmation that she/he filed a complaint. Not receiving a report can be a big problem for victims. In our opinion, there are no reasonable obstacles that the victims should not receive the report some time after they filed the complaint.

Unfortunately, it still happens that a victim thinks she/he filed an official complaint, but the police officer makes only an official note. This is not enough to start the pre-trial investigation and the criminal procedure, but the victim doesn't know that, because she/he didn't get any document from the police. This happens more often to victims of family violence in some rural and/or remote areas.

As explained above (Article 3), if it is obvious a victim doesn't speak the official language she/he is provided with a translator (speaking for oral complaint). We are not aware of any case where victims would file a written complaint in their language.

Victims of trafficking in human beings are always provided with translators as they are most often foreigners. When the police performs a pre-prepared police action, they also arrange for translators. If a victim comes to the police with an NGO, the NGO informs the police about the need for a translator in advance. When the police cannot provide a translator for a specific language, they use translators provided by an NGO.

Authorities don't have any exam to test whether victims understand the official language. As said before, victims from former Yugoslav republics may be discriminated in this regard, because of the false notion that languages are similar and "we understand each other" (that is the case especially at the police stations).

The answers from the survey respondents confirm victims don't always get the written acknowledgment of their formal complaint (the report of their complaint), which is not a good practice. Interestingly, here the answers of NGOs and different authorities differ – authorities claiming victims get the acknowledgement (report), and NGOs stating they don't.

Most respondents claim victims are enabled to make a complaint in their own language, but still a big number of them stated that they are not, again NGOs being more critical. The same applies for the possibility of making a complaint through receiving linguistic assistance.

ARTICLE 6 - RIGHT TO RECEIVE INFORMATION ABOUT THEIR CASE

Member States shall ensure that victims are notified without unnecessary delay of their right to receive information related to criminal proceedings: any decision not to proceed with or to end an investigation or not to prosecute the offender; the time and place of the trial, and the nature of the charges against the offender; of any final judgement in a trial and of information about the state of the criminal proceedings, in accordance with their role in the criminal justice system; about the reason which led to the above mentioned decisions; notification in case the person remanded in custody, prosecuted or sentenced concerning the victim is released from or has escaped detention.

When victims make a formal complaint at the police station they are asked whether or not they want to receive information related to criminal proceedings (regarding the police work). Their wish is written in the record of their complaint.

If the police decide there is no ground for a criminal complaint on the basis of collected information, it sends the report to the public prosecutor. It also notifies the victim about the decision (considering her/his wish about receiving the information).

The **Criminal Procedure Act** states in its **Article 60 Paragraph 1**:

"If the public prosecutor recognizes that there is no basis for prosecution of an offense for which the perpetrator is prosecuted ex officio, or if he realizes that there is no basis for the prosecution of one of the participants, he must inform the injured party within eight days that the injured party can start the prosecution himself. So does the court if the public prosecutor has resigned from prosecution."

Injured parties get these notifications regularly including the reason which led to these decisions. Unfortunately, it may vary from one public prosecutor to another of how detailed information will they give.

Injured parties are also notified about the time and place of the trial if they are to be heard. They are not notified in some special cases - precautionary hearing where the defendant declares about his guilt, or penal order hearing in minor offenses[4]. They are also notified about the nature of the charges against the offender and the state of the criminal proceedings, in accordance with their role in the criminal justice system.

While the case is still in the hands of the police, victims can get the information through an online app or they can call the case holder. Through the online app, victims can obtain information about the course, phase and termination of the pre-trial procedure for the crime in which they were injured. By entering the required data in the fields, they receive automatic notification from the official police records. Unfortunately, the online app is unknown to the public as well as to victims. They are not notified about it even at the police stations.

In later stages they can get the information from the prosecutor or at the court, but it is much harder, especially if the victim doesn't have a lawyer (which is usually the case).

The **Criminal Procedure Act** in its **Article 128 Paragraph 8** states:

"(8) The beneficiaries of the examination of the file (note: that includes the injured party) *pursuant to the provisions of this Act shall have the right to monitor the course of the procedure in the information system."*

Injured parties are not clearly notified about this option (except from some NGOs). They also cannot exercise their right due to no access to the information system (contrary to the online app, which is intended to give the information about the pre-trial procedure, this information system holds information about the trial itself). There is no specific person they can turn to for the information.

Due to personal data protection of the offender victims are often denied information in case the person remanded in custody, prosecuted or sentenced is released from or has escaped detention. The information they get (if they are lucky) is often informal. The problem is partially solved for victims of family violence, as the **Domestic Violence Prevention Act** has a new provision (**Article 14 Paragraph 3**; since the end of 2016), that states:

"(3) At the request of the victim, the social work centre can obtain information on free exits, a possible escape from imprisonment and the estimated date of dismissal of the convict who committed violence against the victim or her children."

4 For criminal offenses under the jurisdiction of a local court, a state prosecutor may propose that the court issue a penal order with which the accused is sentenced by the proposed criminal sanction or measure without having conducted the main hearing. A local court is responsible for criminal offenses for which a fine or imprisonment sentence of up to three years is prescribed as the main penalty (for example, threat, stalking, criminal coercion, but also some forms of violence, including violence against a partner with whom the offender does not live with, or their relationship has broken down).

This obligation is written also in the Enforcement of Penal Sentences Act.

Upon their request, victims are notified of the release or escape of the offender, but not always, as they should be. They get the information in writing. If the social worker assesses that the victim could be in danger they make a security plan, or the social worker can also summon a multidisciplinary team to prepare a help plan for the victim.

When the court pronounces the judgment, the president of the panel immediately announces it. If the court cannot pronounce the judgment on the same day after completing the main hearing, it postpones the proclamation of the judgment for a maximum of three days and determines when and where it will be announced. The victim can be present at the announcement of the judgement. However, if she/he is not present at the announcement the victim is not entitled to be informed of the judgement (due to data protection reasons; as mentioned above, victims sometimes get the information informally), except in some special cases (for example, if the injured party has the right to appeal). Conviction of criminal offence by a final decision (where the appeal is not possible anymore) shall be served on the injured party only, if she/he requests so, but that is another right victims know nothing about.

General information, for example about the criminal justice procedure, is available only in the official language – Slovenian, and in areas where two recognized minorities live, also in their languages (Italian, Hungarian).

Survey respondents stated, that victims are informed of their right to receive information about criminal proceedings, but still the number of those who don't is too high.

When victims request the information, they usually get it. Still often enough the information not provided to victims, based on their role in the criminal justice system. For example, as explained above, an injured party has the right to examine the file, but this right may be waived if she/he has not yet been heard in the investigation.

Answers of the respondents are indecisive with regard to the fact whether victims find the reasons provided to justify decisions taken with regard to the criminal proceedings, which means there surely is room for improvement.

It's worrying that victims are very rarely informed about their right to be notified of the release or escape of the offender since this can have serious implications on their safety.

ARTICLE 7 - RIGHT TO INTERPRETATION AND TRANSLATION

Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings are provided, upon request, with interpretation at least during any interviews or questioning and with translation of information essential to the exercise of their rights in criminal proceedings in accordance with their role. Victims may challenge a decision not to provide interpretation or translation.

According to the Article 8 of the Criminal Procedure Act[5], parties, witnesses, suspects and other

5 Criminal Procedure Act (Article 8):

„(1) Parties, witnesses, suspects and other participants in the proceedings shall have the right to use their language in investigative and other judicial actions or at the main hearing. If the judicial act or main hearing does not run in the language of these persons, it is necessary to provide an oral interpretation of what they or others are saying, as well as the written translation of documents and other written evidence, which includes essential documents for accused persons and suspects such as: indictments, invitations, all decisions on deprivation of liberty, judgments, court decisions on exclusion of evidence, refusal of evidence and exclusion of judges. On the proposal of suspects or defendants, the court may decide that, in the light of the specific circumstances of the case, interpretation or translation should also be provided in other cases, so as to ensure the exercise of guarantees or rights in pre-trial or criminal proceedings. The court may also exceptionally decide that in respect of certain parts of the essential documents which are not relevant to the persons referred to in the first sentence of this paragraph in order to understand their criminal case or for their possible use of legal remedies under this Act, only oral interpretation is provided.

(2) The persons referred to in the preceding paragraph may, in the course of carrying out investigative and other judicial acts or at the main hearing, file an objection in accordance with the meaningful application of the seventh paragraph of Article 82 of this Act if they consider that interpretation or translation is inappropriate because it does not allow the realization of guarantees or rights in pre-trial or criminal proceedings, or if, because of the need to respect them, they consider that, in the light of the particular circumstances of the case, interpretation or translation should also be provided in other cases.

(3) The right to translation and interpretation shall be given to the persons referred to in the first paragraph of this Article; these may only voluntarily and explicitly abandon the translation or interpretation of a particular investigative and other judicial act or part of the main hearing or certain judicial or other documents if they know the language in which the proceedings are taking place. The record should state that they were educated and what they stated.

(4) The translation shall be done by a court interpreter. If a court interpreter is not available for a specific language, the court may, in accordance with the meaningful application of Article 233 in relation to the fourth paragraph of Article 249 of this Act, appoint another appropriate person who speaks a foreign language for which there are no court interpreters to perform translation or interpretation.

(5) The provisions of the preceding paragraphs shall apply mutatis mutandis to the deaf person.

(6) The costs for interpretation or translation shall not be charged to the persons referred to in the first and fifth paragraphs of this Article."

participants in the proceedings have the right to use their language in investigative and other judicial actions or at the main hearing. When the proceedings are not conducted in their language, they have the right to oral translation of oral proceedings and written translation of some important documents. The persons may also file an objection if they consider that interpretation or translation is inappropriate. The translation is done by a court interpreter. If a court interpreter is not available for a specific language, the court may appoint another appropriate person who speaks that foreign language. The said also applies to deaf persons. The costs for interpretation or translation are not charged to the mentioned persons.

Victims who don't understand the official language of the court are provided with a translation in a timely manner. If the police/court realizes the victim doesn't understand the official language, they postpone the proceedings and appoint a translator.

There is not a lot of problems with this right in court proceedings, but they can occur in proceedings before the police, especially in cases of victims from former Yugoslav republics. Because of the similarity of languages, still close ties between nations and more relaxed procedures, police officers often get a false feeling that they understand victims and vice versa Because there was no translation available in the initial stages of the procedure the credibility of a witness may be compromised in later stages („Before the police you said it differently"). Besides, victims' understanding of the proceedings is not guaranteed. If victims don't understand clearly the proceedings from the start they might experience more difficulties in exercising their rights.

All official decisions are submitted to victims in official languages (Slovenian; Italian and Hungarian, where minorities live). A written translation of documents is provided to those who don't speak official languages.

Mostly, the survey respondents answered that the interpreting services are made available during the entire trial. The interpreting services are also free of charge.

Even though they are guaranteed, according to the survey respondents, the main problems with ensuring the right to **interpreting services** are:

- false assumption that victims understand the language of the proceedings well enough (as explained above);
- lack of availability of interpreters (see below);
- interpreting services do not address victims' vulnerability (e.g.: woman victim of sexual violence with interpretation services by a male interpreter);
- risk of interpreter bias;
- poor quality of interpretation;
- interpreting services available only under limited circumstances (conditional to active participation);
- interpreting services are provided in a language other than the victim's own language; and to some extent;
- interpreting services are available but not free of charge.

There is a list of interpreters to whom judicial authorities can resort to. Interpreters are appointed by the Ministry of Justice, which administers the procedure for the appointment in accordance with the Courts Act, the Rules on Court Interpreters and the rules governing the general administrative procedure. In addition to complying with certain conditions (among others also, that a person has a university degree and possesses appropriate expertise and practical skills and experience), a court interpreter has to successfully pass the examination for the judicial interpreter. The Ministry of Justice publishes a public invitation to submit applications for the appointment of court interpreters twice a year. The call is published according to the stated needs, which are determined by the Ministry on the basis of the reasoned opinions of the presidents of the courts. For these reasons, courts may face a lack of availability of interpreters for languages that are not very common in Slovenia.

According to the Courts Act, court interpreters are obliged to improve their knowledge and keep up-to-date with new methods in the profession and actively participate in consultations and professional education. However, as one can read on a website of the Ministry of Justice, training seminars for court interpreters for Italian, English, German and Serbian languages were cancelled in 2017 and, since then, there are no other published seminars[6].

Vast majority of respondents answered that all listed documents are considered essential to be translated and made available to the victim in translated form.

Not all respondents know whether the translations are provided free of charge, but those who do mostly answered that they are free. There is no information available to us to suggest interpretation services are not free for victims (except in some special cases when victims bear the costs of the criminal proceedings – see Articles 11 and 14).

A problem that was highlighted by one of the respondents is also, that victims cannot choose the interpreter by themselves. A sensitive interpreter proves to be invaluable for victims.

6 Republic of Slovenia, Ministry of Justice, Training Seminars, obtained on 18 June, 2018, available at: http://www.mp.gov.si/si/izobrazevanje_v_pravosodju_cip/sodni_tolmaci/izpopolnjevalni_seminarji/.

The main problems with respect to **translations**, as seen by survey respondents are:

- false assumption that victims understand the language of the proceedings well enough
- lack of availability of translators
- information not being deemed essential for translation (this includes explanations to victims and additional information, not the essential documents)
- available but not in a timely manner
- translations are available but not free of charge
- essential documents are translated orally in a manner that, in practice, does not guarantee fulfilment of the victim's rights
- poor quality of translations
- risk of translator bias
- translations are provided in a language other than the victim's own language.

Some respondents pointed out that in some cases essential documents are translated orally in a manner that, in practice, does not guarantee fulfilment of the victim's rights. As explained, providing a translation doesn't necessarily mean a victim truly understands what the information means for the fulfilment of her/his rights.

ARTICLE 8 - RIGHT TO ACCESS VICTIM SUPPORT SERVICES

Member States shall ensure that victims have access to confidential victim support services, free of charge, before, during and for an appropriate time after criminal proceedings. Member States shall facilitate the referral of victims, by the competent authority that received the complaint to victim support services. Member States shall take measures to establish specialist support services in addition to, or as an integrated part of, general victim support services. Member States shall ensure that access to any victim support service is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

Victims of crime can receive support services from Social Work Centres, which are established by the state, and by numerous NGOs. NGOs are mostly funded by the state (and municipalities), so their programmes of support have to be verified by the state (see below). Because of this, NGOs are highly dependent on the state and can be vulnerable to political change.

If the financing is stable services delivery works well. However, because of the dependence on the state, NGOs are less critical to the system. They also have less room for pilot projects, and financing depends on the political direction of the state.

Geographically speaking, the coverage of Social Work Centres is good. They are just undergoing a major reorganization and the number of centres will reduce significantly (from 62 to 16). However, the services will be provided at the same locations as now by Social Work Centre Units. There will be 63 units at the same locations as today's Social Work Centres are (the biggest Social Work Centre will split into two units).

At Social Work Centres, an intervention service is organized, and works at times when centres are closed. The intervention service carries out only urgent tasks that prevent or reduce the threat to victims of violence. On the basis of a police notice, it offers first social assistance and accommodation in a safe environment when it comes to:

- a minor child who is endangered, remains without parents, etc.,

- victim of domestic violence,

- a person who has been deprived of her/his legal capacity or extended parental right and who remains without protection and care,

- an elderly person who is without relatives and because of age changes finds herself/himself in loss.

Since 2017, counselling for victims of family violence has been dispersed geographically, and there are more organizations that offer such counselling. The problem is that not all organizations are specialized for working with victims of family violence. Therefore their methods may be contrary to the doctrine of working with victims (for example, they are offering couple counselling). To receive the funds from the state, the access to support services has to be at least 6 hours per day. In practice it is more. They are all in locations accessible by public transport.

The state does not control if NGOs fulfil the obligations from the Directive. The tool for verifying minimum standards of operation is verification of the programmes, but there are no quality certificates. The state checks very little content of the support services provided by NGOs. Instead, it mainly focuses on bureaucratic requirements. As a result of this, there is a problem in practice because very few organizations in their work derive from the feminist principles of work with victims and are not adequately trained for the job.

Victims of trafficking in human beings

All victims of trafficking in human beings have the right to stay in a crisis accommodation (accommodation for victims of trafficking in human beings is established by NGOs, but funded by the state), which lasts for 30 days. During this time they must decide whether they are willing to participate in criminal proceedings or not. If they choose not to, or if the state prosecutor declares that the victim is not needed to testify, victims cannot switch to long-term accommodation (which lasts until the end of criminal proceedings) or join a victim care programme, which is funded by the Ministry of Internal Affairs.

Since this is discriminatory, a NGO that works with victims of trafficking in human beings, arranged financing from another source for victims who are not willing to cooperate in the criminal proceedings. But such a solution is not stable and it was chosen by only one non-governmental organization. Another NGO, which also offers service to victims of trafficking in human beings, does not offer service to victims who do not want to participate in criminal proceedings.

Foreigners Act

According to the Article 50 of the Foreigners Act, if a **victim of trafficking in human beings** lives illegally in the Republic of Slovenia, the police may authorize her/him a retention time of 90 days – a time for the victim to decide whether she/he will participate as a witness in criminal proceedings for the criminal offense of trafficking in human beings. During this time the criminal investigation and proceedings are not delayed, but are carried out as usual. The same applies to **victims of illegal employment** (for the criminal offense of illegal employment) **and victims of family violence** (for the criminal offense of family violence). For justified reasons, the retention time may be extended for up to another 90 days. For more information, see Article 17.

Overall, the coverage with universal services for victims is good, but the state lacks specialist services, as explained in the commentary on Article 9. There are also some other legislative or practical issues. For example, victims are denied access to financial assistance or public funds when they leave the perpetrator, until they file for divorce. In practice that could mean they could be without any means even up to three months. There is also a long waiting period for emergency housing unit (apartment unit victims get in case they don't have any other accommodation) – 5 years for single women, and 3 years for mothers with children.

How long do victims receive the support from victim services depends on the type of service and in some cases – unfortunately – on nationality (see Article 9). Counselling services for victims of violence are available as long as they need them. Accommodation in safe houses or maternity homes is possible up to one year, and up to 3 weeks in two of the state's crisis centres / 4 weeks in the only NGO's crisis centre. Staying in safe houses and crisis centres depends on the seriousness of the crime, as well as the level of safety.

Most respondents of the survey stated that victims are often referred to victim support services by the competent authorities. Most of them also think that victim support services meet the needs of victims of crime. However, most critical of the support service is the LGBT NGO - undoubtedly, because support services for victims of crime do not address the specific needs of LGBT victims.

In Slovenia, besides the existent network of victim support services survey respondents agree that much has to improve and confirmed the gaps identified above. Survey results indicate that more funding, better geographical coverage and the allocation of more professionals to victim support services are the top three areas in need for improvement.

ARTICLE 9 - SUPPORT FROM VICTIM SUPPORT SERVICES

Victim support services shall, as a minimum, provide: a) information, advice and support relevant to the rights of victims; b) information about or direct referral to any relevant specialist support services in place; c) emotional and psychological support; d) advice relating to financial and practical issues arising from the crimes; e) advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation. Specialist support services shall develop and provide: a) shelters or any other appropriate interim accommodation for victims; b) targeted and integrated support for victims with specific needs such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships.

Victims' access to support services in Slovenia is not fully adequate. Firstly, Slovenia is, geographically speaking, quite diverse. Some villages and farms are scattered across the hills, and victims from these areas are more isolated. Therefore, they lack access to support services, especially since Social Work Centres do not have mobile units and do not provide online services. On the contrary, some of the NGOs do provide counselling over e-mail and phone.

Working hours of Social Work Centres are also not user-friendly. They are opened from 7 am to 3 pm every day, except on Wednesday when working hours are until 5 pm. As explained in Article 8, when Social Work Centres are closed an intervention service is organized but it carries out only urgent tasks.

Although they are victims, foreign citizens do not have access to all rights. Certain bureaucratic requirements also make it difficult for them to withdraw from violence. For example, a residence permit is linked to the existence of a marriage. If the victim of family violence is divorced, she/he remains without a residence permit (if she/he doesn't arrange it on another ground, which is difficult in many cases).

If victims have only a temporary residence permit in the Republic of Slovenia, they do not have rights from public funds. Victims also do not receive other help at Social Work Centres than just a first conversation, where they receive information – not in their own language.

Third-country nationals can also not be placed in the government's safe houses, but they can be placed in safe houses of NGOs. For that reason, NGOs have to seek funds from other sources of financing. This means that the funding the state provides to NGOs cannot be allocated to victims' nationals of a third-country when these victims resort to the services of these NGOs.

Third reason for inadequate access to support services is lack of specialist services. Slovenia has a good network of save accommodation for victims of family violence, but there is no so called "rape centres" that would comprehensively deal with victims of sexual abuse. Not for women, or children - victims of violence or sexual abuse there is no specialized psychotherapeutic treatment that would be addressed at the systemic level. Psychotherapeutic treatment is mostly not free of charge, but even these psychotherapists are not specialized in dealing with victims of violence or sexual abuse. When the treatment is free of charge, victims tend to wait for an appointment for quite some time (even children).

There is also no specialized legal assistance for victims of crime. However, it is offered to some extend by some NGOs to the users of their programmes (for example, for victims of family violence). There are no court experts specializing in dealing with victims of violence or sexual abuse as well.

Information about services is available online, at Social Work Centres, police, NGOs in form of brochures and leaflets, and orally. Yet services are not particularly visible or known by victims or even the general public. There are many victims who didn't know anything about the services until they started to seek help themselves.

Most victims get information about or direct referral to existing relevant specialist support services at Social Work Centres and NGOs. They do not know what to expect from services, though. The content of the help is not known to them. Unfortunately, it can also happen that victims receive insufficient or incorrect information, as not all workers who give the information are specialized for working with victims or are familiar with the criminal procedure and available services. The existing support services are not well known to prosecutors, court officials and attorneys.

Victims get access to emotional support, especially at NGOs and Social Work Centres, but the access to psychological support is limited for the reasons explained above.

They also receive inadequate advice relating to financial and practical issues associated with the criminal offence. In practice, information on the possibility of compensation under the Crime Victim Compensation Act is rare as this Act is not very well known to the public (it is the state's well-kept secret).

Victims receive advice relating to the risk and prevention of repeat victimisation, of intimidation and of retaliation in the form of a safety plan, which can be made at Social Work Centres or NGOs. Advice on secondary victimization is scarce, since it seems that professionals are not familiar with the term, and are not aware of the possibility and dangers of secondary victimization.

The coverage with safe accommodation for victims of family violence (safe houses, crisis centres, maternity homes ...) is good. A minimum requirement for a certain number of beds per capita is 1 bed per 10,000 inhabitants, and Slovenia exceeds this quota. Nevertheless, there is still one (small) region which does not have an accommodation programme for victims of family violence (Zasavje).

Unfortunately, only one safe house is adapted for disabled women – victims of family violence, and one for victims with addiction problems. An NGO working with disabled people also has an accommodation programme, but they offer accommodation to all regardless of the gender (women and men are not separate).

There are two NGOs offering safe accommodation for victims of trafficking in human beings, one of them specialized in offering help exclusively to such victims. As explained in Article 8, one of the NGOs does not provide services to victims who do not want to participate in criminal proceedings.

ARTICLE 10 - RIGHT TO BE HEARD

Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.

The **Criminal Procedure Act** in its **Article 59**[7] states that the injured party and private prosecutor are entitled to call attention to all facts and offer or produce evidence during the investigation and at the main hearing. They may also pose questions to the witnesses and experts. The injured party, the injured party in his capacity as prosecutor and the private prosecutor shall be entitled to inspect the file and the material evidence.

Victims are regularly heard in criminal proceedings (in pre-trial proceedings when they file a complaint, after criminal proceedings start - in investigation and main hearing; they are not heard, for example, in a phase when the state prosecutor files a written charge to the court and the defendant has the right to file an appeal to this charge), but that is not their right. Victims are still viewed as "tools" in hands of the prosecutor, and if she/he decides that victims have to

7 Article 59 of the Criminal Procedure Act:

„(1) The injured party and the private prosecutor shall during the investigation be entitled to call attention to all facts and offer evidence relevant to establishing the commission of a criminal offence, the perpetrator thereof and the property rights claims of the injured party and the prosecutor.

(2) At the main hearing they shall be entitled to produce evidence, pose questions to the witnesses and experts and comment on and clarify their depositions, and make other statements and motions.

(3) The injured party, the injured party in his capacity as prosecutor and the private prosecutor shall be entitled to inspect the file and the material evidence. The injured party may be denied the right to inspect the file until he has been interrogated as a witness.

(4) The investigating judge and the presiding judge shall acquaint the injured party and the private prosecutor with the rights they are entitled to under the first, second and third paragraphs of this Article."

testify that is their obligation (except in some cases, for example, privileged witnesses[8]). If the prosecutor decides the witness doesn't have to be heard, she/he can't change that decision. They are heard according to their role of the victim in the proceedings.

Where a child victim is to be heard, the child's age and maturity are mostly taken into due account. However, according to survey respondents, there are still too many cases, where this is not the case. Most respondents also reported there are no sufficient measures to assess a child's age and maturity.

It is highly unusual that injured parties would actively participate in the procedure in terms of providing evidence. If some of them do, their active engagement is viewed as very strange by officials. Injured parties' active participation is more or less (informally) discouraged (for example, officials were rude to victims, because they were „bothering them "and meddling with their work, but they were also suspicious of too active victims; they often say to victims they don't need to stay during hearings...).

When victims are heard there are some measures to make them feel safer. See Articles 23 and 24.

8 Article 236, Paragraph 1 of the Criminal Procedure Act:

(1) The following shall be exempt from the duty to testify:

1) the spouse of the accused or the person with whom he lives in domestic partnership;

2) persons related to the accused by blood in direct line, persons related to him collaterally at three removes and persons related to him by marriage at two removes;

3) the adopter or adoptee of the accused;

4) the father confessor, on matters confessed to him by the accused or by another person;

5) counsel, doctor, social worker, psychologist or another person, on facts he came to know in the exercising of his profession, if bound by the duty to keep secret what he learns of in the exercising of his profession, except in instances referred to in the third paragraph of Article 65 of this Act, or if statutory conditions are fulfilled under which such persons are absolved from the duty to guard secret or are bound to disclose confidential information to competent bodies.

ARTICLE 11 - RIGHTS IN THE EVENT OF A DECISION NOT TO PROSECUTE

Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to review of a decision not to prosecute. Where the role of the victim will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. Member States also need to ensure that victims are notified of their right to receive, and that they receive sufficient information to decide whether to request a review.

Injured parties are allowed to continue prosecution.[9] They begin prosecution by submitting a request for investigation to the court. The court then reviews their request and decides whether to start the investigation or not.

9 Article 60 of the Criminal Procedure Act:

"(1) If the public prosecutor recognizes that there is no basis for prosecution of an offense for which the perpetrator is prosecuted ex officio, or if he realizes that there is no basis for the prosecution of one of the participants, he must inform the injured party within eight days that the injured party can start the prosecution himself. So does the court if the public prosecutor has resigned from prosecution.

(2) The injured party shall have the right to start or continue prosecution within eight days from the receipt of the message from the previous paragraph.

(3) If the public prosecutor withdraws the indictment, the aggrieved person who takes the prosecution may persist in the filled indictment or file a new one.

(4) An injured party who was not informed that the public prosecutor has not started the prosecution may give his statement to continue the proceedings before the competent court within three months from the day the public prosecutor rejected the complaint.

(5) When the public prosecutor or the court informs the injured party that he can initiate prosecution, he shall also inform him in the communication what he can do to realize this right.

(6) If the victim as a prosecutor dies while the deadline for the commencement of prosecution runs, or he dies during the procedure, his spouse or the person with whom he lived in the unmarried community, children, parents, adoptive parents, adoptive parents, brothers and sisters, within three months after his death they begin to prosecute or state that they will continue the proceedings.

In practice, not a lot of injured parties decide to prosecute the offender themselves after the public prosecutor recognized that there is no basis for prosecution of an offense. Not always because they agree with the public prosecutors' decision, but rather because of practical difficulties to exercise this right.

For a start, an injured party steps into the shoes of the prosecutor with all its obligations, but not also with all the rights and „tools" prosecutors have (for example, injured parties cannot guide police as public prosecutors can). Secondly, if the injured party cannot prove that the accused is guilty, she/he carries all the costs of the criminal proceedings.

To have a fair chance, the injured party has to be assisted by a lawyer. The problem occurs, when she/he cannot afford to pay the help. Injured parties have an option to get free legal aid. But because of the provision of the Legal Aid Act which states that one of the conditions to get the legal aid is that the case is not manifestly unreasonable, or that the applicant has a probable chance of success in the case (see Article 13 below), it is very unlikely injured parties will get the free legal aid. Courts that decide about the legal aid, mostly reason that the applicant for the free legal aid doesn't have a probable chance of success in the case if the public prosecutor decided not to prosecute. However, just recently two clients of the Association for Nonviolent Communication succeeded with the legal aid application as well as the review of the public prosecutor's decision not to prosecute, which never happened before.

Victims get the role of injured parties before the decision not to prosecute is made.

When they are notified that the public prosecutor decided not to prosecute, victims also get informed about the right to prosecute themselves and where to submit a request for investigation. In our opinion, the information about the right and the request for investigation is not detailed enough.

Courts don't hold any data on how often victims ask for a review and how often their request is successful.

ARTICLE 12 - RIGHT TO SAFEGUARDS IN THE CONTEXT OF RESTORATIVE JUSTICE SERVICES

Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Member States shall facilitate the referral of cases, as appropriate to restorative justice services.

The **Criminal Procedure Act** foresees two restorative justice services – settlement procedure and suspend prosecution. The state prosecutor may transfer a crime report to a settlement procedure.[10] Settlement is run by a settler, and may be implemented only with the consent of the offender and the injured party. If the offender fulfils the agreement the state prosecutor dismisses the report. If the agreement is not fulfilled the procedure continues.

With the consent of the injured party the state prosecutor may also suspend prosecution of a criminal offence.[11] If within a time limit the suspect fulfils the obligation undertaken the crime report is dismissed. The survey respondents pointed out that there are no sufficient safeguards in place, which protect the victim from secondary and repeat victimisation, intimidation and retaliation, throughout the restorative justice process.

The increase in the number of settlement procedures was detected in 2016, as state prosecutors dispatched as many as 772 criminal reports against adult perpetrators (680 in 2015, 471 in 2014 and 576 in 2013). 62% of all cases transferred to the settlement have been successfully handled. The agreements concluded by the perpetrator and the injured party with the help of the settler were met by 261 adult perpetrators. The task most often charged by the state prosecutors is an apology, followed by the payment of damages.[12]

10 This is applicable in cases where the criminal offence is punishable by a fine or not more than three years' imprisonment is prescribed. If special circumstances exist, settlement may also be permitted for the criminal offences of aggravated bodily harm, grievous bodily harm, grand larceny, misappropriation and damage to property.
11 This is applicable where the criminal offence is punishable by a fine or not more than three years' imprisonment, and if special circumstances exist, for criminal offences of rendering an opportunity for the consumption of drugs, grand larceny, misappropriation, blackmail, damage to property, business fraud and the presentation of bad cheques and the abuse of bank or credit cards - if the suspect is willing to behave as instructed by the public prosecutor and to perform certain actions to allay or remove the harmful consequences of the criminal offence.
12 Supreme State Prosecutor's Office, Joint Report on The Work of Public Prosecutions for 2016, available at: https://www.dt-rs.si/files/documents/POROCILO-2016-koncno-min.pdf, obtained on 18 June 2018, pages 58-61.

In 2016, state prosecutors decided to suspend prosecution proceedings against 3,141 adult perpetrators, which is less than in 2015 and more than in 2014. The percentage of fulfilment of imposed orders was slightly worse than in the previous period (75.67 % in 2016, 79.58 % in 2015).[13]

However, in cases of family violence professionals and some NGOs advise against alternative dispute resolution procedures. Violence in the family involves unevenly distributed power among partners, whereby those of more power partners abuse this power to the detriment of another partner. In the alternative dispute resolution procedures, it is assumed that both sides have the same power and can represent their interests on an equal footing. In a relationship where family violence is present, this is not the case; therefore, the professionals and organizations point out that the alternative dispute resolution procedures are inadequate in the cases of family violence.

13 Supreme State Prosecutor's Office, Joint Report on The Work of Public Prosecutions for 2016, available at: https://www.dt-rs.si/files/documents/POROCILO-2016-koncno-min.pdf, obtained on 18 June 2018, pages 54-57.

ARTICLE 13 - RIGHT TO LEGAL AID

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings.

Victims have the status of parties to criminal proceedings only as injured parties acting as prosecutors[14] and as private prosecutors[15]. There are not a lot of cases where victims take the role of injured parties acting as prosecutors. For reasons see Article 11.

The **Legal Aid Act** states **(Article 1/24)**: *"When assessing the granting of free legal aid, the conditions and facts of the case in respect of which the applicant applies for the grant of free legal aid shall be taken into account as conditions, in particular:*

*- **the case is not manifestly unreasonable, or that the applicant has a probable chance of success in the case, so it is reasonable to initiate the procedure or to participate or invest in legal action or to answer** and*

- the matter is relevant to the applicant's personal and socio-economic situation, or the expected outcome of the matter for the applicant or his family is of vital importance."

In practice, courts mostly decide victims (applicants) don't have a probable chance of success in the case, because the state prosecutor rejected the criminal complaint. However, if the victim proves to the court deciding about the legal aid that there is a probable chance of success (cases, where prosecutors make very obvious mistakes) the court approves free legal aid.

The **Legal Aid Act** also states **(Article 8)**, that: "Free legal aid under this Act shall not be granted in the following cases:

- for offenses of contempt, defamation, offensive accusation and gossip, unless the injured party is likely to prove that a legally recognized damage has been caused to her/him by acts..." which exempts a lot of victims as private prosecutors (according to the Criminal Code these offenses can be prosecuted only with private actions).

14 If the state prosecutor finds that there are no grounds to prosecute a criminal offence she/he informs the injured party thereof and instructs her/him that she/he may start prosecution by herself/himself (regardless of the nature of the criminal offense). The same procedure is applied by the court when the state prosecutor abandons prosecution. In these cases the injured party becomes the injured party acting as prosecutor.

15 Private prosecutors prosecute certain criminal offenses with a private lawsuit. See Article 2.

Formally, the State could claim that victims do have the access to legal aid, but in practice this access is difficult.

When victims are granted legal aid, they receive help from an attorney who is listed on a Free Legal Aid list. Victims can choose their own attorney as long as she/he is on the list. If victims have an agreement with attorneys that are not on the list, also they can be appointed. In practice, attorneys are rather passive while representing injured parties in criminal proceedings, as there is a common belief that state prosecutors do that job (representing the interests of victims). However, in cases of injured parties acting as prosecutors attorneys must be (and in our experience, are) actively representing injured parties' interests, as there is no state prosecutor to handle the case.

ARTICLE 14 - RIGHT TO REIMBURSEMENT OF EXPENSES

Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system.

Victims in the capacity of witnesses receive reimbursed costs for arriving to the court, but only in the amount of the cheapest public transport. They also receive a receipt for remuneration at work, if needed. If they would like to attend the rest of the main hearing, their costs would not be reimbursed.

The **Article 96 of the Criminal Procedure Act** also states that private prosecutors and injured parties acting as prosecutors are bound to repay the costs of criminal procedure as well as the necessary expenses of the accused and the necessary expenses and fees of her/his counsel, if the proceedings terminate in a judgement of acquittal or of rejection of charges, or if they terminate in a ruling under which proceedings are discontinued or the charge sheet is rejected. This provision may and in fact does influence the victims' decision about their participation in criminal proceedings as injured parties acting as prosecutors (and for some criminal offenses, as private prosecutors – see Article 2). Because of it, victims are reluctant to ask for the review of the public prosecutor's decision not to prosecute anymore.

Victims are also "forced" to continue with the proceedings in cases where they filed a prosecution motion (in these cases they have just a role of injured parties and witnesses, not also injured parties acting as prosecutors or private prosecutors). If they withdraw their prosecution motion, they have to pay the costs of criminal proceedings (this provision was actually implemented, because too many victims withdrew their prosecution motion in the middle of the proceedings. Consequently, the criminal proceedings stopped and left the state with a lot of proceedings costs). The good news is they don't pay the proceedings costs, if defendant is acquitted.

ARTICLE 15 - RIGHT TO THE RETURN OF PROPERTY

Member States shall ensure that recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings.

If there is no doubt that the property claimed belongs to the injured party, and that this property need not be exhibited as evidence in criminal proceedings, it is delivered to the injured party before the end of the proceedings. Property needed as evidence is seized and returned to the owner after termination of proceedings. If such property is indispensable to the owner it may be returned to her/him before the conclusion of proceedings.

Objects seized during the criminal procedure are returned to the owner or actual holder if the procedure is discontinued and there are no grounds for them to be confiscated.

There is no available data about average time needed for the return of property. Also, there are no specific measures taken to ensure that the property is returned to victims in a sensitive way. That depends on the sensitivity of the court staff. Some years ago there was a case, where clothes of the victim still contained blood stains, which was very shocking to her. From that time there is no other available information on the subject.

ARTICLE 16 - RIGHT TO DECISION ON COMPENSATION FROM THE OFFENDER IN THE COURSE OF CRIMINAL PROCEEDINGS

Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

The proposal for the indemnification claim may be submitted by the end of the main hearing before the first-instance court. To submit the claim, the victim does not need the representation by a lawyer or any other formal requirements. However, the indemnification claim is a legal action with the necessary form, so it is recommended that a lawyer prepares it. Victims can get a free legal aid for the preparation of the indemnification claim, if they fulfil the conditions for free legal aid.

In practice, criminal courts usually don't decide on the indemnification claim, especially in cases of non-material damage, because this would unduly lengthen the proceedings. Instead, the injured parties are referred to in the litigation. This means that victims must bring an action for damages to the civil court. Litigation may take several years to complete.

A compensation claim against the offender does not prevent the victim to claim other forms of compensation.

ARTICLE 17 - RIGHTS OF VICTIMS RESIDENT IN ANOTHER MEMBER STATE

Member States shall ensure that authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed. The authorities of the Member State where the criminal offence was committed shall be in a position: a) to take a statement immediately after the complaint is made to the competent authority; b) to have recourse to video conferencing and telephone conference calls for the purpose of hearing victims who are resident abroad.

Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.

Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.

Survey respondents claim that competent authorities are mostly always in a position to take a statement immediately after a victim resident in another Member State makes a complaint (the most unified answers came from the police officers).

They also estimated that competent authorities do not have all the necessary available means (i.e. videoconference, telephone conference calls or other) for the purposes of hearing a victim who is a resident abroad. Answers to this question were not so unified even among authorities.

In their opinion/expertise, victims resident in our Member State are granted the right to make a complaint to our national competent authorities if they were unable to do so in the Member State where the crime was committed. This answer came mainly from the authorities.

Victims who are residents in another Member State are mostly not treated differently from national victims (that includes, that they are informed in an appropriate time). Still, six (of 30) respondents claim they are. The latter also answered that the differences in treatment between national and cross-border victims do affect the successful access to rights of the cross-border victims (from moderately to significantly), but they didn't offer any examples for their claims.

According to the **Foreigners Act**, there are some special measures for victims of trafficking in human beings, victims of illegal employment and victims of family violence who are residents of other countries (not only of other Member States) and live illegally in Slovenia. The police may authorize her/him a retention time of 90 days – a time for the victim to decide whether she/he will participate as a witness in criminal proceedings for the criminal offenses of trafficking in human beings/illegal employment/family violence. During this time the criminal investigation and proceedings are not delayed, but are carried out as usual. For justified reasons, the retention time may be extended for up to another 90 days.

During the retention time, victims have rights which are guaranteed to foreigners with permitted temporary retention and the right to free translation and interpretation.

Victims may be granted a temporary residence permit if they are willing to cooperate as witnesses in criminal proceedings, as confirmed by the competent law enforcement authority (irrespective of other conditions for obtaining a temporary residence permit). A temporary residence permit is issued to victims for the estimated time of the criminal proceedings, but not less than for six months and not more than for one year. It can be extended for up to one more year.

Victims who are granted a temporary residence permit and do not have the means of subsistence have the right to emergency health care and to the payment of financial assistance.

A further permit for temporary residence from another purpose of residence in the Republic of Slovenia may be issued to victims, if the conditions for issuing this permit are fulfilled.

In practice, this provision is mainly used for victims of trafficking in human beings. There is no information about other victims who would benefit from the provision.

ARTICLE 18 - RIGHT TO PROTECTION

Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

There are several protection measures available to ensure and guarantee the victims' right to protection. They are regulated in various laws, and can be issued by different authorities.

Police Tasks and Powers Act regulates the prohibition of approaching a particular person, place or area[16]. The police order this measure for up to 48 hours and the investigating judge can extend it for up to 15 days. On the proposal of the victim, the investigating judge can extend the measure up to 60 days.

In the past, there were difficulties in imposing this measure. Even though one can observe an increase in imposing it, there is still a lot of room for improvement, especially in some rural areas. The police argue that they impose it regularly and that the measure is extended for up to 60 days in large number of cases. However, the latter is not the NGOs' perception.

According to the **Criminal Procedure Act**, the measures which may be used to prevent reoffending are: prohibition on approaching a specific place or person, house arrest and detention.

According to Mrs. Kline, senior state prosecutor (2015; Restrictive Measures under the Criminal Procedure Act in the Criminal Offense of Domestic Violence), restrictive measures under the Criminal Procedure Act are most frequently administered to suspects of the criminal act of family violence. In the duty service carried out by prosecutors, the majority of cases are the criminal offense of family violence.

These measures are proposed by the prosecutors, but are pronounced by courts. In practice, the protective measures from the Criminal Procedure Act, in particular the prohibition of approaching a specific place or person, are not as commonly used as they could have been. Too often, Association for Nonviolent Communication, the biggest NGO working with victims and perpetrators of family violence in Slovenia, has to help victims and use the power of arguments to persuade state prosecutors to propose the measures to the court. In one particularly demanding case the NGO was urging the state prosecutor to propose detention for the defendant for several months. Unsuccessfully, although the defendant repeatedly violated the measure under the Domestic Violence Prevention Act, threatened and also attacked the victim in front of their under aged children. It took a lot of effort for the defendant to finally get a detention (in the end he was sentenced to imprisonment, while on a temporary release for a day, he again attacked the victim).

According to the **Criminal Code**, the court may apply one or more safety measures to the perpetrator of a criminal offence, when the statutory conditions for their application are met. The following safety measures may be ordered for perpetrators of criminal offences:

- compulsory psychiatric treatment and care in a health institution;
- compulsory psychiatric treatment at liberty;
- barring from performing the occupation;
- the prohibition of approaching or communicating with the victim;
- revoking of the driving licence;
- confiscation of objects.

Under the conditions determined by the Criminal Code, the court may decide that the perpetrator, who is given a suspended sentence, has to undergo custodial supervision for a certain period of time during the term of suspension. In applying custodial supervision, the court may also issue

16 Article 60, Paragraph 1 of the Police Task and Powers Act: „If there is a reasonable suspicion that a person has committed a criminal offense or a misdemeanour with signs of violence or has been caught in such an offense or misdemeanour and there are reasons to suspect that it will endanger the life, personal safety or freedom of the person with whom the offender is or was in a close relationship within the meaning of the provisions of the Penal Code and the Act regulating the prevention of family violence, police officers may order a prohibition of approaching a certain place or a person... The prohibition of approaching a particular place or person also includes the prohibition of harassment by means of communication."

one or more instructions[17], according to which the offender has to behave.

The problem in practice is that courts very rarely revoke suspended sentence if perpetrators don't follow the instructions.

There are also several protection measures under the Domestic Violence Prevention Act[18], applicable for victims of family violence, but this Act is not a part of criminal proceedings. These measures are decided by family courts. In practice, the infliction of these measures is good and in a timely manner at the District Court of Ljubljana (in the capital), but not so much in other courts. For example, at the District Court of Koper victims have to wait for the court to decide upon the measures up to 2-3 months even though the law says the procedure is of high priority. What is more, it happens that in other courts the rights of victims are not fully met. The reason for this can be found in the greater presence of NGOs in Ljubljana.

Measures to physically protect the victim

According to the **Criminal Procedure Act** there is a possibility of a removal of the defendant during victim's testimony in the investigation and/or in the main hearing. That is not the victim's right, but rather the decision of the (investigating) judge. That consequently means there are differences between courts while deciding about this measure. At the end of the testimony the defendant is brought back to the room, where the judge reads to him/her what the victim said. The defendant has the right to ask the victim questions afterwards.

The majority of respondents answered that in their opinion victims and their family members only rarely or sometimes receive adequate protection from intimidation and retaliation. That is even more true for the adequate protection against the risk of emotional or psychological harm. Survey results point out that victims and their family members are usually treated by the authorities in a respectful manner and with dignity, which is especially true at questioning by the investigating authorities and the prosecuting authorities, but a little less true when testifying.

17 The court's instructions may include the following tasks:
to submit himself to a course of medical treatment at an appropriate institution, also treatment of alcohol or drug addiction with his consent;
to attend sessions of vocational, psychological, or other consultation;
to qualify for a job or to take up employment suitable to his health, skills, and inclinations;
to spend income according to the duties relating to family support;
prohibition of association with certain persons;
prohibiting the establishment of direct or indirect contact with one or more designated persons, including the use of electronic means of communication;
restraining order to keep the perpetrator away from the victim or some other person;
ban on access to certain places.

18 Domestic Violence Prevention Act states in its:
Article 19 Paragraph 1
„To the perpetrator of violence who has inflicted a bodily harm to a victim or has inflicted damage to victim's health or has otherwise unlawfully interfered with her dignity or other personality rights, the court may:
prohibit entry into the apartment in which the victim lives;
prohibit staying in a certain vicinity of the apartment in which the victim lives;
prohibit retention and approaching the place where the victim is usually located (for example, the workplace, school, kindergarten ...);
prohibit contact with the victim in any way, including means of distance communication, and also through third parties;
prohibit the establishment of any meeting with the victim;
prohibit the publication of personal data of the victim, documents from judicial and administrative files and personal records relating to the victim;
decide on the release of the apartment in the joint use of the victim..."
Article 20
"In addition to the measures referred to in Article 19 of this Act, for the protection of children the court may:
- prohibit the crossing of the state border to a child, except with a specific person, body or organization;
proposes the dispossession of a child's personal document in accordance with the law;
prohibit the issue of a personal document to a child on the basis of the application of one or both parents or a third party;
prohibit the delivery of a child's identity document to one or both parents or to a third party;
decide on the necessary medical examination of the child or the treatment of the child and other medical interventions."

ARTICLE 19 - RIGHT TO AVOID CONTACT BETWEEN VICTIM AND OFFENDER

(1) Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.
(2) Member States shall ensure that new court premises have separate waiting areas for victims.

The Criminal Procedure Act states, that the investigating judge may order the accused to be removed from interrogation if a witness is unwilling to testify in the presence of the accused. The accused may also not be present during the questioning of witnesses younger than 15 who are victims of certain criminal offences. The same may also rule the panel at the main hearing. Upon the return of the defendant to the session the statements of the witness are read to him/her. The defendant is entitled to put questions to a witness.

However, there are two points that should be considered in practice. First, the removal of the accused/defendant is not the witness's right. The investigating judge/the panel MAY decide that the accused/defendant be temporarily removed from the interrogation/courtroom. In practice, it is not always so. Unfortunately, the decision of the investigating judge/panel may vary geographically (that is true at least in cases of family violence and can depend on the presence of NGOs in the region).

Secondly, after the witness testifies the accused/defendant is brought back to the interrogation/courtroom where the investigating judge/panel reads the statement the witness made and the accused/defendant is entitled to put questions to the witness.

The premises where criminal proceedings take place were not assessed in any way in order to implement measures to ensure avoidance of contact between victim and offender. Interrogations usually happen in offices of investigating judges with the accused and witness sitting near each other.

There are no separate waiting areas for victims and offenders, no separate entrances within the premises, and no different entrances from outside the buildings. Usually, the waiting rooms are small and faraway from the security. However, the Court Rules lay down the conditions for the **new** premises of the courts in accordance with the Directive. The other question is when courts will get new premises.

Appointments for victims and offenders are set at different times at the police. They can also be set in court buildings, but in practice there is no real effect in that, because of the structure of our criminal procedure – victims being heard right after offenders, which means they usually meet each other in waiting areas.

Toilet facilities for men and women (they are not separated for victims and offenders) are usually close to one another. The most alarming example of this are toilet facilities at the Family Court within the District Court in Ljubljana – toilets for men and women are separate but in the same (small) room, and with only one washing sink. It is true that it is a family court, but many litigating parties in family matters are also victims and offenders in criminal proceedings. It is unreasonable to protect victims in criminal proceedings, but then not protect them in civil litigations, which may take place at the same time.

ARTICLE 20 - RIGHT TO PROTECTION OF VICTIMS DURING CRIMINAL INVESTIGATIONS

Member States shall ensure that during criminal investigations: a) interviews of victims are conducted without unjustified delay; b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation; c) victims may be accompanied by their legal representative and a person of their choice; d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.

Unfortunately, the time between the criminal complaint, the first interview of the victim and, at last, the main hearing is quite long – approximately 1-1.5 years to the interview and 2-2.5 years to the main hearing. The time varies depending on how many cases prosecutors and courts handle. If a restrictive measure is imposed on a defendant, the time span is shorter. Other than that, there are no standards regarding optimal length between the time a crime is reported and an interview is conducted, or if they are, they are not met.

Interviews with victims of violent crimes are mostly conducted without unjustified delay. In slightly lesser extent that is also true for victims of non-violent crimes. When there are unjustified delays, the reasons for such a delay are (in order of frequency):

- delay in collaboration between authorities
- police have work overload
- priority is given to other cases or more serious crimes
- procedural requirements.

The number of interviews is also not kept to a minimum –there are at least three interviews (at the police station while filing a criminal complaint, before the investigating judge and in the main hearing). In all these phases the interviews are viewed as necessary.

Article 65 Paragraph 4 of the Criminal Procedure Act states, as follows:

"In the pre-trial and criminal proceedings, a minor victim may be accompanied by a person whom the injured person trusts. Such person may also accompany other victim ***of violence*** (underlined subsequently)."

In practice, there may be different interpretations of this paragraph, as some investigating judges see it as their discretionary right to decide whether they will allow the presence of the trusted person for other victims of violence. Besides, the law allows only one person to accompany the victim whether they may be a legal representative or not (so no legal representative AND a person of their choice).

Article 64 Paragraph 1

"(1) Where the injured party is a minor or a person declared legally incapable of work, his legal representative shall be entitled to make all statements and perform all acts which the injured party is entitled to make or perform under this Act."

In practice there can be problems with participation of the legal representative of the victim. In the case of the Association for Nonviolent Communication's client as the legal representative of a minor-injured party she is denied to perform acts which the injured party is entitled to make - the court does not allow her to access the file (even though she is not the potential witness in this case).

Domestic Violence Prevention Act is clear about the right of victims of being accompanied in all procedures related to violence and in proceedings involving the perpetrator of violence[19]. This provision is relatively new and authorities are reluctant to use it, especially in procedures not associated with the Domestic Violence Prevention Act. They act as the provision doesn't apply to them.

19 Article 7 (companion of the victim)
"(1) A victim of violence may be accompanied by a person (hereinafter: a companion), who may accompany her in all procedures related to violence and in proceedings involving the perpetrator of violence (underlined subsequently).
(2) For the presence of a companion in the proceedings referred to in the preceding paragraph, it is sufficient for the victim to declare that a person is accompanying her and she wishes that companion is present in the proceedings prior to the commencement of proceedings or in the proceedings.
(3) Accompanying person may be any adult that is not treated as a source of violence in the procedure.
(4) The companion shall assist the victim in protecting her integrity in proceedings before authorities and organizations, assisting in finding solutions and offering the psychological support to the victim.
(5) The body conducting the procedure shall prohibit the person from accompanying the victim in the procedure if she/he does not fulfil the condition referred to in the third paragraph of this Article or, if there is a likelihood that a person will not be able to perform the tasks referred to in the preceding paragraph in relation to the family or other connections with the victim, the perpetrators of violence."

Victims of family violence report a great relief for a companion to be with them during criminal investigations as well as other proceedings.

Medical examinations are usually kept to a minimum and only carried out where strictly necessary for the purposes of the criminal proceedings.

ARTICLE 21 - RIGHT TO PROTECTION OF PRIVACY

Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy of the victim. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.

In Slovenia, the trial's main hearing is public. From the beginning of the session until the end of the main hearing, the panel may, at any time, *ex officio* or at the request of the parties, but always after hearing them, exclude the public from all or part of the main hearing, if this is necessary for the protection of secrecy, the protection of public order, the protection of the personal or family life of the defendant or injured party or the benefit of the minor, or if, in the opinion of the senate, the public would prejudice the interests of justice (**Criminal Procedure Act, Article 295**). This is mainly done in the cases of offenses against sexual integrity.

Survey results indicate that competent authorities usually take all necessary, appropriate and lawful measures to ensure protection of victim's privacy. However, respondents are not unified on whether the protective measures are applied only to victims of certain crimes. Also, some state that protective measures apply to victims of physical or sexual violence, victims of family violence and victims of serious crime. Other respondents stated that only under-aged victims benefit from protective measures.

Respondents mostly don't consider existing protection measures effective in safeguarding the victim's privacy. In their opinion, competent authorities also don't take enough legally permissible measures to prevent the public dissemination of any information that could lead to the identification of a child victim.

Media are self-regulated with the Reporters' Ethical Code. It states: *"A journalist must not disclose the identity of victims of sexual abuse, family tragedies and serious crime, and may not publish material that would contribute to the disclosure of identity. The identity can be disclosed with the consent of the victim."*

The provisions of the Code are protected by the Journalist Honorary Tribunal. In practice, however, media often don't regulate themselves, as the abstract from an article below points out:

„Analysis of several articles in Slovene newspapers show that reports about criminal acts against sexual integrity of children and youth are often sensationalistic, including excessively detailed descriptions of the events, and therefore they stigmatise the abused. In certain cases we could speak about »the repeated abuse«, about the reporting that disrespects the victim of the crime, which points to an irresponsible work of reporters. If the Reporters' Ethical Code is supposed to be a guideline of ethical reporting in the media, than it should be applied –however, the Slovene media are breaking it daily." (Caf, 2008)

ARTICLE 22 - INDIVIDUAL ASSESSMENT OF VICTIMS TO IDENTIFY SPECIFIC PROTECTION NEEDS

Member States shall ensure that victims receive a timely and individual assessment to identify specific protection needs due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

In criminal proceedings, victims don't receive any individual assessment to identify specific protection needs due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

The proposal for the Act Amending the Criminal Procedure Act (ZKP-N; legislative procedure started in February 2017. The proposal contained a number of solutions consistent with the Directive) introduced an individual assessment of the threat to the victim, which would provide the basis for various safeguards in the criminal procedure itself. Unfortunately, legislative procedure ended in October 2017 and the bill was not adopted.

Witness Protection Act regulates the conditions and procedures for the protection of witnesses and other persons threatened by participation in criminal proceedings[20]. This law can be used mostly in cases of serious criminal offenses and economic criminal acts (and some others). In practice, it is rarely used and mostly for organized crime cases.

A special case are victims of trafficking in human beings. The National Coordinator for Combating Trafficking in Human Beings in the case of accommodation of victims summons a multidisciplinary team, consisting of members of the Interdepartmental Working Group on Trafficking in Human Beings, which could help in the actual case. They assess victims' needs and each member carries out their part of the plan. Multidisciplinary team works according to an **informal** handbook, where

20 According to its Article 10, conditions for the protection of people at risk are:
„1. that a pre-trial or criminal proceeding is under way for a criminal offense in relation to which, in accordance with the provisions of the law governing criminal proceedings, a summary decision may be ordered to conceal investigative measures;
2. to tell the witness about the offense referred to in the preceding paragraph, the perpetrator or other relevant circumstances;
3. that a criminal offense cannot be investigated or proved or prevented to continue the criminal offenses without the participation of this witness in pre-trial or criminal proceedings;
4. that, as a result of such co-operation, a witness poses a serious risk to her life or body or the life or body of another person at risk;
5. that such danger cannot be dissuaded and the cooperation of the threatened witness involved without the implementation of the necessary protective measures or a program of protection under this Act; and
6. based on the assessment of the unit, the possibility of successful implementation of the protection program has been identified."

all the procedures and protocols are gathered. All members of the Interdepartmental Working Group on Trafficking in Human Beings (consisting of all ministries, NGOs and other organizations and authorities who come in contact with victims of trafficking in human beings) are following the procedures and protocols even though they are not implemented in law.

There are also some other cases where victims do receive an individual assessment (which is not a part of criminal procedure) - **family violence victims**. The **Domestic Violence Prevention Act** states that authorities and organizations are obliged to carry out all the procedures and measures necessary to protect the victim according to the degree of danger and protection of its benefits.

The Social Work Centre offers victims and perpetrators of violence services under the law governing social protection. Also, a multidisciplinary team is set up to deal with domestic violence. However, social workers who are the case holders and can summon the multidisciplinary team do not do that in all cases and/or in timely manner. The decision is in their hands and often they arbitrarily assess themselves there is no need for the multidisciplinary team or any other services connected to violence. It is often the case that social work centres call a multidisciplinary team only on initiatives by NGOs.

Most respondents who answered positively to when asked how often are victims provided with an individual assessment of their protection needs come from NGOs and Social Work Centres. Consequently, we assume they are referring to the individual assessment according to the Domestic Violence Prevention Act. As a part of this assessment the risk and threat assessment is also conducted, but not as often as if should (or could) be. There is the possibility to adapt the assessment later on; as stated above, often on initiatives by NGOs. Criteria used as a basis for a decision to adapt the assessment later on are change of circumstances and new criminal offenses or signs of threat. Wishes of victims (including whether or not they wish to be granted special measures of protection) are not taken into account in this process as they should (or could) be.

Survey respondents consider that "practical protocols" are the more frequent measure in place to ensure that unnecessary interactions are kept to a minimum and interactions with authorities are made as easy as possible. As we saw above in cases of victims of trafficking in human beings, practical protocols really prove to be valuable tools for all stakeholders involved.

ARTICLE 23 - RIGHT TO PROTECTION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS DURING CRIMINAL PROCEEDINGS

(1)MemberStatesshallensurethatvictimswithspecificprotectionneedsmanabenefit from the measures A special measure envisaged following the individual assessment shallnotbemadeavailableifoperationalorpracticalconstraintsmakethisimpossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

(2) During criminal investigations, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment, may benefit from the following measures: a) interviews with the victim being carried out in premises designed or adapted for that purpose; b) interviews with the victim being carried out by or through professionals trained for that purpose; c) all interviews with the victim being conducted by the same persons; d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships being conducted by a person of the same sex as the victim, if the victim so wishes.

(3) During court proceedings, victims with special protection needs shall also have the following measures available: a) measures to avoid visual contact between victims and offenders; b) measures to ensure that the victim may be heard in the courtroom without being present; c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; d) measures allowing a hearing to take place without the presence of the public.

As explained above there is no individual assessment of victims' needs in criminal proceedings yet in Slovenia (except informal for victims of trafficking in human beings). Hence, victims with specific protection needs are not formally identified.

Nevertheless, there are some special measures from which victims may benefit.

a) There are several so called "safe rooms" throughout the country which are designed/adapted for interviews with the victim being carried out. They are more or less used for children – victims of crime. Unfortunately, they are not being used as much as they could be. As we heard on a professional training on child-friendly procedures in cases of sexual abuse in May 2017 reasons for that are that not all judges are trained for using the technical equipment, the use of such a room requires a lot of preparation, and not all judges and others who deal with victims know about the rooms. Namely, not all of them are established at court, so investigation interviews are carried out in small investigative judges' offices.

Premises at the police stations where the interviews are carried out are unsuitable. Most often the interviews are carried out in the offices of police officers. Consequently, it can happen that a victim of a sexual offence is being interviewed in an office where there is a calendar with naked women on the wall (not so rare occurrence, unfortunately).

b) Professionals who carry out interviews with victims are more or less specially trained to do that, especially criminal police officers. Less trained are uniform police officers who are often the first to have a contact with victims. However, in cases of trafficking in human beings they are not allowed to conduct interviews with victims. No training on the subject or very limited training is available to judges, investigating judges and prosecutors.

c) All interviews throughout the criminal proceeding with a victim are not being conducted by the same person. However, the NGO working in the field of helping victims of trafficking in human beings observes changes in the past year – at least at the police stations the same criminal police officer is interviewing the victim.

d) All interviews with victims of sexual violence, gender-based violence or violence in close relationships are not being conducted by a person of the same sex as the victim, if the victim so wishes. Again, there is a difference with victims of trafficking in human beings, where their wish is respected.

The **Criminal Procedure Act** does offer some of the measures from this Article. For example, victims can be included in the protection programme - see Article 22 (Witness Protection Act). Also, the court may order one or more measures[21] to protect them or their immediate family.

If there is serious danger to the life or body of the person doing the identification or her/his close relatives, the identification is conducted in such a way that the person being identified cannot see the person making the identification.

The hearing of a defendant or witness may also be carried out using modern technical means of transferring images and voice (videoconference).

In practice, the mentioned measures from the Criminal Procedure Act are rarely used and mainly in cases of organized crime victims. According to the NGO working with victims of trafficking in human beings, videoconference is now being used in almost all cases of trafficking in human beings, and it is not necessary that victims are victims of organized crime.

The still prevalent reason for not using these measures is the old belief of judges that the measures would undermine the principle of directness of the procedure. The other reason might be that (some) judges are not familiar with technical equipment.

Respondents are also very critical of using the measures to avoid unnecessary questioning concerning the victim's private life not related to the offence. But they reported that measures allowing proceedings to take place without the presence of the public are being used more often.

There is no available data on how often are protection measures actually put into place.

21 The measures are:
1) deletion of all or certain data from the third paragraph of Article 240 of this Act from the criminal file;
2) the marking of all or some of the data from the preceding point as an official secret;
3) the issuing of an order to the defendant, his counsel and the injured party or his legal representative and counsel to keep certain facts or data secret;
4) the assignment of a pseudonym to the witness;
5) the taking of testimony using technical devices (protective screen, devices for disguising the voice, transmission of sound from separate premises and other similar technical devices).

ARTICLE 24 - RIGHT TO PROTECTION OF CHILD VICTIMS DURING CRIMINAL PROCEEDINGS

Member States shall ensure that where the victim is a child: a) in criminal investigations, all interviews with the child victim may be audio visually recorded; b) in criminal investigations, and proceedings, competent authorities appoint a special representative for child victims where the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family; c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.

Panels for juveniles exist at district and higher courts and the supreme court. The panel for juveniles in the courts of first instance shall be composed of a juvenile judge and two lay judges. Lay judges shall be elected from among professors, teachers, educators and other persons who have experience in the education of minors. However, this applies only to proceedings involving persons who have committed a criminal offence as minors, but not minor victims of crime. There are no juvenile courts, juvenile sections within regular courts or specially trained juvenile judges that deal with cases of child victims.

The **Criminal Procedure Act** does have some provisions regarding the right to protection of child victims during criminal proceedings. It states, that in cases of certain criminal offences[22] the minor-injured party must have an authorised person to care for their rights from the initiation of the criminal procedure onwards. In the pre-trial investigation and in the criminal proceedings a minor can be accompanied by a person whom she/he trusts. Such person can also accompany other victims of violence. A person whom a victim trusts doesn't have to be a lawyer. The task of this person is to offer psychological support to the victim, but she/he doesn't have any active role in the proceedings.

22 These criminal offences are criminal offences against sexual inviolability, the criminal offence of neglect of minors and cruel treatment and the criminal offence of trafficking in human beings.

Minors who in view of their age and the stage of their intellectual development cannot understand the meaning of the right to decline testimony may not be examined as witnesses except where the accused himself demands it. In our opinion, this provision undermines child victims' best interests and can potentially put them at risk of repeat victimisation and retaliation.

A person under age should be examined considerately to avoid producing harmful effect on her/his state of mind. If necessary, a pedagogue or some other expert is called to assist in the examination of a minor.

An injured party who has attained the age of sixteen is entitled to make statements and perform procedural acts by herself/himself.

Respondents report that interviews with child victims are rarely recorded audio-visually. They are also rarely appointed a special representative by the competent authorities, when there may be a conflict of interest and/or the holders of parental responsibility are precluded from representing a child victim, and are rarely granted the right to legal advice and representation, in their own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility. Where children victims are getting the legal representation, the problem is that - apart of a few exceptions - the list of authorised persons consists of lawyers who are usually inexperienced and are on the list only to get clients. They are not trained to deal with minor victims or minors in general.

A recent example illustrates how Slovenian courts take into consideration children's best interests in criminal proceedings. The defendant is the father of two under aged children (17 and 9). One of them (17 years old) was the victim of his father's violence and the younger child was the witness. Parents are divorced and the children are entrusted with the care of both parents. Children spend one week with their father, and one week with their mother.

When the investigation took place and the younger child was to be heard (the child was a witness proposed by the defendant), she had an arranged contact with her father as per the (family) court decision. That meant, the defendant brought the child to the hearing. After the hearing the child returned back to the defendant's home with him.

The child's mother asked the court to change the date of the hearing, so she could bring the child to the hearing and take her home afterwards. The court denied the request. Then she asked that a trusted person would accompany the child, and again the court ignored her request.

The mother sought for help from an NGO, which also wrote a letter to the court - to no avail. Consequently, the child-witness (aged 9) was with the defendant prior to hearing, during the hearing without any trusted person and went home with the defendant.

ARTICLE 25 - TRAINING OF PRACTITIONERS

Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to enable them to deal with victims in an impartial, respectful and professional manner.
Member States shall request that those responsible for the training of lawyers, judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase awareness of the needs of victims.
Member States shall encourage initiatives enabling those providing victim support and restorative justice to receive adequate training and observe quality standards to ensure such services are provided in an impartial, respectful, and non-discriminatory manner.
Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.
Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

Training of practitioners was a big problem in the past. Apart of criminal police officers (especially in the field of trafficking in human beings) not a lot of professionals who come in contact with victims had systematic and sufficient training.

That changed with the **Act Amending the Domestic Violence Prevention Act** (ZPND-A) which came into force in November 2016. The law now states in its **Article 10:**

„(4) Professional staff is obliged to regularly attend education in particular on the prevention and detection of acts of violence, prosecution, trial and execution of these acts of violence, equality between women and men, the needs and rights of victims and the prevention of secondary victimization to the extent specified by the ministers referred to in the preceding paragraph.

(5) Responsible persons in bodies and organizations and non-governmental organizations shall provide training to all professionals who, in the course of their work, encounter victims or perpetrators of violence.

(6) Judges and state prosecutors who, in their work, encounter victims or perpetrators of violence, shall be obliged to regularly attend education, training and training in the areas referred to in the fourth paragraph of this Article."

The difference is all professionals are **obliged** to participate in trainings. Still, there is a room for improvement in all institutions and organizations.

Police: While it is true criminal police officers receive adequate training that does not apply to uniformed police officers. The latter are the ones who often have a first contact with victims. But they don't receive adequate training on how to deal with victims of crime. That often results in treating victims in a disrespectful, unprofessional and/or discriminatory manner. The said can be even more obvious in some rural parts of the country.

Judges: The Centre for Judicial Training offers trainings for judges dealing with victims of crime. The good thing is also state prosecutors can join some of the trainings. However, the downside is that judges themselves decide whether they will attend trainings and what trainings will they attend. Consequently, judges who are already sensitive enough to victims needs and rights get even more training, and judges who are not don't attend trainings at all.

Prosecutors: They don't receive much training. What is written for judges also applies to state prosecutors.

Lawyers: They don't receive any training on victims' needs and rights. If they are offered training only a few attend. The reason: lack of time.

Victim support workers (social workers, NGOs): They have trainings available, and it is rather sufficient. The problem with NGOs is, that they don't receive regular and sufficient funds for trainings from the state.

Other professionals (administrative authorities, first responders, etc.): Their training is insufficient.

ARTICLE 26 - COOPERATION AND COORDINATION OF SERVICES

Member States shall take appropriate action to facilitate cooperation between Member States to improve victims' access to the rights set in the Directive and such cooperation shall at least aim at: a) exchange of best practices; b) consultation in individual cases; c) assistance to European networks working on matters directly relevant to victims' rights.
Member States shall take appropriate action aimed at raising awareness of the rights set out in the directive, reducing the risk of victimisation, and minimizing the negative impact of crime and the risk of secondary and repeat victimisation, of intimidation and retaliation, in particular targeting groups at risk such as children, victims of gender-based violence and violence in close relationships.

In 2013 the Cooperation in Criminal Matters with the Member States of the European Union Act was enforced.

The government of Slovenia initiated, sponsored or otherwise ensured awareness-raising campaigns. Respondents are not unified on how efficient these campaigns were. The government also initiated, sponsored or otherwise supported or ensured research and education programmes, for which respondents assess they were rather efficient.

GOOD PRACTICES

As already mentioned, **brochures** for children (for different ages) where their rights and the criminal procedure are explained proved to be a very useful tool in practice. The Supreme Court of Slovenia is also preparing new such tools (brochures, online animations) not only for children and for criminal procedure, but for the public in general and for all procedures. The project is said to be finished by the end of June 2018. Brochures are available at: http://www.sodisce.si/znanje/publikacije/. The transferability of the practice and its applicability in other Member States is very high and recommended.

When allowed, the **possibility to be accompanied by a person whom victim trusts** is another good practice. Victims regularly report they felt much better when such a person accompanied them. The transferability of the practice and its applicability in other Member States is very high and recommended.

One of the good practices is also the **multidisciplinary team in the field of protection of victims of trafficking in human beings**, which consists of members of the **Interdepartmental Working Group on Trafficking in Human Beings**, as well as the Interdepartmental Working Group on Trafficking in Human Beings itself (see Article 22 for more information).

Joint annual trainings of various stakeholders (police, prosecutors, judges, NGOs...) proved to be an excellent practice, as it is seen in the field of combating against trafficking in human beings.

Also **cooperation with the police and NGOs** was mentioned as a good practice – not because their work would be perfect, but rather because they are prepared to listen and are proactive in solving problems and misunderstandings.

GAPS, CHALLENGES, AND RECOMMENDATIONS

The most prominent gap in the practical implementation of the Directive is that it is not implemented in Slovenian system, at least not in full. That would also be our biggest recommendation.

Apart from that there are several challenges that are quite visible and the state will have to tackle them in near future.

Let's start with the **Crime Victim Compensation Act**. The Act is not widely known, and compensation victims receive based on this Act is reprehensible - if they are lucky, victims of family violence get 50 - 150 EUR (official statistics are not available; these amounts are the amounts received by the users of the Association for Nonviolent Communication). The definition of a victim for the purposes of this Act is very limited. It says the victim is a person who suffered a harm recognized under this Act due to a **violent intentional** act. Additionally, is says the victim of family violence is a family member recognized under the Domestic Violence Prevention Act and against whom another family member has committed a **violent intentional** act. In the scope of this Act, the violent intentional act is an act committed by a direct attack on life and body using force, or violation of sexual integrity, and for which a penalty of one or more years of imprisonment may be imposed under the Criminal Code (for example, that does not include criminal offenses of criminal coercion, threatening the security of another person, some cases of false imprisonment...). This means that the Crime Victim Compensation Act does not cover all victims of crime, and especially not victims from non-EU states, as the citizenship of one of the EU members is a condition to receive compensation (victims of trafficking in human beings are often citizens of third countries). We recommend revising the Act.

Even though the law requires regular **trainings for all professionals**, including prosecutors and judges, there are still challenges in this area.

In the field of trafficking in human beings the State signed three agreements with the NGO Ključ - Centre for Fight against Trafficking in Human Beings (Police-NGO, Supreme State Prosecutor-NGO and Ministry for Internal Affairs-NGO). The protocols of conduct are written in these agreements, and they are proved to be valuable tools in practice. However, the gap in this matter is, that other NGOs working in the field of trafficking don't have such agreements with the state, thus victims don't get the same treatment. Good news is that parts of the mentioned agreements are adopted by Foreigners Act.

In the field of family violence it is still happening in a lot of cases that the police is treating family violence cases as **misdemeanours instead of criminal offences**. In this way victims don't receive all the rights and protection measures from the Directive. What is worse, they are often treated as offenders themselves and have to pay a fine for misdemeanour.

One of the biggest challenges of Slovenian courts (not only criminal courts) is a **long duration of the proceedings**. As explained under Article 20, the time between the criminal complaint, the first interview of the victim and, at last, the main hearing is quite long – approximately 1-1.5 years to the interview and 2-2.5 years to the main hearing. The time varies depending on how many cases prosecutors and courts handle. If a restrictive measure is imposed on a defendant, the time span is shorter. Other than that, there are no standards regarding optimal length between the time a crime is reported and an interview is conducted, or if they are, they are not met.

In criminal proceedings, the problem is also, that when the offender is not complying with the court's orders and decisions, nothing happens – **the judge does not she/he issue a more severe punishment.**

In the main body of the research **the problem of court experts** was not mentioned. Nevertheless, the field of court expertise should be thoroughly regulated, which is not the case at the moment. Not only is there a shortage of experts who do this type of work, but the organization and supervision of court expertise is inadequate. For example, the production of expert opinions is not uniform, which leads to different treatment of victims. There is also a lack of specialized knowledge of experts in the field of violence, and especially sexual abuse.

CONCLUSION

As already stated, the Directive in not implemented into Slovenian law system, at least not fully. Those provisions that are implemented are scattered. Solutions are partial. It can be seen that the Slovenian state did not seriously undertake the implementation of this Directive. It didn't systematically undertake the implementation. Thus, we have fragmented solutions that apply only to certain groups of victims (for example, under the Domestic Violence Prevention Act), there are informal solutions for certain groups of victims (which work perfectly; for example, for victims of trafficking in human beings), and some victims more or less fall out of the system (for example, victims of sexual abuse).

This kind of attitude reflects also in practice, as victims are still viewed as tools in hands of prosecutors. Some authorities (or professionals) don't take some crimes seriously, or minimize the offence (which can be observed in family violence cases). There are glimpses of hope in cases of victims of trafficking in human beings, but changes do not occur quickly enough.

Victims' rights must come to the forefront, we must begin to discuss them seriously and implement solutions in our legislation.

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APPENDIX 1 – CONTACT LIST OF INTERVIEWED PROFESSIONALS

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