

PROTECTION OF THE RIGHTS OF DISABLED PERSONS AS VICTIMS OF CRIME IN CRIMINAL PROCEDURE

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Abstract. *The aim of the research is to conduct comparative analysis to the Criminal Procedure Laws of the Republic of Lithuania, of the Republic of Latvia and the Ukraine on the rights of protection of disabled persons who became victims of criminal acts (crimes and misdemeanours). Some group of persons are more attractive target for criminals due to their physical or/and mental weakness. Disability is the one of main factors, that directly has impact on them, when accessing to justice - especially during pre-trial investigation stage of criminal procedure. The authors of the research paper are going to focus on disabled persons' access to justice particularly during interview.*

The above mentioned issue points out the main objectives of the research:

- 1. To describe disabled persons.*
- 2. To analyse international and national laws on protection of the rights of disabled persons as victims of criminal acts in criminal procedure.*
- 3. To identify the issues related to disabled persons' access to justice, especially in criminal procedures.*
- 4. To propose suggestions, which could improve protection of the rights of disabled persons in criminal procedures.*

Keywords: *criminal procedure law; criminal procedure law in Latvia, in Lithuania, in the Ukraine; disabled persons; justice.*

Introduction

*Disability need not be an obstacle to success
(Stephen, 2011)*

Human rights in general and human rights of specific categories of people are the topics, which draw the attention of scholars and academics from different research fields. Encyclopaedia Britannica proposes such a universal notion of human rights: "Human rights, rights that belong to an individual or group of individuals simply for being human or as a consequence of inherent human

vulnerability, or because they are requisite to the possibility of a just society. Whatever their theoretical justification, human rights refer to a wide continuum of values or capabilities through to enhance human agency or protect human interests and declared to be universal in character, in some sense equally claimed for all human beings, present, and future” (Burns, 2014). Article 21 of the Charter of Fundamental Rights of the European Union explains the essence of principle “*non-discrimination*”: “1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.” (Charter of Fundamental Rights of the European Union 2012/C 326/02, 2012). We can find the same idea in other international conventions and other international legal acts. As well, each country’s main document, the Constitution, contains provision on the protection of human rights and freedoms. The Constitution of the Republic of Lithuania, the Constitution (in the Latvian language *Satversme*) of the Republic of Latvia, the Constitution of the Ukraine is not an exception. For example, the Preamble of the Constitution of the Ukraine emphasizes that it is important to ensure human rights and freedoms as well as life conditions worthy of human dignity. We can find more details in Article 3 of the Constitution of the Ukraine “An individual, his life and health, honour and dignity, inviolability and security shall be recognized in Ukraine as the highest social value.” (The Constitution of Ukraine, 2004, amended 2016).

The aim of this research is to conduct comparative analysis the criminal procedure laws of the Republic of Lithuania, of the Republic of Latvia and the Ukraine on the rights of protection of disabled persons, who became victims of criminal acts (crimes and misdemeanours).

The above disclosed issue focuses on the main objectives of the research: 1) to describe physically challenged persons; 2) to analyse international and national laws on protection of disabled persons as victims of criminal acts in criminal procedure; 3) to identify issues related to disabled persons’ access to justice, especially in criminal procedure; 4) to propose suggestions which could improve protection rights of persons with disabilities in criminal procedure.

Research methods: 1) method of analysis of literary sources and legislative standards; 2) comparative-legal method through analysis of the legislative standards of the Criminal Procedure Laws of Latvia, Lithuania and the Ukraine; 3) method of statistical analysis.

Conceptual framework

Criminal acts are among different kind of threats to human beings rights and freedoms. Each state’s essential duty is to protect people from criminal acts

by lawful means and meticulously prescribed procedures during investigation set up by the Criminal Procedure Law. For example, according to Part 1 Article 2 of the Criminal Procedure Law of the Ukraine (hereinafter, the CPL). “The objectives of criminal proceedings are the protection of individuals, society and the state from criminal offences, the protection of rights, freedoms and legitimate interests of participants in criminal proceedings, as well as the insurance of quick, comprehensive and impartial investigation and trial in order that everyone who committed a criminal offence was prosecuted in proportion to his guilt.” (The Criminal procedure code of Ukraine, 2012).

Human rights are inherent to every human being from the beginning of the life till its end. However, on different stages of human’s life these rights obtain different peculiarities, so children’s rights differ from the rights of adults, that of disabled persons. Main international document on protection of specific group of persons (specifically disable people) is the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol (hereinafter, the UN Convention). The UN Convention was adopted by the United Nations General Assembly on the 13th of December 2006 and entered into force on 3rd of May 2008. The Republic of Lithuania, the Republic of Latvia and the Ukraine are signatories and participants of the above mentioned Convention. The UN Convention builds upon and works in synergy with other international legal acts related to disabled persons: *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* (1994), *World Programme of Action on Disabled Persons* (1982) (not legally binding treaties). Before going deeper – how does disable persons’ rights and fundamental freedoms are protected in specific areas, during pre-trial investigation of criminal acts, we should have clear picture: what is understood by “*disable person*”, “*person with disability*” in the laws of Lithuania, Latvia, the Ukraine and what we are going to analyse.

As stated above, the fundamental document on the rights of protection of disabled persons - the UN Convention. It had, has and will have huge impact on national legislators regarding protection of disabled persons in different spheres of life. The UN Convention sets out the legal obligations on states to promote and protect the rights of persons with disabilities. It does not create new rights. The UN Convention does not explicitly define disability. Preamble of the UN Convention states: “*Disability is an evolving concept, and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders full and effective participation in society on an equal basis with others*” (The United Nations Convention on the Rights of Persons with Disabilities, 2006).

Article 1 of the UN Convention states: “*Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective*

participation in society on an equal basis with others.” (The United Nations Convention on the Rights of Persons with Disabilities, 2006).

Article 2 of the Law of the Ukraine “On the bases of social security of persons with disability in the Ukraine” states: “*A person with disability is a person with a permanent disorder of bodily functions that in case of interaction with external environment can lead to restriction of his/her activity, therefore the state shall create conditions for realization of his/her rights on an equal basis with other citizens and ensure his/her social protection.*” (Law of Ukraine On the bases of social security of persons with disability in Ukraine, 1991, amended 2017).

It responds to the Law of Social integration of disabled people in the Republic of Lithuania: “*Disability means long-term deterioration of health, participation in public life and reduction of activity opportunities due to the disorder of the person's body structure and functions and the interaction of unfavourable environmental factors.*” (Law of Social integration of disabled people in the Republic of Lithuania, 1991, amended 2019).

A comparative analysis of definitions “disable person”, “person with disability” in the above mentioned laws make us to conclude that disability is not purely related with medical issues of person health but also it is very closely connected with social issues.

The authors of this research fully support the concept that disable people are more disabled by society rather than by their bodies. (World disability report, 2011).

Disability is a human rights’ issue, because people with disabilities experience inequalities in different areas of social life, for example, when they are deprived of access to health care, employment, education or political participation because of their disability. A range of international documents have highlighted that disability is a human rights’ issue, including the *World Programme of Action Concerning Disabled People* (1982), the *UN Convention on the Rights of the Child* (1989), and the *Standard Rules on the Equalisation of Opportunities for People with Disabilities* (1993). Approximately 10% of the world’s population are people with disabilities (over 650 million people). (Disability Statistics: Information, Charts, Graphs and Tables, 2018).

The EU unemployment rate of people with disabilities is 17,4% compared to 10,2% of people without disabilities (European comparative data on Europe 2020 & People with Disabilities, 2013).

The EU does not collect data on people with disabilities on a regular basis. One of the problem is to set up a common definition of disability, which, according to the European Disability Forum, an umbrella organisation, “*is not an easy task*”. The European Commission estimates, that including all who have a “long-term physical, mental, intellectual or sensory impairment,” one in six

people in the EU have a disability - or approx. 80 million. Of them, some 30 million people are blind or partially sighted, according to the European Blind Union. Deaf people are far less numerous, with some 750,000 users of sign language in Europe, according to a spokesperson for the European Union of the Deaf. There are an estimated 5 million wheelchair users in Europe. Other prevalent disabilities – severe and less severe – include dyslexia, with in Europe an estimated 25 million sufferers, stuttering, with 5 million, and autism, with 3.3 million (Disability in figures, 2012).

242 000 people receive disability pensions according to the official statistic date of the Ministry of Social Security and Labour of the Republic of Lithuania in 2017. At the same time approximately 2.9 mil. people used to live in the Republic of Lithuania. So, we can conclude that around 8% of all population of Lithuania are disable persons. 64004 criminal acts were registered in Lithuania in 2017 (Lietuvos Respublikos prokuratūros veiklos 2017 metais ataskaita 2018-02-28 Nr. 17.9.-3673, 2018).

Around 60% of all registered criminal acts are against property. The same statistic data are in other European countries. In *“routine activities theory, [it] examines the environmental context in which crimes occur. Routine activities are a theory of place, where different social actors intersect in space and time. The people we interact with, the places we travel to, and the activities we engage in influence the likelihood and distribution of criminal behaviour.”* (Derek James Allen, 2015).

When looking to evaluate a suitable target many different things can take part for an offender/perpetrator to make this rational decision. And the easiest target for achieving their goal is person with disability. A fact that disable persons more often became targets of criminal acts have been proved by researches done in the United Kingdom, United States of America (hereinafter, USA). Disabled adults in England and Wales were more likely than non-disabled people to worry about being the victim of crime (46.4% compared to 36.0%) (Equality and Human Rights Commission Research report, 2016).

Disabled people in all age groups more likely than non-disabled people have experienced a crime. (Equality and Human Rights Commission Research report, 2016).

In 2015, the rate of violent victimization against persons with disabilities (29.5 victimizations per 1,000 persons age 12 or older) was 2.5 times higher than the rate for persons without disabilities (11.8 per 1,000) in the USA. (Crime Against Persons with Disabilities, 2009-2015).

The authors of this paper conducted comparative analysis to provisions of Criminal Procedure Laws of the Republic of Latvia, of the Republic of Lithuania and the Ukraine on the rights of protection of physically challenged people – victims of criminal acts during pre-trial investigation stage,

particularly – during an interview. The above mentioned criminal investigative action is one of the most frequent method applied by law enforcement agencies in practise to obtain data on circumstances of committing the criminal acts.

Recommendation R (85) 11 of the Committee of Ministers to Member States “*On position of victim in the framework of Criminal Law and Procedure*” recommends the governments of the member-states to review their legislation and practice regarding victims of crime. One of main recommendation is related to questioning of the victim. According to the guidelines of the above mentioned recommendation “at all stages of the procedure, the victim should be questioned in a manner which gives due consideration to his personal situation, his rights and his dignity. Whenever possible and appropriate, children and the mentally ill or handicapped should be questioned in the presence of their parents or guardians or other persons qualified to assist them.” (Recommendation No. R (85), 1985).

Another Recommendation Rec (2006) 8 of the Committee of Ministers to the member-states’ governments “*On assistance to victims of crime*” recommends that the governments of the member-states disseminate and be guided in their internal legislation and practice by the principles set out in the appendix to this Recommendation which replaces Recommendation R (87) 21 “*On assistance to victims of crime and prevention of victimization.*”

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA states: “victims of crime should be recognized and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, *disability*, age, gender, gender expression, gender identity, sexual orientation, residence status or health.” (Directive 2012/29/EU, 2012).

According to Directive, assessments should be carried out for all victims “to determine whether they are at risk of secondary and repeat victimization, of intimidation and of retaliation and what special protection measures they require. Individual assessments should take into account the personal characteristics of the victim such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, *disability*, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime.” (Directive 2012/29/EU).

Based on the above mentioned directive and recommendations, the CPL of the Republic of Lithuania (17 of December 2015 and entered into force from 1 March of 2016) and Criminal Procedure Law of the Republic of Latvia have

been amended by provisions on additional protection of crime victims including provision on individual assessment of victim's needs. For example, article 186¹ the CPL of the Republic of Lithuania describes procedure on individual assessment on needs of victims. Preliminary assessment must be conducted as soon as possible, however not later than at the first interview of victim, by police official or prosecutor. If needed, psychologist or another person with special knowledge or skills might be involved into this assessment procedure. Based on the result of an assessment and identification of special needs of a victim for protection him or her from repeat victimization, a prosecutor in charge for organization and management of pre-trial investigation has the right to choose proper special procedural guarantees prescribed by the CPL/criminal procedure law in order to protect a victim. For example, an interview should be made by the same sex person as the victim, a repeat interview of victim by the same official who did the preliminary interview; one-time interview etc. An individual assessment of victim's should be prescribed in details according to Recommendation of 29 February 2016 by the General Prosecutor of the Republic of Lithuania on assessment for special guarantees to victims. A threat risk to victim is evaluated by grades. Higher grades require higher level of protection from repeat victimization.

So, we can conclude that results of assessment on threat of risk for repeat victimization correlate with quantity of types of special guarantees on needs of a victim. Although, the CPL of the Ukraine (came into force on 20 of November 2012) lacks such tool as an individual assessment on needs of **victims**. The rights of victim's are exposed in Article 56 of the CPL of the Ukraine. Part 1 of the above mentioned Article states: "1. Throughout the entire criminal proceedings, a victim *shall have the right to*" (The Criminal Procedure code of Ukraine, 2012).

Conclusions

A comparative analysis to provisions on the rights of protection of disabled persons in criminal procedures of CPL of Lithuania, Latvia and the Ukraine reveals that the CPL lacks of proper protection of a person with disability. For example, interview of disabled person by pre-trial investigative judge or one-time interview depends on the results of assessment on risk of threat for repeat victimization. If grades are low, it is very unlikely that a disabled person will be interviewed by a judge at pre-trial stage or interview is going to be one-time during all criminal process. An interview is very important investigative action and at the same time it is very stressful experience for a participant of criminal process especially for a person with disability due to his or her sensitivity, lower self-confidence, lack of knowledge in criminal procedural law, not mandatory

participation of defense lawyers as legal representative (just for suspect, accused disabled persons representation of defense lawyers in all stages of criminal process are mandatory), difficulties to access the building where institutions are located etc. Persons with disabilities must enjoy legal capacity on an equal basis with others in all aspects of life and state shall take appropriate measures to create legal ground for persons with disabilities in exercising their legal capacity.

The authors of this research recommend: first, to apply rule of “*one-time interview during the criminal process*” if victim of criminal offence is person with disabilities. Second, participation of defense lawyer during pre-trial investigative actions with a person with disability must be mandatory. It can be done by amendments to Criminal Procedure Laws of Latvia, Lithuania and the Ukraine.

1. Disability is not purely related with medical issues of person’s health, but closely connected with the social issues.
2. A comparative analysis revealed that the CPL of the mentioned countries lacks of proper protection of disabled person as a victim of criminal acts during interview procedure and rule of “*one-time interview during criminal process*” shall apply in this case.
3. Participation of defense lawyer during pre-trial investigative actions with a disabled person must be mandatory.

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