



Klára Kalibová

BIAS CRIME VICTIMS AND THE RIGHT TO LEGAL AID

Klára Kalibová
In IUSTITIA (Czech Republic)

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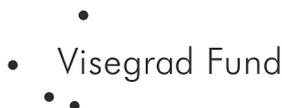
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1

**ÚVOD
A CÍL TEXTU**

The aim of this text is to introduce the public to the **conditions and legal framework for providing legal aid to bias crime victims**, to draw attention to some **needs and specifics about such injured parties**, and to propose **measures** that would arrange for actual access to justice for these injured parties, the people who become the targets of different forms of bias violence.

This text presents the practice that is common in the Czech Republic, which was the first EU Member State to introduce into its legal code the Directive of the Council of the EU and the European Parliament 2012/29/EU, dated 25 October 2012, establishing the minimum rules about the protections for, rights of and support for crime victims (hereinafter the Directive)¹, which happened in the Czech Republic in August 2013 through Act No. 45/2013, Coll., on crime victims (hereinafter the ACV). It is possible to consider this domestic practice unique for many reasons. The state has formulated conditions for the provision of services to victims through a legal text and its implementing regulations, created a scheme for financing such services, and is generally endeavouring to support the development of services for victims. The providers of services to victims (the NGO sector) have grasped this opportunity to professionalize their services and primarily to provide them to an extent that was not possible before the adoption of the ACV. The criminal justice authorities have adapted rather quickly to the change in the legal position of injured parties/victims and (at least formally) recognize and uphold their rights. While the position of crime victims has been significantly improved by the adoption of the ACV and this subsequent practice, it is necessary to draw attention to the existing legal, political and practical limitations on this law in practice.

Paradoxically, those limits are most markedly visible when it comes to legal aid provision. The services for victims that the state supports are limited to being just advisory in scope. The apparent need of most hate violence victims is high-quality legal aid in its entirety, i.e., including legal representation from the first tasks associated with the criminal proceedings through to the final decision in the case.

1 Directive of the Council of the EU and European Parliament 2012/29/EU dated 25 October 2012. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029&qid=1548959738621&from=EN\(bit.ly/legalaid01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029&qid=1548959738621&from=EN(bit.ly/legalaid01)).

There is no doubt that legal aid also has side effects. The most basic is systemic change, specifically for those subjected to hate violence. A successfully-litigated case that achieves generally-binding jurisprudence will significantly influence future decision-making in similar cases. It is not possible to arrange legal aid for all hate violence victims, but at least victims can rely on the gradual bolstering of their rights by means of generally-binding legal practice. We believe high-quality jurisprudence can, in many cases, mean much more from the standpoint of protecting the rights of injured parties than would an educational, emancipatory or preventive campaign, even one lasting several years.

This text is addressed to legal professionals, providers of services, and the public administration. For legal professionals it will familiarize them with the needs of hate violence victims, introduce them to the necessity for a comprehensive approach and to the difficulties that legal professionals (who are not members of the helping professions) experience in situations where they collaborate with marginalized or otherwise disadvantaged people as well as with traumatized persons generally. The providers of other services who do not have legal advice and representation services available for hate crime victims can learn from this text about how to set up such a service and what problems to prepare for. Last but not least, the courts and the public administration can learn about the needs of hate violence victims during the preliminary and procedural phases of adjudication and what their particular world entails.

2

**BIAS VIOLENCE
AND HATE CRIME**

At the outset it is necessary to define the basic terminological difficulties we are currently grappling with as we strive to effectively improve the position of **bias violence** or hate violence victims. As will later be demonstrated, we are using the terms *bias violence* and *hate violence*, or rather *bias crime* and *hate crime*, interchangeably. We consider the term bias violence to be the concept that more exactly captures the essence of **violence motivated by the biases of the assailant toward the group which, from the point of view of the perpetrator, the victim represents.**² This is not, therefore, about the intensity of the perpetrator's hostility, i.e., the degree of hatred, but about the perpetrator's bias-selective choice of victim. On the other hand, in European and international legal documents and at the level of expert discussions³ and public policy⁴ the term that still predominates is *hate crime* to designate the kind of **crime that is driven by a biased (hateful) motivation.**⁴ Whenever, therefore, the term hate is used, by definition it considers a bias-selective choice of victim to be a pivotal element of that crime.

Currently there is no legal definition of hate crime at the level of the European Union. The Directive itself does not contain one. Whether bias crime victims are recognized as victims with special needs (particularly vulnerable victims) crucially depends on how **bias crimes are defined by national criminal law.** The absence of a definition of hate crime in domestic and EU documents can prevent hate violence victims from accessing justice, legal aid, and other services for victims, in some cases.

2 KALIBOVÁ, Klára (ed.). *Face to Face with Bias Violence. Guidelines for social workers.* Prague: In IUSTITIA, 2016, p. 9. Available at: <http://www.in-ius.cz/dwn/brozury-bias/bias-eng-afterproof2.pdf> (bit.ly/legaid02).

3 See, e.g., the website of the international expert group International Network for Hate Studies. <http://www.internationalhatestudies.com/> (bit.ly/legaid03).

4 See e.g., *National Security Audit.* Prague: Ministry of Interior Czech Republic, 2016, p. 29. Available at: <https://www.mvcr.cz/cthh/soubor/national-security-audit.aspx> (bit.ly/legaid04 - in English).

5 "A hate crime is a criminal act committed with a bias motive." *Hate Crimes in the OSCE Region: Incidents and Responses.* Warsaw: ODIHR, 2013, p. 14. Available at: http://www.antigone.gr/files/en/library/documentation-of-EU-and-international-organizations/international-surveys-and-studies/Hate_Crime_Report_full_version.pdf (bit.ly/legaid05-ext).

Domestic definitions differ fundamentally from each other. Some states approach the legal definition with an exhaustive enumeration of the protected groups of persons, others given demonstrative examples and others a more general definition.⁶ The broadest protection to bias violence victims is provided in those states that choose demonstrative or general definitions. The Czech Republic is a country that conceptualizes bias crime through an exhaustive list.⁷ At the same time, however, what does benefit hate crime victims in the Czech Republic is the **broader, demonstratively-conceived definition included directly in Section 2 paragraph 4 letter d) of Act on Crime Victims.**⁸ This means that while criminal law norms consider hate crimes just assaults motivated by hostility towards an ethnic, national, political, racial or religious group (with the exception of Section 356 Criminal Code⁹), the protective norm stipulating the rights of victims includes assaults on persons for other reasons (age, association with a subculture, sexual orientation, social origin, state of health) as meeting the definition of hate crime victims.

6 For more, see KALIBOVÁ, Klára. *Trestná činnost z nenávislosti de lege lata a de lege ferenda – některé hmotně právní aspekty*. Brno: Faculty of Law, Masaryk University. Dissertation, 2017. Available at: https://is.muni.cz/th/r84zv/DizPrace_Kalibova_2017.pdf (bit.ly/legaid06 - in Czech).

7 With the exception of victims of Section 356 - Incitement to hatred of a group of persons or the restriction of their rights and freedoms.

8 Act 45/2013 Coll., on Crime Victims. Available at: <https://www.zakonyprolidi.cz/cs/2013-45> (bit.ly/legaid08 - in Czech).

9 Act No. 40/2009 Coll., Criminal Code. Available at: <https://www.zakonyprolidi.cz/cs/2009-40> (bit.ly/legaid09 - in Czech).

3

**POSITION OF PERSONS
ENCOUNTERING
HATE VIOLENCE**

3.1 PEOPLE AT RISK OF HATE VIOLENCE

The vulnerability of groups at risk of bias violence is conditioned by the cultural, historical and political conditions in a specific region or state,¹⁰ both in the immediate and long-term senses.¹¹ A markedly negative societal atmosphere, political populism, and the designation of entire groups of persons as inferior, problematic or unwanted is a source of energy for specific assailants.

In the region of Central and Eastern Europe, bias violence primarily targets actual or assumed Romani people and, more recently, also actual or assumed foreign nationals, while in Western Europe people are assaulted because of their faith or skin colour, as are foreign nationals and migrants generally.¹² Lesbians, gays, bisexuals and transgender people are at risk of bias violence to a significant degree also. An important group at risk of bias-motivated attacks is that of homeless people. Especially during the last three years, organizations and people who are somehow dedicated to protecting the rights of minorities or to advocating for human rights have become targeted by bias violence.¹³

3.2 INJURED PARTIES AND VICTIMS

Any crime is followed by an adjustment to the lives of those subjected to it. The usual consequences of crime are a breakdown in the victim's

10 *EU-MIDIS Data in Focus Report 6: Minorities as Victims of Crime*. Vienna: European Union Agency for Fundamental Rights, 2012. Available at: <http://fra.europa.eu/en/publication/2012/eu-midis-data-focus-report-6-minorities-victims-crime> (bit.ly/legaid10).

11 VIRDEE, Satnam, MCGEEVER, Brendan. Racism, Crisis, Brexit. *Ethnic and Racial Studies*, vol. 41, 2018, p. 1802-1819. Available at: <https://www.tandfonline.com/doi/full/10.1080/01419870.2017.1361544>. (bit.ly/legaid11).

12 BIHÁRIOVÁ, Irena. *Comparative Hate Crime Report*. Bratislava: People in Need, 2018. Unpublished.

13 GILBERT, David. Facebook has a problem with death threats in the Czech Republic. *Vice News*, 30. 11. 2017. Available at: https://news.vice.com/en_us/article/3kpp5j/facebook-has-a-problem-with-death-threats-in-the-czech-republic-and-is-failing-to-fix-it (bit.ly/legaid13).

family and social ties, damages to physical health, economic losses, loss of safety, loss of a sense of control, psychological harm, reduced income and the risk of losing housing (or actually losing housing).¹⁴

People who become crime victims also become **the holders of new rights**. These can be divided into three areas:

- Rights connected with the right to care and support that arise the moment the crime is committed and are held by the *victim*,
- Rights of a procedural character that can be realized during the criminal proceedings and are enjoyed by *injured parties* and *witnesses*, and
- The substantive entitlement of the *injured party* to compensation for the damages caused, which can be realized either directly during the criminal proceedings or during a subsequent civil proceedings.

At one and the same moment, therefore, a crime victim ends up occupying three different positions. While the rights of injured parties and witnesses are a component of the national legal order, the rights of victims have only come to the forefront of interest during the last decade. The basic instrument that charges the state with guaranteeing a victim's minimal rights is the Directive.

First and foremost, such a person, in the sense of Article 2 of the Directive, is a **victim**, i.e., a natural person who has suffered damages including economic loss or emotional, physical or psychological harm directly connected with the crime. Victims are also guaranteed such rights as the prevention of secondary victimization. This is primarily about:

- The right to **information and support**, including **rights to legal and psychological aid and social services** (Articles 3-9);
- The right to **participate in the criminal proceedings**;

14 KALIBOVÁ, Klára (ed.). *Face to Face with Bias Violence. Guidelines for social workers*. Prague: In IUSTITIA, 2016, p. 28-36. Available at: <http://www.in-ius.cz/dwn/brozury-bias/bias-eng-afterproof2.pdf> (bit.ly/legaid14).

- **The right to protection**, including the right to be dealt with gently, the right to information about the criminal proceedings, and the right to be heard.

Secondly, such a person becomes the **injured party**, i.e., a party to a criminal proceeding who enjoys procedural rights directly during the case being made against the accused (e.g., the right to participate in the criminal proceedings, to propose evidence, to view the case file, and to file complaints and appeals), and frequently also the right to compensation for damages, including non-pecuniary harm. The injured party, as a party to the criminal proceeding, is recognized primarily in states with a continental law tradition and is usually defined at the level of the national legal code. Czech legislation defines it as *the party whose health has damaged by the crime, who has suffered property damage or non-pecuniary harm because of the crime, or at whose cost the perpetrator of the crime has enriched herself or himself. In this sense, a legal personality can also be an injured party. Similarly, Hungary considers an injured party to be the party whose legal interests or rights have been threatened or violated by the crime.*¹⁵

The third position in which the person subjected to a criminal act finds herself or himself is that of **witness**, i.e., of a person who was able to observe or perceive certain facts and must, if subpoenaed by the state, give testimony about such facts.¹⁶

These three positions held by a person subjected to a criminal act involve many practical problems. Of these, the most burning problem is a certain degree of inertia on the part of the criminal justice authorities, who perceive persons subjected to an offence primarily as bearers of information important to the criminal proceeding in their capacity as

15 Article 5, paragraph 1, Act XIX of 1998 on Criminal Proceedings. Available at: http://www.ejtn.eu/Documents/About%20EJTN/EJTN_Genocide%20Network%20programme/Act%2019%20of%201998%20BE.doc (bit.ly/legaid15)

16 With certain exceptions as to when testimony can be refused, such as cases where the person herself or himself or his or her loved one would become subjected to criminal prosecution after testifying or would break a lawfully-established or recognized obligation to preserve confidentiality.

witnesses. Only secondarily do authorities acknowledge these persons' needs as crime victims who are authorized to claim the corresponding care and support.

3.3 VICTIMS IN NEED OF PARTICULAR PROTECTION (ESPECIALLY VULNERABLE VICTIMS)

Crime does not affect all victims the same way. There is a group of victims who experience their victimization by crime especially heavily and who must receive increased protection from repetitious or secondary victimization. For such persons, the Directive uses the term *victims in need of particular protection*. The Czech legal system uses the term *especially vulnerable victims*.¹⁷

Section 4 of the Act on Crime Victims (ACV)

a) a minor

b) a person who is of advanced age or who is afflicted by a mental, physical or psychological disability or impairment of the senses, if these facts might, given the circumstances of the case and the conditions of the person, prevent his or her effective, full participation in society in comparison with its other members,

c) a victim of the crime of human trafficking (Section 168 Criminal Code) or the crime of a terrorist attack (Section 311 Criminal Code),

d) a victim of a crime against human dignity in the sexual arena, **a crime that involved pressure, the threat of violence or violence, a crime committed because of the victim's affiliation with a class, ethnic, national, racial, religious or other group of persons**, or the victim of a crime committed to benefit an organized criminal group if in the specific case there is an **increased danger of causing secondary damage, especially with respect to the victim's age, nationality, race, religious faith, sex, sexual orientation, state of health**, cognitive maturity, ability to communicate, current life situation, or with respect to the relationship between the victim and the person suspected of committing the crime on whom the victim is dependent.

Unlike Czech domestic law, the Directive does not specifically enumerate the victims in need of particular protection. First and foremost, the

¹⁷ Act 45/2013 Coll., on Crime Victims. Available at: <https://www.zakonyprolidi.cz/cs/2013-45> ([bit.ly/legaid17](https://www.zakonyprolidi.cz/cs/2013-45) - in Czech).

Directive lists the criteria that can have an influence on particular vulnerability, which are:

- Personal characteristics of the victim
- The nature or type of crime
- The nature of the circumstances under which the crime was committed.

Currently the Directive unambiguously lists several groups of persons who are to be paid specific attention when assessing their need for particular protection. In addition to victims of violent crime, these are victims of crimes with a bias or discriminatory motive associated with a characteristic of the victim's personality. Other victims in need of particular protection are those assaulted by a loved one or somebody on whom they are dependent. Especial attention must be paid to victims of exploitation, human trafficking, intimate partner violence, organized crime, sexual violence, terrorism, violence on the basis of the victim's sex, or **hate crime**. Minors must always be considered persons in need of particular protection.

The Czech Republic has approached the category of especially vulnerable victims differently, by listing victim types. However, while some victims are considered especially vulnerable *ex lege*, (i.e., the authority that assesses their vulnerability just assesses whether they belong to a specific group and awards their status on the basis of that assessment), other groups of victims are considered especially vulnerable only after the conclusion can be drawn during the assessment that, with regard to their characteristics, the risk of secondary damage to them exists. The first category (*ex lege*) includes minors, people living with disability, senior citizens, victims of human trafficking and victims of the crime of a terrorist attack (i.e., not all victims of terrorism). The second category, the position of which will always depend on the assessment of the authority responsible, includes victims of bias crime, of intimate partner violence, or of sexual crime, but just in situations *where there is, in a specific case, increased danger of causing secondary damage with respect to their age, nationality, race, religious faith, sex, sexual orientation, state of health, cognitive maturity, ability to communicate, current life situation, or with respect to the relationship between the victim and the person suspected of committing the crime or on whom the victim is dependent.*

3.4 THE RIGHT TO INDIVIDUAL ASSESSMENT AND RELATED RIGHTS

The right to individual assessment is introduced by the Directive as a basic right of victims with particular needs (especially vulnerable victims) in Article 22. Each victim has the right to have a corresponding individual assessment of these specific protection needs after the crime is committed and on the basis of that assessment, the provision of protection during the criminal proceedings. The purpose of individual assessment is to prevent secondary and repeat victimization, intimidation and revenge and to grant the rights in a criminal proceeding defined in Articles 23 and 24 of the Directive.

This is about the following authorizations **during the investigation**:

- The right to be interrogated in facilities that are specially adapted or created,
- The right to be interrogated by a person who is **trained**,
- The right to **be interrogated by the same person over time**, assuming such procedure does not prevent the execution of justice,
- The right to **be interrogated by a person of the same sex**. This right concerns the victims of sexual violence, of violence motivated by the victim's actual or assumed gender, and of violence in intimate relationships.¹⁸ It does not apply to interrogations performed by the state attorney or by a judge.

It is also about the following authorizations during a **court proceeding**:

- The right to **measures preventing visual contact between the perpetrator and the victim** during testimony (e.g., using different kinds of communications technologies),

¹⁸ It is not, however, ruled out that this could also apply to any victims with special needs (particularly vulnerable victims).

- The right to **not be interrogated in the courtroom**,
- The right to **not be interrogated about one's private life**,
- The right to measures that facilitate a **closed hearing**.

It generally applies that during the execution of the Directive, Member States can also go beyond the measures it lists. An example of a state choosing to enact measures that are even more favourable toward victims is the regulation of the interrogation of especially vulnerable victims in the Czech law on crime victims, which **allows the victim to choose the sex of the interrogating police officer**.

Section 19 of ACV:

The victim may ask to be interrogated by a person of either the opposite sex or the same sex during the preliminary proceedings.

For especially vulnerable victims it is necessary to accommodate such a request. It can be refused only in cases where there are important reasons – which, however, the law does not at all define. These will primarily be reasons of the immediate capacity of a police station, i.e., a situation where police need to interrogate the injured party and at that moment do not have an officer available of the sex the injured party would prefer. The reason the Czech Republic chose such a progressive approach toward crime victims is to take into account the needs of persons of minority sexual orientations and transgender persons who may feel more comfortable and safe during interrogation if a person of the opposite sex conducts it. However, these measures also benefit others who, for different reasons (loss of social role, previous bad experiences, or shame) want to choose the sex of the interrogator. The choice of sex should not be perceived by the police as obstruction but as a way to prevent secondary victimization on the one hand, and on the other hand to facilitate the course of the interrogation itself, from the standpoint of the amount of information the injured party provides.

During the individual assessment of the particular need for protection, it is necessary to assess the **personal characteristic(s) of the victim, the kind or the nature of the crime, and the circumstances of its**

commission. The Directive directly mentions hate crime victims, who are to be paid special attention during individual assessment. Victims of hate violence are therefore considered victims for whom individual assessment **must be performed in particular detail and professionally** (like victims who are minors, victims of human trafficking, victims of sexual abuse or violence, and victims of a criminal act of terrorism).

Section 22 (3) of the Directive:

In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

The personal characteristic(s) of the hate crime victim are primarily their age, ethnicity, nationality, political convictions, religion, sexual identity or orientation, or state of health – i.e., the circumstances under which they were targeted for attack, as well as those that could disadvantage them or cause them to become vulnerable during the course of the criminal proceedings.

The assessment of particular vulnerability **is performed by the police, the state attorney and the courts**, i.e., essentially by those bodies and institutions that subsequently grant the rights described in Article 23. They are meant to proceed in close cooperation with the victim so as to ascertain the actual situation and the risk factors that could give rise to secondary or repeat victimization. It is necessary to repeat assessments if the situation of the injured party changes. One of the rights of a victim is also the right not to be considered a victim in special need of protection. Also, services for aiding victims should be able to identify the needs for special protection of a victim, which follow two aims: The first is the quality provision of all advice and services, which must include information about the rights under Article 23, and the second is to aid in enforcing those rights directly during the criminal proceedings.

The Directive leaves it up to the states how to carry out an assessment of the special need for protection. While some EU Member States have enacted detailed elaborations of assessment methods,¹⁹ others (including the Czech Republic²⁰) continue to wait for such good practice. As a pilot, in the year 2013 a scheme was developed for assessing special needs for protection as part of the EVVI project (Evaluation of Victims) implemented by the French Justice Ministry.²¹ It took the form of a questionnaire to be completed even without the consent of the victim by the criminal justice authorities focused on the actual situation of the victim after the commission of the crime (especially in terms of the economic, health, personal and psychological impacts in terms of sources of support for the victim, and the previous criminal history of the perpetrator, as well as other aspects of the person of the perpetrator). It is necessary to note that the EVVI was apparently developed in the context of domestic violence victims and the needs of hate violence victims are not specifically included in it.

19 Typically Great Britain, see e.g. MAIZNER, Linda et al. *EVVI (Evaluation of Victims)*. Ministère de la Justice, French Republic, 2013. Available at: <https://victimsupport.eu/activeapp/wp-content/uploads/2015/07/EVVI-Guide-English1.pdf> (bit.ly/legaid19a). See also: *Victims of crime in the EU: the extent and nature of support for victims*. FRA – European Union Agency for Fundamental Rights. Luxembourg: Publications Office of the European Union, 2014. Available at: <http://fra.europa.eu/en/publication/2014/victims-crime-eu-extent-and-nature-support-victims> (bit.ly/legaid19b).

20 V ČR není dokonce článek 22 Směrnice zcela implementován do zákona.

21 <https://victimsupport.eu/activeapp/wp-content/uploads/2015/07/EVVI-Guide1.png> (bit.ly/legaid21)

4

THE RIGHT TO FREE LEGAL AID

4.1 LEGAL FRAMEWORK

Access to justice, i.e., the opportunity to *ask for and achieve redress for rights violations through protection by informal and formal judicial institutions upholding human rights standards*,²² is a standard that must be provided to the broadest possible circle of persons.²³ One means for providing it is affordable legal aid. Some groups must be provided free legal aid. While in the past these persons were primarily considered to be the perpetrators of crimes, the current efforts and trends in international society are to provide a similar level of representation for victims (injured parties).

We define legal aid for the purposes of this publication as assistance involving **legal information** in the sense of the Directive, **legal advice and representation before the courts and other parts of the criminal justice system**. Legal information also means, at the very least, information provided to victims so that they will be able to successfully exercise their rights during the criminal proceedings and their rights as victims. Advice involves complete legal counselling in relation to all the rights of the person who is entering a certain proceeding. Legal representation also involves the assistance of a lawyer directly during negotiations with the criminal justice authorities or other institutions with which the injured party or victim comes into contact.

The way in which free legal aid is provided differs significantly from Member State to Member State, depending on local legal tradition, the available resources to finance legal aid, and also on the willingness of those with the status of legal professionals to accept a free legal aid scheme as a professional standard.

22 *Global Study on Legal Aid. Global Report*. New York: UNODOC, 2016, p. 8. Available at: https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global_Study_on_Legal_Aid_-_FINAL.pdf (bit.ly/legaid22).

23 See Sustainable Development Goals: 16 Peace, Justice and Strong Institutions. Available at: <https://www.un.org/sustainabledevelopment/peace-justice/> (bit.ly/legaid23).

Article 4 of the Directive

Right to receive information from the first contact with a competent authority

- the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;
- the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;
- how and under what conditions they can obtain protection, including protection measures;
- how and under what conditions they can access legal advice, legal aid and any other sort of advice;
- how and under what conditions they can access compensation;
- how and under what conditions they are entitled to interpretation and translation;
- if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;
- the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;
- the contact details for communications about their case;
- the available restorative justice services;
- how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

The right to free legal aid flows from domestic, EU and international norms and was originally primarily developed in relation to persons accused of breaking the law, especially those who commit crimes. The European **Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR)**²⁴ guarantees the right to free legal aid to accused persons who do not have enough money to pay for a defence attorney, where the interests of justice are served by so doing (Article 6, para. 3, letter c)), as does **the International Covenant on Civil and Poli-**

24 Communication from the Czechoslovak Federal Ministry of Foreign Affairs No. 209/1992 Coll., on the negotiation of the Convention on the Protection of Human Rights and Fundamental Freedoms and its related Protocols.

tical Rights (Article 14, para. 3, letter d)).²⁵ The European Court of Human Rights, nevertheless, has interpreted this over time to mean that the right to a fair trial can, *despite the absence of similar regulations for civil disputes, sometimes oblige the state to provide the aid of an attorney if such assistance is demonstrated to be essential to effectively accessing the court, whether because legal representation is obligatory, as it is in the domestic law of some contracted States for different types of disputes, or because the matter itself or the proceeding itself is complex.*²⁶ The state, therefore, has a positive obligation to provide legal aid where the interests of justice demand it under certain conditions.²⁷ According to Article 47 of the **Charter of Fundamental Rights of the EU**²⁸ all who do not have sufficient means to afford an attorney are to be provided one if it is essential to arranging for effective access to justice. Legal aid is also regulated by the UN General Assembly Resolution on the **Principles and rules for access to legal aid in criminal justice systems**.

In **relation to crime victims** the right to free legal aid is guaranteed by **Article 13** of the Directive. States must arrange access to free legal aid for victims who are parties to criminal proceedings (injured parties). The Directive leaves the legislation of the access to free legal aid up to the Member States.

Article 13 of the Directive 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. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.

25 Decree of the Czechoslovak Socialist Republic Ministry of Foreign Affairs No. 120/1976, on the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

26 Airey v. Ireland, Judgment of 9. 10. 1979, No. 6289/73.

27 Cf. KMEC, Jiří, KOSAŘ, David, KRATOCHVÍL Jan, BOBEK, Michal. *Evropská úmluva o lidských právech*. [First edition]. Praha: C. H. Beck, 2012, p. 809 et seq. (in Czech).

28 Charter of Fundamental Rights of the European Union. Dostupné z: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> (bit.ly/legaid28).

4.2 METHODS OF PROVIDING LEGAL AID

For crime victims, access to legal aid is a basic condition of their succeeding with the criminal proceeding. Just providing legal advice or information does not respect the actual needs of injured parties who have been traumatized and who are customarily in the position of lay persons when it comes to legal knowledge and who need the relevant support, including legal representation, in order to genuinely enforce their rights. If the main reason free legal aid is provided to alleged perpetrators of felonies is that there is a risk of their rights being violated otherwise, especially in the form of their having to serve a prison sentence, then there is no reason why, at least to a similar extent, i.e., in cases of felonies, or even for other reasons that make injured parties especially vulnerable, the state should not be obliged to arrange for legal aid to victims as well.

Free legal aid in the general sense is something we comprehend to mean a situation where under certain conditions a **natural person is provided with professional legal assistance free of charge**. Free legal aid is legal assistance provided (in exchange for remuneration made available by others) to the entities that provide help to those in need at no cost to them. It is necessary to admit that free legal aid of the kind paid for by the state from public funds can only be provided to some groups of victims. To **whom**, under **what conditions, to what extent**, and **by whom** the legal aid will be provided must be defined, according to the Directive, by domestic legislation.

There are two cumulative conditions customary for the provision of free legal aid – **the lack of resources of the party** to whom the free legal aid is provided and the **interests of justice with respect to each individual case**.²⁹ In the case of a crime victim, it is also customary for there to be a third condition related to **typology of the injured parties** – free legal aid is provided just to some groups of injured parties. This typology may correspond, for example, to the definition of a victim with special needs. Let's recall that these are persons who are especially vulnerable because of their personal characteristics, the nature or type of the crime, or the circumstances under which it was committed. Through this prism, there-

²⁹ See KMEC, Jiří, KOSAŘ, David, KRATOCHVÍL Jan, BOBEK, Michal. *Evropská úmluva o lidských právech*. [First edition]. Praha: C. H. Beck, 2012, p. 809 et seq. (in Czech).

fore, legal aid should be guaranteed especially to victims of violent crimes or other crimes that markedly weaken the ability of the injured party to join the criminal proceedings without suffering further damage.

As an **example of good practice** here we will discuss the implementation of the law on legal aid in Czech legislation on crime victims and the Criminal Code. Free legal aid is conceived of at two levels in that legislation. The first group of persons must always document their lack of financial means to pay for legal aid. At the same time, they must have been

- a) victims of intentional felonies causing damage to their health,
- b) the surviving relatives of such a victim or
- c) injured parties who have claimed compensation for damages, non-pecuniary harm, or a finding by the court of unjust enrichment, unless such representation is manifestly unnecessary.

The second group of persons are those younger than 18 and all especially vulnerable victims. Such persons are provided legal aid free of charge even without documenting their assets or claiming compensation.

The UN has recently identified different schemes for providing legal aid from the standpoint of the entities authorized to provide it or actually providing it. They differentiate between the following:³⁰

- **Public systems of legal aid:** Legal aid provided by state-paid lawyers through state institutions. (In the Czech Republic the system of the Probation and Mediation Services approximates such a model but is limited to providing legal information by the ACV);
- **Systems based on appointment (*ex offio* systems):** Legal aid is provided by lawyers (attorneys) in private practice on the basis of a court (or other state institution) resolution. The costs are covered by the court (or another

30 *Global Study on Legal Aid. Global Report*. New York: UNODOC, 2016, p. 41. Available at: https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global_Study_on_Legal_Aid_-_FINAL.pdf (bit.ly/legaid30).

entity). (In the Czech Republic this model is used in situations where the injured party, who is entitled to free legal aid (see below) does not choose the attorney, who is assigned to the injured party exclusively from among the ranks of attorneys);

- **Contractual systems of legal aid:** Legal aid is provided by entities contracted by the state to provide legal aid on behalf of third parties. The state covers the cost of this legal aid. Legal aid conceived in this way is provided by attorneys, lawyers or non-state entities (law clinics, NGOs, service providers). (In the Czech Republic this model is applied in relation to service providers for victims who provide crime victims legal information on the basis of a subsidy contract free of charge.);
- **Hybrid systems** combining all the above methods of providing legal aid.

4.3 PRÁVNÍ POMOC A POTŘEBY OBĚTÍ PŘEDSUDEČNÉHO NÁSILÍ

Legal aid to victims of general (violent) crime customarily includes assistance during negotiations with police, claiming entitlement to compensation for damages including arranging the corresponding documentation and expert assessments, and representation before the court. However, the conditions of hate violence victims and their needs are so specific that it is necessary to approach them with special caution and to absolutely adapt the character of the legal aid and other services provided to their needs.

The essence of bias violence is an assault on the personal dignity of the injured party, who usually knows, absolutely and exactly, that he or she was attacked because of his or her difference and otherness. Such persons also know that they cannot easily prevent such an assault and that they could face one again at any time due to their difference, which is usually visible.³¹ Their basic need, therefore, is **acknowledgment**, and in the ideal case, also documentation of the **fact that the motivation of the perpetrator was prejudicial**. The role of legal aid in relation to this need, therefore, is to flesh out – if the criminal justice system has not already done so – the evidentiary situation to include information that can prove bias motivation. The providers of legal aid are, in relation to hate crime victims, obliged to advocate for their **right to an effective investigation**, which includes the positive obligation of the state to investigate bias motivation.³² It is therefore categorically necessary that the relevant legal aid be provided by persons who are specialists in the subject of bias crime.

Bias crime represents a specific legal problem that court-appointed legal advisers will not have customarily encountered more than once in

31 KALIBOVÁ, Klára (ed.). *Face to Face with Bias Violence. Guidelines for social workers*. Prague: In IUSTITIA, 2016, p. 30. Available at: <http://www.in-ius.cz/dwn/brozury-bias/bias-eng-afterproof2.pdf> (bit.ly/legaid31).

32 For more, see KALIBOVÁ, Klára. *Trestná činnost z nenávisti de lege lata a de lege ferenda – některé hmotně právní aspekty*. Brno: Faculty of Law, Masaryk University. Dissertation, 2017. Available at: https://is.muni.cz/th/r84zv/DizPrace_Kalibova_2017.pdf (bit.ly/legaid32 - in Czech).

their careers. Unlike specialists, such advisers must expend more effort to formulate the corresponding legal strategy. In cases of bias violence such strategy is based not just on researching secondary sources or domestic case law, but necessarily requires a broader dimension of research.

First and foremost, it is necessary to base the strategy in such cases on European and other international examples of case law, on legal documents and also on non-legal sources that are convincing by virtue of the strength of their argumentation, such as policy documents, recommendations and research. These resources are, for most legal advisers, either absolutely inaccessible or unfamiliar to them. It cannot be assumed that appointed attorneys would have the opportunity, above and beyond their obligatory representation of the client, to undertake deeper analysis or research, as the subject of bias violence is so new here that success in these cases is condition on using new, non-traditional legal arguments.

Second, legal strategy can draw on the purely practical experience that such legal advisers gain only from dedicating themselves to this subject over a longer period of time. To clarify bias crimes, last but not least, it is crucial to have knowledge of the local circumstances of the accused perpetrator, the criminal justice authorities, and the injured parties.

The specificity of bias violence victimization also conditions the way legal aid is provided to those affected. What is characteristic of hate crime is its high degree of **lack of reporting**, caused both by the injured parties' unwillingness to report incidents to the police for different reasons and by the police's incorrect legal assessment of the nature of such crimes. Most victims, therefore, remain unidentified and their needs are not provided for in the corresponding way, as they are able to access legal aid only with great difficulty. The provision of legal aid, therefore, should ideally be preceded by the kind of service that finds victims, provides them with adequate information about their legal situation, makes it possible for them to reflect on the fact that they have become victims of bias crime, and then facilitates possible follow-up by legal services.

Generally it applies that most bias violence victims are **marginalized and structurally discriminated**. That conditions both the ability and

willingness of injured parties to identify themselves as victims in particular need of protection and the willingness to offer them access to the legal protection system. In comparison with similarly vulnerable victims of domestic or sexual violence (albeit for different reasons), or even with victims who are either minors or senior citizens, bias violence victims are still not insufficiently instructed about their rights and the corresponding support is not afforded them.

Demonstrably-existing structural discrimination can negatively influence the willingness of non-specialized legal aid providers, especially court-appointed attorneys, to even provide services or to provide them in the corresponding quality or way so as to fulfil the above-mentioned need of these clients to prove the bias motivation of the crime. Court-appointed legal aid providers customarily provide non-specific services of a standard quality including primarily orientation in the process of compensation for non-pecuniary damage and assistance during the court proceedings.

Many legal aid systems are **relatively inaccessible to bias violence victims**, both in a physical and a social sense. First and foremost, legal aid provision requires visiting the location where advice is given. In many cases injured parties are incapable of this. As a consequence of their primary victimization in a public area, they may suffer fear of moving about in public or of taking public transportation, to say nothing of physical injuries that can significantly restrict their ability to travel. The impossibility of accessing a brick-and-mortar counselling centre can also be caused by purely economic reasons from the side of the injured party, especially if they live outside of large population centres or have been without income for a long time. The solution customarily is to provide consultations and counselling directly where the injured party resides.

The barriers faced by injured parties when accessing legal aid **are also cultural and linguistic**. Legal services should be provided in a language that the injured party speaks well enough to be able to comprehend their rather complex content. The ability to grasp such content is significantly reduced in stressful situations. Even if the injured party speaks a language in which most of the legal services customarily provided by appointed attorneys are being provided (Czech, English, or any of the other main European languages) within the framework of ordinary com-

munication, that is not enough for professional counselling. Appointed legal representatives do not have the capacity to arrange interpreters and injured parties do not have enough means to independently organize interpretation. In such situations, it has been demonstrated that it is appropriate to choose to provide counselling and representation along with a service that includes interpretation as a standard for collaborating with such a client.

The basic quality that legal aid should bring to crime victims is that of **acceptance**, both at the level of accepting the client's version of the incident and at the level of collaborating with the client on the legal strategy. Legal aid providers do not encounter persons from other cultural environments during their standard work and may approach injured parties with stereotypical expectations or with disproportionate curiosity (albeit unconsciously). At the same time, they may assume facts or situations about the client's life that fit the image the legal adviser has about that certain group, but that may not apply to that particular client. Another alternative to an insensitive approach that represents a different kind of communication barrier is when the legal adviser is too shy to communicate with the client about matters related to his or her otherness that the legal adviser may be considering without expressly naming them.

Bias crime does not just **bring about consequences at the legal level**. When providing legal aid it is possible to encounter clients who have been injured and traumatized, who live in difficult economic or social situations, or who have no families to back them up. It can also be discovered that the client faces many other legal problems that need to be solved in connection with the case.

Legal aid providers should know how to respond to such situations, not just how to solve a specific legal problem in isolation from other factors. The client's personal situation is closely connected with the provision of legal aid. A person whose other needs are not sufficiently addressed is easily subjected to secondary victimization during a criminal proceedings and his or her role in that proceedings may be endangered. Unaddressed psychological problems can influence the testimony given by the person as a witness, while a difficult economic or social situation can influence his or her ability to actively contribute to the proceeding or even to physically arrive for hearings. An unstable background can gen-

erally lead to a loss of motivation to continue with the proceeding. Clients frequently fall out of criminal proceedings because they are long and painful and will never bring them an answer to their basic question, "Why has this happened to me?" The kind of criminal proceedings that will successfully convict the perpetrator and will demonstrate bias motivation is, for most clients, their main motivation for entering such a criminal proceedings in the beginning, and it has the potential to positively influence how crimes are dealt with in future. It is the role of the legal aid provider to approach the injured party holistically and to make the complex journey of the criminal proceedings easy for them. In some situations, the role is even to motivate the clients to see their case through to the end, all with the awareness that an unfinished case makes it impossible for the trauma that bias crime has visited upon the injured party to be processed and overcome.

From the above it can be concluded that **just the legal specialization of persons providing legal aid is not sufficient to meet the needs of bias crime victims**. On the other hand, it has been and is being demonstrated that bias violence represents such a complex situation in terms of such clients and their legal needs that the approach to addressing it must be multifunctional, based on knowledge and skills that are both extra-legal and legal, and must include non-legal care for injured parties.

In the following tables we are providing an overview of the identified advantages and risks for different providers of legal advice, aid or information.

ADVANTAGES

RISKS

ATTORNEYS

- Comprehensive legal aid including representation
- Quality acquired through legal education, practice, confirmed passage of professional examinations
- Financially and organizationally independent from the state or other actors
- Confidentiality can be waived by the client only
- Compulsory insurance in case of malpractice
- Quality control in place

- Oriented on addressing legal issues and only legal issues
- Low specialization in the needs of victims, not required to continually educate themselves
- Not connected to other aid systems
- High communications barriers for persons from marginalized groups
- Quality control is just performed by members of the profession itself
- Accessing legal aid is itself a process
- Difficult availability in some regions

STATE-PROVIDED LEGAL AID

(Czech example – Probation and Mediation Services)

- Quality is acquired through (especially extra-legal) education and practice
- Confidentiality can be waived by the client only
- Backing of a state institution
- High regional availability
- Use of extrajudicial aid instruments (mediation)

- Orientation just on advice, not representation or accompanying clients to court
- State institutions combine aid to perpetrators and victims
- High communications barriers for persons from marginalized groups
- Quality control is just internal

NGO PROVIDERS OF SERVICES TO VICTIMS IN SYSTEMS FUNCTIONALLY IMPLEMENTING THE DIRECTIVE

(Czech example – accredited entities aiding victims per Section 38 et seq. of ACV)

- Connection to comprehensive aid services for victims (social services, therapies) including the choice of extra-legal or non-confrontational legal approaches (mediation)
 - Oriented toward achieving systemic change
 - High specialization in this subject, ability to support legal argumentation with data and information that may be less accessible to other entities or unknown to them
 - Legal arguments customarily oriented toward the human rights dimension and international documents
 - Easily approachable by victims coming from marginalized groups
 - Availability (employees are mobile, negotiations are informal, and staff are culturally equipped)
 - Quality is acquired through (legal) education and practice
 - Organizational independence from the state and other actors guaranteed by the NGO's mission and public obligation
 - Confidentiality can be waived by the client only
 - Required to hold malpractice insurance
 - Quality is controlled by an independent body
 - Legally required to attend continuing education
- According to the ACV, NGOs can just provide legal information; according to the Criminal Code they can represent clients during criminal proceedings – the extent of their aid, therefore, depends on the choice (and the finances) of the specific client
 - NGOs cannot be appointed by the court as attorneys for injured parties, but said parties can individually choose them
 - Formal institutions respect NGOs less than other representatives
 - Limitations in proceedings that assume representation by an attorney is compulsory
 - Financial dependence on the state or other third-party financial resources
 - Accessibility difficult in some regions

ACTIVIST INDIVIDUALS

(as lay attorneys for the injured parties they are able to appear on the basis of a power of attorney from the client per Section 50 of Criminal Code)

- | | |
|---|---|
| <ul style="list-style-type: none">■ Victims from marginalized groups have low barriers to accessing them■ Availability (culturally-equipped, mobile, negotiations are informal)■ High specialization on just one subject■ Participatory approach■ Clients' voluntary choice to work with them despite all the risks■ Oriented toward achieving systemic change | <ul style="list-style-type: none">■ Customarily lay people (without any legal education)■ Lack of oversight■ Malpractice insurance not required■ Not connected to other aid systems■ No education required■ Weak backup, low sustainability■ No Code of Ethics in place■ Confidentiality not required by law |
|---|---|

LEGAL CLINICS AT LAW SCHOOLS

- | | |
|--|--|
| <ul style="list-style-type: none">■ Easily accessed by victims from marginalized groups■ Availability (informal negotiations, the clinic itself is not an institution)■ Participatory approach■ Client voluntarily chooses to participate – with all the risks that entails■ Quality control by trainers■ Option to buy malpractice insurance (but this is not legally required)■ Organizational independence■ Education of future lawyers toward social responsibility | <ul style="list-style-type: none">■ Customarily just providing legal advice and simple filings – it is not ruled out that they could represent clients in court, but it does not happen■ These advisers have not yet completed their legal education, but the provision of the legal advice is overseen by the trainer■ Low sustainability, clinics are usually one semester long, not appropriate for longer-term cases■ Confidentiality not legally required■ Clients respect these advisers less than the other kinds |
|--|--|

5

EXAMPLE OF GOOD PRACTICE – AID TO BIAS VIOLENCE VICTIMS IN THE CZECH REPUBLIC

In this chapter we are presenting the way legal aid to bias crime victims is provided in the Czech Republic. We are convinced that this is an exceptionally comprehensive approach to the needs of victims that can become a model for states where aid to victims has not yet been conceptualized. At the same time, however, we are aware of certain legal and practical limitations that continue to partially restrict access by injured parties to justice, the optimization of which needs to be sought.

5.1 BASIS AND CONDITIONS

For the successful provision of legal aid to bias crime victims, **conditions must be fulfilled at three levels – the state, the criminal justice authorities, and service providers.** In an ideal case, all these aspects act in mutual synergy.

Less than one year after the Directive took effect, the Czech Republic adopted in 2013 a comprehensive law regulating crime victims' rights, fulfilling the implementation deadline (of November 2015) more than two years ahead of time. When drafting the legal norm, the state took into consideration the interests of the injured parties – the drafting group was comprised of the academic authors of the law, representatives of the public administration and the judiciary, and, in an absolutely unique case, the providers of services to victims, and what was taken into special consideration were particularly vulnerable victims.³³ That facilitated at least taking partial account of the actual needs of injured parties including their need for legal representation. Here it is necessary to make an essential note: the first draft of the ACV made it possible for the providers of services to victims to directly provide an integrated legal aid package, including legal representation in court by anybody. It was only after interventions were made to the original bill during the subsequent legislative commenting procedure that the opportunity for court-appointed or state-subsidized remuneration for representation became limited so as to exclusively benefit attorneys.

33 In IUSTITIA contributed to the drafting of the law.

5.1.1 THE STATE

First and foremost, the state has provided the **legal framework**, not just through the above-mentioned law about crime victims, but also by connecting it with the Criminal Code and its subsidiary legal standards. The positive aspect of this law must be primarily seen in its definition of hate violence victims as especially vulnerable victims, a broader definition than that of the criminal law. Currently, practically all who are assaulted on the grounds of their difference and in danger of secondary damage for that reasons have access to the rights of a particularly vulnerable victim. The state also guarantees all especially vulnerable victims access to free legal aid by court-appointed attorneys. We see the limits of this legislation as being the fact that a law on free legal aid has yet to be adopted that would guarantee free legal aid in a genuinely comprehensive way.

The Czech state has established a scheme of support for legal aid that is **hybrid**, i.e., a combination of contracted (through a subsidy system) legal aid through accredited independent providers of services to victims, a system of legal aid provided through a state body (the Probation and Mediation Services), and an appointment system for state-paid remuneration of legal aid that allows the court to appoint attorneys exclusively as providers. Attorneys are able to provide legal aid to victims on the basis of being registered with the attorney list kept by the Interior Ministry, from which the court subsequently appoints an attorney on the basis of the injured party's request. The Probation and Mediation Services provides exclusively legal information on the basis of direct legal empowerment. Independent providers of services to victims, on the other hand, must be accredited, fulfil professional conditions, and conform to a quality control system.

The state does **guarantee quality legal aid**, both directly and indirectly. However, it does not approach all provision equally.³⁴ At the Probation and Mediation Services, the quality of the services providing legal information is assumed and no special mechanism is established for quality control or standards. The legal information provided to injured parties

34 The proposals for the corresponding changes in the law on victims are discussed here: *Zákon o obětech trestných činů. Praktická a legislativní doporučení zohledňující návrh technické novely zákona č. 45/2013 Sb.* Praha: In IUSTITIA, 2016. Available at: <http://www.in-ius.cz/dwn/praktalegdopo/zotc-web-final.pdf> (bit.ly/legaid34 - in Czech).

does not have to be provided by a person with a legal education there. With respect to attorneys, the quality is assumed on the basis of their membership in the professional chamber (the bar association), as any malpractice in the provision of legal services will be addressed by that entity. Quality control is established most strictly for providers of services to victims. They must first and foremost guarantee their expertise by employing persons with legal educations, and they must furthermore elaborate and follow a series of quality standards that are established by decree.³⁵ The quality of the services provided is regularly assessed by the Justice Ministry.

An indubitable advantage of this aid system is also its **financial framework** guaranteed by the state, which distinguishes the legal position of the entities providing legal information or aid. If an injured party is appointed an attorney per Section 51a Criminal Code, it is always in exchange for compensation, a blanket amount of CZK 1 500 (55 €) per each task. This amount is paid by the state, customarily after a final decision takes effect in the case, within one year of that verdict being announced. The Probation and Mediation Services are financed directly from the state budget. Services by accredited entities are supported contractually through subsidy proceedings. Accredited entities, however, are not able to provide legal representation in court that will be remunerated by state subsidy, but that does not mean the providers of services are not able to undertake representation during criminal proceedings - they can, but the financing must come from somewhere else than the state. The regulation allowing the injured parties to choose anybody to represent them, including legal entities providing services to victims, is rather controversial, but at the same time it does not allow the representatives to do so in exchange for compensation, financial support, or remuneration for representing clients during a criminal proceedings. As has been analysed broadly above, hate crime victims require a specific approach, just as it is frequently necessary to take a special route towards building a successful legal strategy for them. It seems the providers of services are able to be better-equipped to provide **comprehensive aid in one place**, including legal assistance.

35 The compulsory quality standards are established by Decree No. 119/2013, Coll., on the quality standards for services provided according to the Act on Crime Victims. Available at: <https://www.zakonyprolidi.cz/cs/2013-119> ([bit.ly/legaid35](https://www.zakonyprolidi.cz/cs/2013-119) - in Czech).

5.1.2 CRIMINAL JUSTICE AUTHORITIES

Although the criminal justice authorities – police, prosecutors, courts – do not provide legal aid to victims, the roles they play when approaching the victims are inextricably part of whether victims will eventually be able to access legal aid.

The Police, most frequently, are the first to encounter the injured parties. Their appropriate, corresponding identification of bias crime victims as especially vulnerable can significantly aid with such victims exercising their right to free legal aid. Police are legally obligated to refer injured parties to entities providing services free of charge to such victims (Section 8 para.1 letter b)). They are obliged to do so in such a way as to not intensify their secondary victimization, i.e., in the ideal case they would just refer them to an entity providing services to hate crime victims. If police merely provide injured parties with a general list of all service providers, there is a danger that an unaware victim will choose to mistakenly contact a non-specific counselling centre, or a domestic violence counselling centre, from where they would of course be referred elsewhere. That means the injured party would be forced to describe the situation experienced again and again and to look for a new service. That can lead not just to their re-victimization, but also to their giving up on finding the relevant aid at all. If, on the other hand, police provide contact directly to a counselling centre that specializes in aiding bias crime victims, **they will significantly influence the quality of the criminal proceedings and the speed at which the crime is dealt with**. The police also have the basic obligation to provide basic information to injured parties regarding all their rights.

Crime victims are also able to enter directly into a criminal proceeding by reporting the crime to the **state attorney**, who has the same obligations with respect to injured parties in terms of identifying them and informing them as police do. The irreplaceable role in accessing free legal aid is played by the **court**, which decides on an injured party's request for such aid.

5.1.3 ACCREDITED ENTITY FOR AID TO VICTIMS: IN IUSTITIA

In the Czech Republic there is currently just one organization specializing in aid to bias crime victims. During almost 10 years of practice it has developed a unique mechanism for providing care to injured parties that combines legal representation, the provision of social services, and work in the field to identify such persons.

First and foremost, the organization bases its work on the justified assumption that persons subjected to bias violence rarely turn to the police or other state bodies to report a crime or request aid. At the same time, however, information about such incidents is frequently reported by the media, on social networks, or through unwritten verbal narratives shared inside the communities who are endangered. A crucial instrument for reaching persons in need of legal aid, therefore, is **field work**. To undertake such work with persons endangered by or subjected to hate violence is a specific endeavour because communities at risk do not comprise homogenous groups that are easily contacted in the field – they are closed, to a significant degree, to persons approaching them from the outside. Long-term outreach work, the creation of materials in different forms and languages, and employing peer staffers who come directly from such communities and can enter them more easily have all proven effective.

In IUSTITIA considers it important that there be **collaboration with police and other criminal justice authorities that is based on mutual respect**. Injured parties are able to assess and decide how and whether to take advantage of services only on the assumption that police give them the relevant contacts and information. For that reason, the organization focuses primarily on beefing up police skills when it comes to identifying bias crime victims so they can give them information about legal aid and other services.

Legal aid is provided to victims to the extent necessary during the entire course of the criminal proceedings. The organization combines a team of employed lawyers with attorneys who collaborate with them on cases. At the same time, the organization strives to make sure the injured parties come into contact with as few advisers as possible so their secondary victimization will not intensify. A component of legal aid is as-

sistance during the preliminary proceedings directly during the injured party's deposition, and subsequently during the interrogations of all important witnesses and the accused. Legal aid is also related to the lawyer or collaborating attorney participating in other essential steps of the criminal proceeding. Only this approach facilitates the injured party securing his or her claims in full. In some cases, within the framework of legal aid, In IUSTITIA proposes augmenting the evidentiary means. Expert assessments that benefit the injured party are procured to demonstrate their entitlement to compensation for damages and non-pecuniary harm. The claim to compensation for such damages is then formulated and submitted. If the client shows interest, the organization will also exercise the client's right to be spared contact with the perpetrator or to be interrogated by a person of the client's preferred sex. During the main trial legal aid is provided during the entire duration.

This collaboration in providing legal aid is fundamentally consensual and voluntary. The client can cease collaboration at any time, without explanation. Services are frequently provided directly in the location of the client's residence because it may be extremely difficult for clients to visit the organization's counselling centre. Consultations are always provided by two persons, the lawyer and the organization's social worker, who is tasked with, on the one hand, making communication between the client and legal adviser easier, and on the other hand with meeting the needs of such injured parties that can only be covered by social work. This model of shared consultation can be considered rather successful and rare.

Our lawyers pay great attention to communicating with the clients so that the entire process of exercising their rights can be as participatory as possible. From the beginning they define their common aims and the ways to achieve them. That is followed by frequent consultations and continuously informing the client about developments in the case. These personal consultations happen, at a minimum, at the beginning of the proceedings, before the trial, after the injured party testifies as a witness, after the decision is handed down by the first-instance court, after any eventual appeals decision is handed down, and prior to the eventual filing of a constitutional complaint. Clients are also usually provided important filings for comment. This collaboration with the client differs from the common performance of advocacy in which lawyers

purely act in their capacity as experts, do not consult clients very often, and primarily advocate for their claims to compensation for damages. The aim of the collaboration between a client and the In IUSTITIA organization, of course is, in addition to defending the client's rights, for the injured party to regain control over his or her life in the aftermath of the crime. The opportunity for a client to actively contribute to addressing his or her legal case undoubtedly contributes to that effort.

As has been stated above, for hate crime victims a key moments in the entire process of pursuing justice is having the bias motivation of the perpetrator taken into account and eventually officially acknowledged. If the injured parties have enough evidence of bias motivation, nothing prevents them from augmenting it. Bias motivation represents a violation of an injured party's non-pecuniary rights, so proving it directly during the criminal proceedings involves proving the extent of the non-pecuniary damage.

A basic component of In IUSTITIA's activities, as mentioned above, is **social work**. Only clients whose needs are fully acknowledged and then fulfilled can be successful during a criminal proceeding. As part of the organization's social work with its clients, we address their economic and social endangerment, their housing, medical and psychological problems, media interaction planning, safety planning, and stabilization of their family system.³⁶

An overview of the activities of the Justýna Counselling Centre run by In IUSTITIA follows:

36 KALIBOVÁ, Klára (ed.). *Face to Face with Bias Violence. Guidelines for social workers*. Prague: In IUSTITIA, 2016, p. 24-36. Available at: <http://www.in-ius.cz/dwn/brozury-bias/bias-eng-afterproof2.pdf> (bit.ly/legaid36).

JUSTÝNA COUNSELLING CENTER

PROFESSIONAL SOCIAL COUNSELLING

- Providing crisis interventions
- Creation of safety plans
- Creation of media interaction plans
- Arranging for state social support benefits and sickness insurance benefits
- Facilitation of therapeutic care
- Communication with creditors / local authorities / schools
- Looks for new employment / school options
- Looks for new housing
- Accompanies the client to see doctors, expert witnesses, local authorities, the Police of the Czech Republic
- Facilitation of pro bono attorney representation services

LEGAL INFORMATION

- Informing injured parties of their rights and how to exercise them
- Applying for claims to compensation for damages and non-pecuniary harm
- Acquiring monetary aid
- Writing filings during proceedings before courts and state administration bodies
- Fiduciary services
- Expert witness assessments
- Interpretation services

JUSTÝNA COUNSELLING CENTER

REPRESENTATION BY ATTORNEY

- Services include those listed under “Legal information” and also include the following:
- Active participation in the client’s filing of statements /depositions/interrogations
- Attending the interrogations of the accused perpetrators and of eyewitnesses on behalf of the client
- Protecting clients from coming into contact with perpetrators
- Calculating and applying for compensation of damages and non-pecuniary harm
- Attends the main trial
- Files appeals and/or constitutional complaints
- Civil proceedings
- Aid with collecting compensation for damages

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