

Selected rights of crime victims in criminal proceedings

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1. Definition of terms

A natural person who suffered an injury to health, pecuniary or non-pecuniary damage or at whose expense the perpetrator enriched him/herself as a result of a criminal offence pursuant to Art. 43 of the Code of Criminal Procedure has the position of **victim** in an ongoing criminal proceeding regardless of the victim's age or the nature of the criminal offence, with all the procedural rights, to which a crime victim is entitled pursuant to the law. Also legal entities have an identical position of victim in a criminal proceeding if they suffered e.g. pecuniary damage as a result of a criminal offence or if the perpetrator enriched him/herself as a result of a criminal offence at their expense. A crime victim and thus holder of procedural rights pursuant to the law, on the other hand, is not a person/entity² feeling to have suffered moral or other damage as a result of a criminal offence if the incurred damage was not caused by the perpetrator's intentional act or if there is not a direct causal correlation with the criminal offence (Art. 43 par. 2 of the Code of Criminal Procedure).

With effect from 1 August 2013 **natural persons** who suffered (or allegedly suffered) an injury to health, pecuniary or non-pecuniary damage or at whose expense the perpetrator enriched him/herself as a result of a criminal offence are considered in the way like the next of kin, i.e. spouse, common law spouse, registered partner, adoptee, adopter, sibling or a relative in direct kinship to the victim who suffered death as a result of a criminal offence pursuant to Art. 2 par. 2 and 3 of the Crime Victims Act No. 45/2013 Coll. **victims** and thus holders of further rights declared by this special law. A victim is to be considered any natural person who feels to be a victim of a criminal offence, unless the opposite is proven to be true or if it is a manifest misuse of the law (so-called victimization presumption shall apply). It has

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² i.e. natural person or legal entity

no impact on the position of victim whether the perpetrator has been or not identified or convicted.

Under certain conditions a natural person may enjoy increased legal protection granted by the Act No. 45/2013 Coll. on Crime Victims effective as of 1 August 2013 to the category of so-called **especially vulnerable victims**. Under Art. 2 par. 4 of this Act, this category comprises next to children (i.e. persons younger than 18 years of age regardless of the nature of the criminal offence by which they've been affected) and human trafficking victims under Art. 168 of the Criminal Code also people with physical, psychological or mental handicap or a sensorial handicap preventing them from a full-fledged application in society, just like victims of sexual crimes against human dignity (i.e. criminal offences of rape, sexual pressure, sexual abuse etc.) or criminal offences including violence or threats of violence, if at the same time there is also increased risk of secondary victimization in a specific case, mainly with respect to the victim's age, sex, race, nationality, sexual orientation, religious believes, health status, cognitive development, expression abilities, life situation or the victim's relationship to or dependence on the suspect. The draft amendment of the Crime Victims Act No. 45/2013 Coll. prepared by the Ministry of Justice of the Czech Republic was submitted to the Czech Government for approval in October 2015. In case of successful completion of the legislative process with effect from 1 July 2016, among other things, the category of especially vulnerable victims should be expanded to comprise seniors (regardless of the nature of the criminal offence)³, victims of terrorist attacks under Art. 311 of the Criminal Code, victims of hate crimes⁴ and organized crime⁵.

³ The draft amendment does not count on general delimitation of increased vulnerability of seniors in relation to the risk of their secondary victimization, since according to the Ministry of Justice that has submitted the draft amendment, old age as such does not entail a need for special treatment, as the need arises as a result of some biological or social phenomena accompanying the process of ageing, that occur individually, and in every individual at a different age. A senior shall enjoy the status of especially vulnerable victim only if the old age factor combined with various obstacles (e.g. bad health, social isolation, dependence on the help of others, etc.) prevents the individual from full-fledged application in society (as compared with the other members of society). Based on the existing court practice, a senior is considered a recipient of old age pension and a person above the age of 60 who is not yet entitled to receive old age pension.

⁴ This includes victims of crimes committed due to the victim's nationality, race, ethnicity, religion, class or another category.

⁵ In case of hate crime and organized crime victims, one of the basic conditions to enjoy the status of especially vulnerable victim should be the fact that in the specific case there is an increased risk of secondary victimization on the side of the victim, mainly with regard to the victim's age, sex, race, nationality, sexual orientation, religious believes, health status, cognitive development, ability to express oneself, current life situation, or with regard to the relationship to or dependence on the suspected perpetrator.

Acknowledgement of the status of especially vulnerable victim under Act No. 45/2013 Coll. entails among other things provision of free-of-charge expert assistance on the hand of professional organizations providing assistance to crime victims (Art. 5 of the above Act) without undue delay upon the victim's request, furthermore right to a thoughtful and considerate hearing conducted by a trained professional (Art. 20 of the above Act), right to request at any stage of the criminal proceeding and/or even before start of criminal proceeding that all the necessary measures be implemented during the acts, in which the victim takes part, to prevent contact of the victim with the alleged perpetrator indicated by the victim and who is the crime suspect or against whom the criminal proceedings have been instigated (Art. 17 of the above Act), along with the right to request to be interviewed in the pre-trial proceeding, including interpretation provided by a person of the same or opposite sex (Art. 19 of the above Act) or the right to a repeated interview of an especially vulnerable victim to be conducted by the same body and by the same interviewer, unless it is prevented by important reasons (Art. 20 par. 3 of the above Act); Such requests need to be granted, unless it is prevented by the nature of the conducted act or other important reasons.

2. Crime victim's right to active participation in criminal proceedings

As concerns crime victim's active participation. crime victims are pursuant to Art. 12 par. 6 of the Code of Criminal Procedure one of the parties to the criminal proceeding and they have **the right to lodge a criminal complaint** concerning facts indicating that a criminal offence has been committed that must be accepted by the prosecutor and the police, including the right to request to be informed (within one month from the date of lodging the criminal complaint) about the measures adopted to ascertain the criminal complaint (Art. 158 par. 2 of the Code of Criminal Procedure). At any time during the pre-trial proceeding, crime victim is entitled to request the prosecutor supervising the police body's procedure in the criminal matter, to remove delays in the proceeding or certain shortcomings in the procedure of the police body. The victim as the petitioner must be informed about the outcome of the review by the prosecutor who is obliged to handle such request without undue delay immediately after it has been lodged (Art. 157a par. 1 of the Code of Criminal Procedure)⁶.

⁶ The victim may also demand that delays in the proceeding or shortcomings in the prosecutor's procedure be removed; responsible to handle such a complaint is the prosecutor of an immediately higher prosecution office (Art. 157a par. 2 of the Code of Criminal Procedure).

A victim whose domicile or registered office is known to the court has also **the right to receive a copy of the filed indictment or punishment proposal** (Art. 196 par. 1, 3 of the Code of Criminal Procedure), as well as to be **informed about the date and time of the main hearing** in case that the victim is not at the same time called in as a witness. Delivery of the indictment including the date and time of the main hearing are important pieces of information for the victim to exercise the right to claim compensation of pecuniary or non-pecuniary damage caused by the criminal offence or return of groundless enrichment obtained by the perpetrator as a result of the criminal offence at the expense of the victim, since such a claim may be raised under Art. 43 par. 3 of the Code of Criminal Procedure not later than at the main hearing prior to the start of evidence collection (Art. 206 par. 2 of the Code of Criminal Procedure)⁷. So if in a given case the victim has not yet raised a claim for compensation of pecuniary or non-pecuniary damage⁸, and/or return of groundless enrichment, the procedural court will inform the victim about this right at the time of the delivery of the copy of the indictment. If the victim does not appear at the main hearing, but the claim for compensation of damages had been included in the criminal file, such a claim (as a rule raised during the pre-trial proceeding as a part of the hearing of the victim in the position of a witness) is read out from the file by the president of the senate prior to the start of evidence collection.

At the same time, the victim is invited by the president of the senate (sole judge) to inform the court in a timely manner of any suggestions to collect further evidence at the main hearing, stating the circumstances that should be clarified by means of the proposed evidence (Art. 196 par. 2 of the Code of Criminal Procedure). Similarly, the victim has a right to be informed about the date and time of the public appeal hearing as well as the date and time of the public plea bargain hearing to be held based on an agreement between the defendant and the prosecutor (Art. 314q par. 1 of the Code of Criminal Procedure).

If the victim is a foreign national and/or a person without a nationality who declares not to speak Czech, i.e. the language in which law enforcement authorities conduct the criminal

⁷ The victim's claim for damages must clarify the grounds and the amount of the claim for compensation of pecuniary damage (including late interests) or non-pecuniary damage or return of groundless enrichment. The victim shall support with evidence the grounds and the amount of pecuniary damage, non-pecuniary damage or groundless enrichment, about which the victim shall be informed by the law enforcement authorities in advance during the criminal proceeding.

⁸ in criminal proceeding it must be always expressed in money

proceeding, the victim has a **right to use in contact with law enforcement authorities** (and also in court trial) **his or her mother tongue**⁹ and/or a language that he or she declares to speak (Art. 2 par. 14 of the Code of Criminal Procedure). Any and all cost in relation to interpretation during a procedural act (e.g. during explanation or witness hearing in the pre-trial proceeding or victim interview in the procedural position of witness in court trial) and/or written translations (e.g. invitation of the victim as a witness to the main hearing) shall be borne by the law enforcement authority conducting the act, which is also obliged to ensure a suitable interpreter.

A victim who has raised a claim for compensation of pecuniary or non-pecuniary damage caused by the criminal offence, and/or return of groundless enrichment obtained at the victim's expense as a result of a criminal offence, has the **right to view the investigation file within a proper time limit** including all the attachments, **and make proposals to complete the investigation**¹⁰, of which the victim must be notified by the police body in advance¹¹ (Art. 166 par. 1 of the Code of Criminal Procedure). The victim only has this right if the law enforcement authorities are familiar with the victim's domicile or registered offices.¹² If the victim fails to take advantage of this right, the police body makes a note in the file and proceeds in its procedure as if the victim had been informed, i.e. the police submits the file to the supervising prosecutor with a proposal to file an indictment and/or with a different proposal to handle the file as to the merits of the case.

In case of lesser criminal offences, i.e. misdemeanors¹³, the victim has a **right to enter with the defendant in an agreement on damage compensation** or return of groundless enrichment, which is a necessary prerequisite to conditionally discontinue criminal prosecution¹⁴ (Art. 307 of the Code of Criminal Procedure) and similarly the victim has a right to express consent (dissent) with the court's decision (and the prosecutor's decision in

⁹ It is the official language of the country, of which the victim is a national.

¹⁰ the police body must inform the victim about refusal of the proposal to complete the investigation

¹¹ within a deadline of at least 3 days that may be shorter only with the victim's consent

¹² If the number of victims is very high, i.e. in the hundreds or thousands, this right may only be applied by means of a so-called common plenipotentiary (Please refer to Art. 44 par. 2 of the Code of Criminal Procedure).

¹³ Misdemeanors under Art. 14 par. 2 of the Criminal Code are all criminal offences committed out of negligence (regardless of the criminal penalty provided by the law) and also those intentional criminal offences, for which the Criminal Code (in its special section) foresees the punishment of imprisonment with maximum duration of up to five years (inclusive).

¹⁴ unless it has been already compensated (or groundless enrichment has been returned), and/or unless the defendant undertook other measures aimed at damage compensation and/or return of groundless enrichment

the pre-trial proceeding) to approve reconciliation (Art. 309 of the Code of Criminal Procedure)¹⁵, which may be the closure of the criminal case as to its merits.

The victim has also a **right to make various proposals and suggestions in the course of the criminal proceeding** (e.g. to complete evidence collection, to secure his or her claim to pecuniary or non-pecuniary damage compensation and/or return of groundless enrichment by means of the defendant's assets, etc.) as well as **remedies**¹⁶. The victim is entitled to lodge remedies only against those decisions of law enforcement authorities and/or single statements that concern him or her directly. The victim has a right to appeal a judgment, but only limited to the statement concerning the victim's previously raised claim on compensation of pecuniary or non-pecuniary damage caused by the criminal offence or return of groundless enrichment obtained by the perpetrator as a result of the criminal offence at the expense of the victim (see Art. 228 and Art. 229 of the Code of Criminal Procedure).¹⁷ At the same time, the victim has a right to file a complaint against the court's or the prosecutor's resolution to impose or abolish a preliminary injunction prohibiting contact of the defendant with certain persons and/or with the victim and the victim's next of kin (Art. 88d of the Code of Criminal Procedure) or prohibiting the defendant from entering the common home shared with the victim (Art. 88e of the Code of Criminal Procedure), furthermore against the resolution of the police body or the prosecutor to defer the case (Art. 159a par. 1, 5 of the Code of Criminal Procedure), against the prosecutor's resolution (and not a court's resolution) to refer the case to another body (Art. 171 par. 1 of the Code of Criminal Procedure), against the prosecutor's resolution (and not a court's resolution) to discontinue criminal prosecution (Art. 172 par. 1, 2 of the Code of Criminal Procedure), against the prosecutor's or the court's resolution to conditionally discontinue the criminal prosecution of the defendant (Art. 307 of the Code of Criminal Procedure)¹⁸, against the prosecutor's or the court's resolution to uphold conditional discontinuation of criminal prosecution of the defendant with a concurrent extension of the

¹⁵ The victim's express consent is a necessary prerequisite for reconciliation approval.

¹⁶ This includes only ordinary remedies, i.e. complaint against a resolution and appeal of a judgment that have not yet become effective; on the contrary, the victim is not an authorized person to lodge any of the extraordinary remedies (i.e. appellate review, complaint due to statutory violation, proposal to allow trial renewal) that are aimed against a valid and effective decision as to the merits of the case (not even in favor or disfavor of the defendant as regards the statement on damage compensation)

¹⁷ This applies also to approval of plea bargain if it does not correspond to the scope and manner of damage compensation approved by the victim in advance (if the victim had agreed with the draft plea bargain that was later approved by the court as drafted, the victim does not have a right to appeal – Please refer to Art. 245 par. 1 of the Code of Criminal Procedure)

¹⁸ This applies also to preliminary indictment hearing or a court's decision taken outside of the main hearing (Art. 188 par. 1(f) of the Code of Criminal Procedure and Art. 231 par. 3 of the Code of Criminal Procedure).

trial period of up to one year (Art. 308 of the Code of Criminal Procedure), against the prosecutor's or the court's resolution based on certification of the defendant in the trial period to conditionally suspend criminal prosecution (Art. 308 of the Code of Criminal Procedure), against the prosecutor's or the court's resolution to approve reconciliation (Art. 309 of the Code of Criminal Procedure)¹⁹ or against the prosecutor's resolution to conditionally postpone the lodging of a petition for punishment (Art. 179g of the Code of Criminal Procedure). On the contrary, the victim has no right to lodge remonstrance against a penal order (not even against the statement on damage compensation)²⁰ since pursuant to Art. 314g par. 1 of the Code of Criminal Procedure the victim is not an authorized person to do so. Remonstrance lodged in a timely manner by an authorized person shall lead by law to the abolition of the entire penal order, based on which a sole judge shall order a main hearing; it is hence impossible to lodge remonstrance only against one partial statement of the penal order.

The victim as a party to the criminal proceeding has also the **right to take part in person in the main hearing**, also when (a part or the entire) hearing is a non-public hearing²¹. Within the main hearing the victim has a right to put questions to the persons being interviewed, i.e. to the defendants, witnesses as well as sworn experts (Art. 215 par. 1 of the Code of Criminal Procedure)²², furthermore the right to make proposals to complete evidence collection, the right to deliver a closing speech²³, and if the victim is heard as a witness in the main hearing, the victim is also entitled to compensation of expenses (under Art. 104 of the Code of Criminal Procedure)²⁴. The participation of the victim in the main hearing may be limited by the court to the necessary time period, moreover when it's necessary to clarify the facts of the

¹⁹ This applies also to a preliminary indictment hearing or a court's decision taken outside of the main hearing (Art. 188 par. 1(f) of the Code of Criminal Procedure and Art. 231 par. 3 of the Code of Criminal Procedure).

²⁰ If the penal order, based on which the victim was awarded compensation of pecuniary or non-pecuniary damage caused as a result of the criminal offence and/or return of groundless enrichment obtained at the victim's expense as a result of the criminal offence, becomes effective, it may be enforced based on a distraint title, i.e. in this regard it has the same legal effects as a final convicting judgment in terms of the victim's claim.

²¹ E.g. in a proceeding against a minor defendant or under the conditions of Art. 200 of the Code of Criminal Procedure (i.e. when classified information is discussed, when the security or morality or an undisturbed course of the hearing is jeopardized or when an important interest of the witness is at risk)

²² It is absolutely prohibited to ask so-called suggestive (i.e. leading) and deceptive (i.e. misleading) questions, as well as questions into the witness's intimacy, unless necessary to clarify facts important in the criminal case.

²³ The victim or the victim's plenipotentiary shall deliver the closing speech immediately after the prosecutor, i.e. prior to the closing speech of the defense and the defendant.

²⁴ This comprises compensation of lost earnings or profits, compensation of travel expenses and food allowance and/or overnight stay. Entitlement to compensation of the above expenses shall expire unless a claim is made within three days from delivering the witness testimony, of which fact the witness must be notified duly in advance by the respective law enforcement authority.

case, and especially when the victim is to be heard as a witness²⁵. The victim should be heard at the very beginning of evidence collection immediately after the defendant is heard, and the victim needs to be informed in the course of the evidence collection process about the statement of the defendant (if the victim was not present in person), so that the victim may consider this statement in the closing speech (Art. 202 par. 6 of the Code of Criminal Procedure).

3. Right to protection and security

In relation to the adoption of the Crime Victim's Act, one of the basic principles of criminal proceeding is the **duty of all law enforcement authorities to conduct the criminal proceeding always with due thoughtfulness towards the victim and due consideration to the victim's personality** (Art. 2 par. 15 of the Code of Criminal Procedure).

One of the means to strengthen crime victim protection in the procedural position of injured party (victim) from any secondary victimization in relation to the trial of especially serious violent and sexually motivated criminal offences, is among other things a thorough application of provision of Art. 209 par. 1 of the Code of Criminal Procedure on **conducting an interview of the victim** in the procedural position of witness during the main hearing **in the absence of the defendant**. The above provision shall not be applied only based on the victim's request and/or request of the victim's plenipotentiary, but also based on a sworn expert's recommendation who had conducted expert psychological or psychiatric examination of the victim in the pre-trial proceeding, and/or based on the judge's own discretion who with regard to the nature of the crime and the manner in which the criminal proceeding has been conducted insofar comes to a conclusion that there is a risk that the victimized person as a witness shall not say the truth in the presence of the defendant in the main hearing and/or is at risk of suffering adverse (also mental) health effects or other serious danger based on the defendant's testimony.

²⁵ in order for the witness statement at the main hearing to be spontaneous and not affected by other evidence, mainly by the statement of the defendant, etc.

In a specific case, crime victim protection and security may be strengthened already during the delivery of a witness statement²⁶ if based on the circumstances of the case there is an evident threat to the health or any other serious danger posed to the victim or violation of the victim's basic rights, by adoption of **measures** on the hand of law enforcement authorities **aimed at concealing the victim's identity** (Art. 55 par. 2 of the Code of Criminal Procedure). The name, surname and personal data of a secret witness are not recorded in the relevant criminal file, but are kept separately, and may only be disclosed to law enforcement authorities actively involved in the case. The witness signs the hearing protocol under a fake name and surname used to identify the witness in the criminal case.²⁷

In this regard it is worthwhile noting that there is the option to **exclude the public from the main hearing** and/or a part thereof including e.g. hearing of the crime victim in the position of witness if the security or another important interest of the witness is jeopardized (Art. 200 par. 1 of the Code of Criminal Procedure) or the possibility to **use videoconference** to conduct witness interview (Art. 111a of the Code of Criminal Procedure), which may contribute significantly to eliminate any adverse effects on the mental state of the crime victim during the court trial. A convincing reason to use videoconference in conducting acts within criminal proceedings may be, among other things, protection of the rights of interviewed witnesses mainly with regard to their old age or deteriorated health, which combined with deteriorated mobility may prevent them from attending in person an act conducted far from their domicile.

If the victim is a person younger than 18 years of age or fell victim to selected criminal offences (e.g. murder under Art. 140 of the Criminal Code, manslaughter under Art. 141 of the Criminal Code, abuse of entrusted person under Art. 198 of the Criminal Code, abuse of a person living in common home under Art. 199 of the Criminal Code, stalking under Art. 354 of the Criminal Code, sexual crimes, some criminal offences, which resulted in serious injury, etc.) by law there is a direct **prohibition of disclosure of data** enabling victim identification (Art. 8b par. 2 of the Code of Criminal Procedure). In practice such a prohibition means, among other things, also the inability to disclose pictures, video and audio recordings, or other

²⁶ and/or the victim's close persons, i.e. mainly spouse, partner, offspring, parents, grandparents, siblings, adoptee or adopter

²⁷ When reasons expire to keep the identity of the witness secret and to keep the witness's personal data separate, the body which at the time conducts the criminal proceeding will abolish the level of data classification and enclose formerly classified data into the criminal file, after which the witness's identity shall no longer be kept secret.

information about the course of the main hearing or a public hearing that might lead to the identification of the victim. An exception from this prohibition is e.g. disclosure of certain information for the purpose of searching for persons, to meet the purpose of the criminal proceeding, or for reasons of public interest that prevail over the right of the victim to private life protection, or if the victim consented to such disclosure, etc. (Art. 8d of the Code of Criminal Procedure).

A specific manifestation of the requirement to strengthen crime victim protection and security is also **limitation of the victim's personal and family data stated in the protocols of criminal proceeding acts**²⁸ (Art. 55 par. 1 (c) of the Code of Criminal Procedure). This limitation applies to domicile, postal address, place of employment or business of the victim, witness, legal representative, guardian, plenipotentiary or trustee, as well as to personal, family and property information of the victim and the witness. The above data shall not be stated in the protocols of conducted criminal proceeding acts only upon request (and not automatically) of the persons concerned, unless such data is necessary to achieve the purpose of the criminal proceeding, whereas the data are kept in a way so that they may be disclosed only to law enforcement authorities and probation and mediation officers involved in the case. Upon a substantiated request of the defense, the necessary victim's personal data (necessary for due application of the right to defense) may be shared with the defense, which must be recorded in the relevant protocol. Identical protection of some victim's or witness's personal data applies also to the viewing of the file (see Art. 55 par. 1(c) and Art. 65 par. 6 of the Code of Criminal Procedure). The above arrangements concern victim personal data protection in general, not only in relation to conducting acts within criminal proceeding (Art. 16 of Crime Victims Act).

Certain elements of crime victim protection may be also noted in the modified **arrangements of conducting victim interviews** by law enforcement authorities, since intimate questions may be put to a crime victim in the position of witness only when it is unavoidable to clarify important facts of the case. It is always necessary to maintain an especially thoughtful and discreet manner of putting questions that must be comprehensive as to their content in order to avoid repeated victim interviews (Art. 101 par. 2 of the Code of Criminal Procedure and Art. 18 of the Crime Victims Act), whereas the victim has a right to raise objections as to the aim

²⁸ i.e. in drawing up an official record on providing an explanation to the victim, in drawing up a protocol from victim interview, in drawing up a protocol of the main hearing or a public hearing, etc.

of the question²⁹. Formulation of the questions must always be appropriate to the age, personal experiences and mental disposition of the witness, whereas a person younger than 18 years of age may only be interviewed through the law enforcement authority conducting the hearing (Art. 102 par. 3 of the Code of Criminal Procedure). Special arrangements apply to the hearing of persons younger than 18 years of age, when it is necessary, in view of minimizing the risk of adverse effects of this act and/or manner, in which it is conducted, on the interviewed child's mental condition and psychological development, to ensure in their interview the presence of social curatel officer or another professional experienced in youth upbringing who may be not necessarily a pedagogue (Art. 102 par. 1 of the Code of Criminal Procedure). A crime victim has a right to request that the interview be conducted or explanation³⁰ and interpretation be provided by a person of the same or opposite sex (Art. 19 of the Crime Victims Act)³¹. A request of an especially vulnerable victim must be granted unless prevented by important reasons, whereas this category of victims must be interviewed in criminal proceeding especially thoughtfully, with regard to the circumstances that make them especially vulnerable (Art. 20 of the Crime Victims Act). Interviewing and provision of explanation to an especially vulnerable victim in the pre-trial proceeding should be conducted by a trained professional so that the acts do not need to be repeated. In case of need of repetition, the interview (explanation) should be as a rule conducted by the same professional (unless prevented by serious reasons³²). Law enforcement authorities should upon the request of the victim³³ at the same time **adopt adequate measures preventing immediate visual contact between the victim and the suspect** (defendant) in acts where the victim is present in person (Art. 17 of the Crime Victims Act)³⁴ in any stage of the criminal proceeding and/or before its start. If the victim's request cannot be granted, the contact between the victim and the perpetrator shall be prevented at least before and after the conducted act. The procedure must not constitute a violation of the right to defense (audio-visual technology is used for this reason to prevent an immediate visual contact between the victim and the defendant, without limiting the defendant's right to defense). Last but not least, it must be emphasized how important it is to prevent confrontation between minor victims (younger than 18 years of age)

²⁹ objections are to be noted in the protocol; the body conducting the hearing/interview shall decide whether the objection is substantiated or not

³⁰ this applies only to the pre-trial proceeding

³¹ may be applied in the pre-trial proceeding as well as in court trial

³² e.g. staffing, timely and other circumstances of the case

³³ the respective law enforcement authority is obliged to grant a request of an especially vulnerable victim, unless excluded by the nature of the conducted act

³⁴ provision of an explanation, hearing/interview, recognition in natura, re-enactment on the crime scene, investigation attempt, etc.

and defendants of sexual crimes against human dignity (Art. 104a par. 5 of the Code of Criminal Procedure).

One of the means aimed at rehabilitating the victim's respect as one of the parties to the criminal proceeding is the implementation of the institute of the **victim's declaration on the crime impact on the victim's life** effective as of 1 August 2013³⁵ (Art. 22 of the Crime Victims Act and Art. 43 par. 4 of the Code of Criminal Procedure and Art. 212a of the Code of Criminal Procedure). In practice this institute of the victim in the position of injured party should ensure in an ongoing criminal proceeding adequate room for a dignified expression of the victim's feelings and needs that have arisen as a result of the committed criminal offence against the victim's person. In any stage of the criminal proceeding, at the latest during the closing speech delivered within the main hearing, the victim has a statutory right³⁶ to make a statement in an appropriate way concerning the impact of the criminal offence on the victim's physical and mental health and material damage suffered, as well as interference, if any, in the other aspects of the victim's life, mainly long-term effects, impacts and changes in the victim's family life, partnerships, social and other relationships. Such a declaration may constitute important evidence for the court's decision making³⁷, especially as regards the issue of guilt (i.e. in assessing the harmfulness and seriousness of the defendant's actions, including the danger posed by his person), as well as suitable type and duration of punishment that should among other things express the importance of public interest that was disrupted or jeopardized by the defendant's wrongdoing. What is also important is the impact, if any, of this declaration in the form of expression of the victim's own feelings on the defendant as regards mainly the defendant's realization of the severity of wrongdoing that had an invasive effect on the victim's life, and resulting acceptance of the consequences of the defendant's criminal liability for the committed criminal offences.³⁸ The declaration may be delivered in

³⁵ i.e. by the Crime Victims Act No. 45/2013 Coll.

³⁶ but not an obligation

³⁷ and/or during the pre-trial proceeding for the prosecutor in considering whether statutory prerequisites are met to refer the case as a misdemeanor to another body under Art. 171 of the Code of Criminal Procedure, discontinue criminal prosecution as purposeless under Art. 172 par. 2 (a) of the Code of Criminal Procedure, conditionally discontinue criminal prosecution under Art. 307 of the Code of Criminal Procedure, and/or approve reconciliation under Art. 309 of the Code of Criminal Procedure

³⁸ If a crime victim's declaration is to have the required importance in an ongoing criminal proceeding, it must be the victim's own expression of feelings and needs, and not a written summary drawn up by a representative of one of the helping organizations that the victim had addressed during the proceeding with a request for expert assistance. In the opposite case, the declaration would be a completely useless document from the perspective of decision-making of the respective law enforcement authorities as well as from the viewpoint of ensuring a dignified position of the victim as a party to the proceeding and protection of the victim's rights and legitimate interests.

writing or verbally, whereas a written declaration shall be deemed documentary evidence³⁹ in court trial. As compared with foreign practice, Czech law lacks any standard form of any type to apply this right of the victim. Assistance and cooperation provided to the victim, especially in case of especially vulnerable victim, on the hand of professional organizations providing expert assistance to crime victims and specific groups of individuals⁴⁰ is hence needed also in drawing up the victim's own declaration on the crime impact on the victim's life.

Another factor that plays a key role in terms of victim rights protection is a timely provision of information e.g. about the existence of a **separate waiting room in the court premises**. Only if the victim is informed in a timely manner about possibilities to protect the victim's legitimate interests, the victim is able to take effective advantage of the means guaranteed by statutory and other legal provisions. The institute of separate waiting rooms for victims, witnesses and accompanying persons established in general courts is an important means of victim protection from unnecessary stress and secondary victimization during a public hearing of the case.

Not only in relation to domestic violence cases there is a possibility to conduct **witness hearing/interview** (especially when the witness is a victim) **in the form of a protocol** under Art. 158 par. 9 of the Code of Criminal Procedure **yet before the start of criminal prosecution** under Art. 160 par. 1 of the Code of Criminal Procedure. The police usually use this procedure when there are doubts as to the victim's correct and complete perception and ability to memorize or reproduce the experienced facts with regard to the victim's deteriorated mental disposition (e.g. due to domestic violence) and/or with minors younger than 15 years. Such a hearing/interview is not deemed an urgent and unrepeatable act in its nature, and the presence of the judge is not necessary to conduct it under Art. 158a of the Code of Criminal Procedure. The same procedure is used when it may be expected that verification of a criminal complaint or instigation of criminal prosecution might take a long time, mainly due to the fact that no suspect has been identified, as a result of which no criminal prosecution may be instigated, and there is a risk of losing the value of evidence of the witness statement⁴¹. Under these circumstances it is possible to hear as a witness also a person whose testimony based on a substantiated assumption is of key importance to instigate criminal

³⁹ i.e. by reading under conditions of Art. 213 of the Code of Criminal Procedure with the defendant's possibility to make a verbal statement to such evidence under Art. 214 of the Code of Criminal Procedure

⁴⁰ e.g. civic associations: Život 90, Bílý kruh bezpečí, o.s., ROSA, La Strada, In Iustitia and others

⁴¹ e.g. with consideration to old age or deteriorated health

prosecution, if determined facts indicate that pressure may be exerted on an individual due to his/her testimony or the testimony is at risk of manipulation due to other reasons⁴². If after the start of criminal prosecution such a witness is not heard again under Art. 164 par. 4 of the Code of Criminal Procedure, the protocol on the witness's previous hearing may be read in court during the main hearing only under conditions of Art. 211 par. 1, par. 2(a), par. 3(b), (c) of the Code of Criminal Procedure, i.e. upon consent of the parties to the trial (i.e. prosecutor and defendant); if the witness died or is missing; if the witness lives abroad and is unreachable; or if the witness fell ill to a disease that prevents forever or for a long time to hear the witness in person; if it was determined that the witness fell victim to violence, harassment, bribery or promise of privileges, which led the witness to refrain from giving testimony or giving a false testimony; or if the testimony would be influenced as to its contents by the course of the main hearing, mainly as a result of the defendant's or the public's behavior. In all other cases a witness may only be confronted with his/her previous testimony under Art. 212 of the Code of Criminal Procedure in order to explain the contradictions concerning significant points raised in the previous testimony, to allow the court within free assessment of evidence to assess the credibility and truthfulness of the witness's later testimony during the main hearing.⁴³

In relation to domestic violence cases it is highly recommendable to consider **use of audiovisual recording** already at the first victim interview, which enables law enforcement authorities to capture the victim's current mental disposition, injuries, etc. The recording may be used by law enforcement authorities, mainly by the court to assess the credibility and truthfulness of the witness testimony in subsequent stages of the criminal proceeding and/or a testimony delivered by the victim in person during court trial may be replaced with such a recording under conditions of Art. 211 of the Code of Criminal Procedure, i.e. usually with consent of the parties to the trial, eliminating deterioration of the victim's mainly mental health in connection with detailed recalling of the experienced victimization.

As to the requirement to ensure crime victim protection and security, it is a statutory duty of every police officer, correction services officer, military police officer and municipal police officer to conduct an act or adopt an adequate measure to ensure the victim's security if it is

⁴² e.g. considering the close relationship and frequent contact with the perpetrator, and the victim may be dependent to a significant degree on the perpetrator as a caregiver

⁴³ whereas the court may not use in its assessment the content of the previous witness testimony conducted under Art. 158 par. 9 of the Code of Criminal Procedure prior to the start of criminal prosecution

jeopardized (Art. 14 par. 1 of the Crime Victims Act), whereas next to the institute of procedural criminal law, such adequate measure may include e.g. eviction of the aggressor from common home in domestic violence cases under Act No. 273/2008 Coll. on Police of the Czech Republic (Art. 44 through Art. 47) or protection of domestic violence victim by preliminary injunctions imposed by civil courts under Art. 400 et seqq. of Act No. 292/2013 Coll. on Special Court Proceedings and/or providing the witness with special protection under Act No. 137/2001 Coll. on special protection of witnesses and other persons in criminal proceedings, or provision of short-term protection of persons⁴⁴ under Art. 50 of Act No. 273/2008 Coll. on Police of the Czech Republic.

3.1 Securing of a crime victim's right to protection and security through the institute of preliminary injunctions in a criminal proceeding

Effective as of 1 August 2013 the Crime Victims Act No. 45/2013 Coll. introduced in the criminal procedure system a new **institute of preliminary injunctions**. Courts and under certain conditions prosecutors in pre-trial proceedings may in justified cases decide on imposing some of the nine exactly enumerated types of preliminary injunctions, the purpose of which is to strengthen victim protection, protection of other persons, mainly witnesses or of the society at large from repeated criminal acts of the alleged perpetrator, which are subject to ongoing criminal prosecution instigated against the defendant (see Art. 88b et seqq. of the Code of Criminal Procedure). Law enforcement authorities may impose on the defendant⁴⁵ e.g. prohibition of contact with the victim and the victim's close persons or other persons, mainly witnesses (Art. 88d of the Code of Criminal Procedure), prohibition of entering common home inhabited by the victim and entering and staying in its immediate surroundings (Art. 88e of the Code of Criminal Procedure), prohibition of visiting inappropriate environment, sports, cultural, and other social events and contact with certain persons (Art. 88f of the Code of Criminal Procedure), prohibition of staying in a specifically delimited area (Art. 88g of the Code of Criminal Procedure), prohibition of traveling abroad (Art. 88h of the

⁴⁴ i.e. in the form of a) physical protection, b) temporary change of domicile, c) application of security technologies or d) consultation and prevention activities

⁴⁵ and not on the suspect, since one of the basic conditions of this procedure is next to a concern about a possible repetition or completion of the prosecuted criminal act, well-grounded assumption that the prosecuted act was actually committed, the committed act has some elements of a criminal offence and it was committed by the defendant, and the purpose of the preliminary injunction may not be achieved in another way and the protection of the victim's legitimate interests and/or the victim's close persons or protection of interests of the society or actual start of criminal prosecution requires to impose such a measure.

Code of Criminal Procedure), prohibition of holding and keeping items that may be used for criminal acts (Art. 88i of the Code of Criminal Procedure), prohibition of consumption, holding or keeping of alcoholic beverages or other narcotics (Art. 88j of the Code of Criminal Procedure), prohibition of gambling and lottery (Art. 88k of the Code of Criminal Procedure) or prohibition of a specifically delimited activity (Art. 88l of the Code of Criminal Procedure).

Since the type of preliminary injunction chosen by a relevant state authority must always be related to the prosecuted criminal act of the defendant, i.e. the merits of the case, mainly the first two enumerated preliminary injunction measures (i.e. prohibition of contact with certain persons under Art. 88d of the Code of Criminal Procedure and prohibition of entering a common home of the defendant and the victim under Art. 88e of the Code of Criminal Procedure), will play a key role in strengthening the protection of persons at risk of domestic violence in the position of victims in an ongoing criminal prosecution case, i.e. yet before a final court decision concerning the guilt and punishment is reached. In a specific case, increased victim protection may be achieved on both territorial and personal level, by concurrent imposition (i.e. accumulation) of both types of preliminary injunctions. Since the preliminary injunction in the form of prohibition of entry of the defendant in common home inhabited by the victim and entry and staying in its immediate surroundings under Art. 88e of the Code of Criminal Procedure, in terms of its content, builds on similar institutes regulated by other legal provisions⁴⁶, the prohibition of entry imposed based on the Code of Criminal Procedure starts on the first day following the last day of enforcement of eviction imposed based on a different legal provision, which must be stated directly in the decision of the court who ordered this preliminary injunction. Although the reasons for imposing the prohibition of entry in the previous eviction carried out based on a different legal provision are assessed separately, a previous eviction is not a condition to impose this type of preliminary injunction in a criminal proceeding. In accumulation of similar types of protection measures it is necessary nevertheless to consider the measures adopted previously and to consider the adequacy of imposing a measure that may be identical in its nature and lead to duplication in the context of a criminal proceeding. A defendant who was imposed such a prohibition within a criminal proceeding is by law obliged to leave immediately the delimited home including its

⁴⁶ i.e. in Art. 44 through Art. 47 of Act No. 273/2008 Coll. on Police of the Czech Republic and in Art. 76b of the Code of Civil Procedure, which has been amended as of 1 January 2014 by Art. 400 et seqq. of Act No. 292/2013 Coll. on Special Court Proceedings

surroundings and refrain from entering it. At the same time, the court shall inform the defendant directly in the resolution about the defendant's rights and obligations, including the consequences of failing to abide by the order to leave the home and infringement of the imposed preliminary injunction. The defendant has a right to take from the common home shared with the victim his/her personal effects (i.e. clothes, hygiene and sanitary items), personal valuables and documents. In the course of the duration of the preliminary injunction, in a way as to prevent any inappropriate effects on the victim, the defendant may in the presence of a law enforcement officer or authorized probation officer take from the home also other items that are necessary for conducting his/her business or profession. Should the defendant breach a court decision on an imposed preliminary injunction repeatedly or in a gross manner, another type of preliminary injunction or a disciplinary fine of up to 50,000 CZK may be imposed or the defendant may be taken into custody (on grounds under Art. 67 (c) of the Code of Criminal Procedure) and/or under certain conditions the defendant may be prosecuted for the misdemeanor of marring execution of an official decision and eviction under Art. 337 par. 2 of the Criminal Code.

With effectiveness as of 1 August 2013 the relevant law enforcement authorities are obliged to consider thoroughly whether it may be appropriate to strengthen victim protection by means of an adequate preliminary injunction, the duration of which is limited directly by law by achievement of its purpose and it may last no longer than the final judgment or decision as to the merits of the case is adopted, by which the criminal prosecution of the defendant is ended. Should it be necessary to provide the victim with continued effective protection, it is more than appropriate to impose on the perpetrator who does not meet the conditions for an unconditional imprisonment sentence a similar prohibition of contact with certain persons, mainly with the victim or prohibition of entry in common home just like in the previous preliminary injunction, namely in the form of appropriate limitations and obligations imposed under Art. 48 par. 4 of the Code of Criminal Procedure as a part of an alternative punishment. In this way it is possible to provide the victim with comprehensive protection throughout the duration of a criminal proceeding and/or from the moment of the start of criminal prosecution until the end of serving the imposed sentence.

4. Victim's trustee and plenipotentiary in criminal proceeding

An important institute aimed at contributing to improvement of the victim's position in criminal proceeding, mainly to enhance protection of victim's rights, has been implemented with effect as of 1 August 2013. It is a crime victim's right to **be accompanied by a trustee** (Art. 21 of the Crime Victims Act and Art. 50 par. 1 of the Code of Criminal Procedure). Under the current legal provisions, a crime victim may in all acts conducted during a criminal proceeding, in which the victim takes part in person (i.e. hearing in the position of witness⁴⁷, provision of explanation under the Code of Criminal Procedure⁴⁸, recognition in natura or photo-recognition⁴⁹, re-enactment or verification at the crime scene⁵⁰, investigation attempt⁵¹, learning the investigation outcomes⁵², viewing of the file⁵³, taking part in the main hearing⁵⁴ or in a public appeal hearing⁵⁵, provision of explanation under Act No. 273/2008 Coll. on Police of the Czech Republic, etc.) be accompanied by a natural person chosen by the victim⁵⁶ who shall provide the victim with moral and psychological support and who shall assist the victim in conducting the act.

The trustee chosen by the victim may not interfere in any way in the course of the conducted act, in which the trustee accompanies the victim. If the trustee takes part in the main hearing, he or she is under Art. 201 par. 2 of the Code of Criminal Procedure entitled to remain in the court room even when the main hearing and/or a part thereof is not public⁵⁷. The respective law enforcement authority conducting the act, in which next to the victim also the trustee takes part, may exclude the trustee from the act, but only if the trustee disrupts the course of the act or jeopardizes the achievement of the purpose of the act. However, the crime victim must be in such a case provided with an opportunity and room to choose a new trustee, unless there is a risk of delay or excessive cost.

⁴⁷ including urgent and unrepeatable acts conducted under Art. 158 par. 9 of the Code of Criminal Procedure in conjunction with Art. 158a of the Code of Criminal Procedure and hearings conducted yet before the start of the criminal prosecution under conditions of Art. 158 par. 9 second sentence of the Code of Criminal Procedure

⁴⁸ Please refer to Art. 158 par. 3 (a) of the Code of Criminal Procedure

⁴⁹ under conditions of Art. 104b of the Code of Criminal Procedure

⁵⁰ under conditions of Art. 104d and Art. 104e of the Code of Criminal Procedure

⁵¹ under conditions of Art. 104c of the Code of Criminal Procedure

⁵² under conditions of Art. 166 par. 1 of the Code of Criminal Procedure

⁵³ Please refer to Art. 43 par. 1 of the Code of Criminal Procedure under conditions of Art. 65 of the Code of Criminal Procedure

⁵⁴ Please refer to Art. 43 par. 1 of the Code of Criminal Procedure

⁵⁵ Please refer to Art. 233 par. 1 of the Code of Criminal Procedure in conjunction with Art. 246 par. 1 (d) of the Code of Criminal Procedure

⁵⁶ of legal age, i.e. not younger than 18 years of age

⁵⁷ In a proceeding against an adult defendant the public may be excluded from the main hearing that is public only under conditions of Art. 200 par. 1 of the Code of Criminal Procedure. In a proceeding against a minor defendant the main hearing is non-public directly by law (Art. 54 par. 1 of Act No. 218/2003 Coll. on the Judiciary in Youth Matters).

The victim's trustee may at the same time be a **plenipotentiary**⁵⁸ who is entitled directly by law to actively defend the victim's rights and legitimate interests. On the contrary to the trustee, the plenipotentiary is entitled among other things to lodge proposals on behalf of the victim (e.g. claim damage compensation, propose evidence to be collected in relation to the raised claim for damage compensation, propose to impose a preliminary injunction, etc.), lodge on the victim's behalf applications (e.g. to be granted free-of-charge legal assistance by a plenipotentiary or legal assistance for a reduced fee under Art. 51a of the Code of Criminal Procedure) and remedies (e.g. appeal of the statement on damage compensation that is a part of the convicting judgment, complaint against a court's resolution⁵⁹ to conditionally discontinue criminal prosecution or against reconciliation approval or against resolution to abolish a preliminary injunction⁶⁰). The plenipotentiary may on behalf of the victim take part in all procedural acts that the victim may take part in and as of 1 August 2013 the plenipotentiary is entitled from the start of the criminal prosecution to be informed by the respective law enforcement authority about any and all conducted acts in advance in order to enable the plenipotentiary to take part. This right does not apply to all procedural acts conducted in a criminal proceeding, but only to those acts that are important in terms of the victim's rights enforcement and that may at the same time be used as evidence in court trial.⁶¹ The victim and of course also the victim's plenipotentiary has under Art. 166 par. 1 of the Code of Criminal Procedure the right to view the investigation file and make proposals to complete the investigation. As a part of the main hearing the victim's plenipotentiary has also the right to put questions to the persons being heard, make proposals to complete the evidence collection and deliver the closing speech.

As of 1 August 2013 the victim's plenipotentiary may be next to a natural person⁶² also a legal entity, i.e. a professional organization providing assistance to crime victims or certain

⁵⁸ On the other hand, a trustee may not be a person who is in the position of defendant, defense counsel, witness, sworn expert or interpreter in the same criminal case.

⁵⁹ and against a prosecutor's resolution in the pre-trial proceeding

⁶⁰ Please refer to Art. 88n par. 4 of the Code of Criminal Procedure.

⁶¹ The presence of the plenipotentiary in conducting an act may be excluded if the purpose of the criminal proceeding would be marred or the act may not be postponed and information about it may not be delivered to the plenipotentiary. The plenipotentiary who takes part in person in an act on the victim's behalf has the right to put questions to the persons heard as well as to raise objections against the manner in which the act is conducted at any time during the course of that procedural act.

⁶² different from the defendant's defense counsel, he/she needs not be a lawyer or law school graduate

groups of individuals⁶³. It is hence necessary to choose a high quality plenipotentiary so that the plenipotentiary might actually contribute to strengthening and not weakening the victim's rights protection. In relation thereto it needs to be mentioned that all written documents intended for the victim shall be delivered to the address stated by the victim, but if the victim has a plenipotentiary, all written documents shall be delivered only to the plenipotentiary chosen by the victim⁶⁴. There is therefore a need for a relatively high level of mutual trust between the victim and the plenipotentiary and this must be borne in mind in choosing the right plenipotentiary who shall effectively defend the victim's rights in a criminal proceeding.

A person who fell victim to a criminal offence⁶⁵, due to which fact he/she has in an ongoing criminal proceeding the procedural position of an injured party, may under the conditions of Art. 51a of the Code of Criminal Procedure raise a **claim for free-of-charge legal assistance provided by a plenipotentiary**, and/or legal assistance provided for a reduced fee. In a specific case the court shall grant such a victim's claim if the victim is able to prove lack of money to cover the cost of hiring a plenipotentiary and at the same time the victim is an especially vulnerable victim under Art. 2 par. 4 of the Crime Victims Act⁶⁶ or if he or she suffered serious injury to health as a result of an intentional criminal offence and/or if he or she is a survivor of a victim who suffered death as a result of a criminal offence⁶⁷ regardless of the fact whether he or she has raised or not a claim for damage compensation. In all other cases the victim may achieve free-of-charge assistance by a plenipotentiary and/or assistance provided for a reduced fee if the victim is able to prove lack of money and has raised a claim for pecuniary or non-pecuniary damage compensation and/or return of groundless enrichment in the criminal proceeding and due to the nature or the amount of the raised compensation claim, it is not manifestly unnecessary for the victim to be represented by a plenipotentiary. Only victims younger than 18 years of age are entitled to free-of-charge legal assistance provided by a plenipotentiary automatically by law (with the exception of the criminal offence

⁶³ e.g. civic associations Život 90, Bílý kruh bezpečí, o.s., ROSA, La Strada, In Iustitia and others

⁶⁴ this does not apply if the victim is sent a notice to conduct an act in person e.g. summons of the victim as a witness to the main hearing or a public court hearing etc.

⁶⁵ regardless of the nature of the criminal offence

⁶⁶ i.e. under Art. 2 par. 4 (b) of Act No. 45/2013 Coll. a person with physical, psychological or mental handicap or a sensorial handicap preventing them from a full-fledged application in society or under Art. 2 par. 4 (d) of Act No. 45/2013 Coll. victims of sexual crimes against human dignity or criminal offences including violence or threats of violence, if at the same time there is also an increased risk of secondary victimization in a specific case, mainly with respect to the victim's age, sex, race, nationality, sexual orientation, religious beliefs, health, cognitive development, expression abilities, life situation or the victim's relationship to or dependence on the suspect.

⁶⁷ e.g. the surviving husband of a female victim who died as a result of long-term abuse on the hand of their son living in common home

of failure to pay mandatory alimony under Art. 196 of the Criminal Code), regardless of their property situation and whether they did or not raise a claim for damage compensation within an ongoing criminal proceeding.

If a victim who is entitled to legal assistance provided by a plenipotentiary free of charge or for a reduced fee fails to choose a plenipotentiary, the plenipotentiary shall be established based on a court resolution⁶⁸ from among the lawyers registered in the register of providers of assistance to crime victims (upon their own request)⁶⁹, and/or another lawyer shall be established for the victim⁷⁰. The cost to hire a plenipotentiary in this case shall not be borne by the crime victim, but instead by the State that shall claim repayment from the convict in case of a final guilty verdict.

5. Financial aid provided pursuant to Act No. 45/2013 Coll. to crime victims

If a natural person who fell victim to a crime suffered bodily injury or grievous bodily harm as a result of the crime⁷¹, and/or they fell victim to a crime against human dignity in the sexual area⁷², thus incurring non-pecuniary damage, they may claim financial aid from the state at terms set forth in Art. 23 et seq. of Act No. 45/2013 Coll.^{73, 74} Such aid refers to one-off granting of a financial amount intended to overcome a worsened social situation caused by the crime that the given person fell victim to.

⁶⁸ If the reasons for their appointment cease to exist, or if the plenipotentiary is not able to continue acting on behalf of the injured party due to important reasons, the court shall revoke their appointment as plenipotentiary of the injured party.

⁶⁹ according to the place of their operation and order of sequence; the register is publicly available at the website of the Ministry of Justice of the Czech Republic.

⁷⁰ under conditions set forth in Art. 39 par. 2, 3 of the Code of Criminal Procedure

⁷¹ please refer to the definition in Art. 122 par. 2 of the Criminal Code

⁷² e.g. the crime of rape pursuant to Art. 185 of the Criminal Code, the crime of sexual harassment pursuant to Art. 186 of the Criminal Code, the crime of sexual abuse pursuant to Art. 187 of the Criminal Code aj.

⁷³ Act No. 45/2013 Coll., on Crime Victims, with effect from 01 August 2013, replaced the previous regulation set out in Act No. 209/1997 Coll., on Provision of Financial Aid to Crime Victims.

⁷⁴ A person being the surviving child, parent, spouse, registered partner or sibling of the victim who died in consequence of the crime may also claim financial aid, if they shared a common household at the time of the victim's death, or if they are a person to which the deceased provided (i.e. also a partner living with the deceased in shared/family household) or was obliged to provide maintenance.

Financial aid is granted to the victim based on the victim's request, usually within three months from submitting the request⁷⁵, which shall be handed in to the Ministry of Justice of the Czech Republic no later than within two years from the day when the person as a victim learned about the damage incurred by the same as a result of the crime, however, no later than within five years from the crime, otherwise this right shall forfeit.⁷⁶

In the case of bodily injury, the victimised natural person may claim financial aid in the lump-sum of CZK 10,000.- or in an amount representing lost income proved by such natural person (if employed) and documented costs associated with the person's medical treatment, reduced by the total of all amounts already received as a victim in damages, provided that the financial aid granted in this manner shall not exceed the total amount of CZK 200,000.- . In the case of grievous bodily harm, the crime victim may claim financial aid in the lump-sum of CZK 50,000.- or in an amount representing lost income proved by such natural person and documented costs associated with the person's medical treatment, reduced by the total of all amounts already received in damages, provided that the financial aid shall not exceed the total amount of CZK 200,000.- .⁷⁷ If the natural person fell victim to a crime against human dignity in the sexual area, as a result of which they incurred non-pecuniary damage, they may claim reimbursement of costs associated with provision of professional psychotherapy and physiotherapy or other expert service (i.e. including necessary spa care, unless the costs of such services are covered directly under public health insurance), up to a total amount of CZK 50,000.-. All this shall, however, apply at the assumption that the victim has not yet received financial aid in connection with bodily injury. Notwithstanding this, accumulation of statutory amounts is possible when it comes to financial aid granted to the same victim in the same case in connection with simultaneous infliction of grievous bodily harm and non-pecuniary damage as a result of a sexually motivated crime, although the currently negotiated draft amendment to the Crime Victims Act intends to remove this option of accumulation of various financial claims of the victim.⁷⁸

⁷⁵ The period may be prolonged by up to 30 days when an oral hearing or local investigation is ordered, or possibly for an extremely complicated case, or by a period necessary to send a request, draw up a sworn expert report or deliver a written notice to a foreign country.

⁷⁶ Until 31 July 2013, this period of limitation was purely subjective and lasted 1 year.

⁷⁷ Until 31 July 2013, a victim could claim a lump-sum amount of CZK 25,000 or the amount of documented costs up to a maximum amount of CZK 150,000.

⁷⁸ If the applicant is a survivor of the victim who died as a result of the crime, the applicant may claim financial aid in the lump-sum amount of CZK 200,000.- (if the applicant is a surviving parent, spouse, registered partner or child of the victim, with which the applicant shared a common household at the time of the victim's death, or if it is a person to whom the deceased provided or was obliged to provide maintenance) and if it is a sibling of the deceased sharing a common home with them, then the financial aid shall amount to the lump-sum of CZK

The point score for pain is no longer a condition for granting of financial aid since 01 August 2013, whereas until 31 July 2013 it was necessary that the total point score for pain was at least 100 points pursuant to Decree of the Ministry of Health of the Czech Republic no. 440/2001 Coll. on Damages for Pain and Impaired Social Status. Financial aid is still not granted, if the crime victim being the injured party did not grant their consent to prosecution of the crime perpetrator, where such consent is a condition for institution of prosecution under Art. 163 of the Criminal Code. However, what is not an obstacle to granting of financial aid is the fact that the accused was released from criminal charges due to their insanity⁷⁹ or that the case was discontinued as the perpetrator is unknown⁸⁰, and/or if a statutory obstacle prevents the prosecution, unless a judgment was declared until then or unless the judgment entered into force, unless there are reasonable doubts suggested by the outcomes of investigation of the law enforcement authorities conducted so far that the crime inflicting damage upon the victim has actually been committed.

With effective date since 01 August 2013, a crime victim who received both financial aid from the state and at the same time damage compensation from the perpetrator (be it only partial) is no longer obliged to levy the granted financial aid to the state in the amount corresponding to the damage compensation received, up to the amount of the total financial aid granted. As a matter of fact, the victim's claim to pecuniary or non-pecuniary damage compensation from the perpetrator of the crime is assumed by the state as of the moment of granting of financial aid, within the scope of the financial aid granted by the same.⁸¹

Under the aforementioned criteria, financial aid is granted by the state to citizens of the Czech Republic (CZ) having their registered permanent residence or habitual residence in CZ, further to citizens of CZ not having their registered permanent residence in the territory of CZ, but they fell victim to a crime here, to foreigners with their registered permanent residence or with a residence permit in the territory of another EU Member State, who fell victim to a crime in CZ, to foreigners who lawfully stay in CZ for a continuous period of at

175,000.-, provided that the total financial aid shall not exceed the amount of CZK 600,000.-. If the total financial aid exceeded this amount, the amount provided to each of the entitled surviving persons of the victim shall be reduced accordingly (until 31 July 2013 the lump-sum amounted to CZK 150,000.-, and with a higher number of survivors it was provided up to the maximum amount of CZK 450,000.-).

⁷⁹ Please refer to Art. 226 (d) of the Code of Criminal Procedure.

⁸⁰ Please refer to Art. 159a par. 5 of the Code of Criminal Procedure.

⁸¹ The state can enforce the claim in the adhesion procedure or in civil-law proceedings.

least 90 days and fell victim to a crime in CZ, as well as to foreigners who fell victim to a crime in CZ and applied for international protection here or were awarded asylum, whereas other foreigners shall only be entitled to financial aid under the conditions and within the scope of an announced international treaty binding upon CZ.

6. Other areas of rights of injured parties and crime victims in criminal proceedings

Other areas of rights of injured parties and crime victims in terms of criminal proceedings include, without limitation:

A. Right to damage compensation

A person who incurred bodily harm or pecuniary damage or non-pecuniary damage as a result of a crime, and/or to the detriment of which the accused obtained unjust enrichment, may, in the position of the injured party, regardless of the nature of the crime, request that the court imposes a duty upon the defendant in the convicting judgment and/or in the enforcement order, to compensate the pecuniary or non-pecuniary damage to the injured party in money⁸². The injured party may, under Art. 206 par. 2 of the Criminal Code, lodge the petition for compensation of pecuniary or non-pecuniary damage pursuant to Art. 43 par. 3 of the Criminal Code no later than at the main hearing prior to commencement of the evidence proceedings or at the first proceeding on agreement on guilt and punishment under Art. 175a par. 2 of the Criminal Code. The petition may be made orally and recorded in the minutes, or in writing, in person or via a plenipotentiary. Unless such petition is duly lodged within the set deadline, it cannot be decided on in terms of the pending criminal proceedings in any way, not even when lodged additionally (e.g. in terms of a later examination of the injured party in witness position as part of the main hearing). However, as the current decision-making practice of the Supreme Court of the Czech Republic suggests⁸³, the injured party may, in the continued course of the proceedings, change (and support with evidence) the amount of the (non-)pecuniary damage claim raised

⁸² Please refer to Art. 3 par. 3 of the Code of Criminal Procedure.

⁸³ Please refer to R 5/2015.

duly and in time and stipulated earlier, at the latest until the time when the first-instance court retires for final deliberation in terms of the main hearing or in terms of the public hearing on the appeal.

B. Right to reimbursement of costs

Besides the claim to compensation of damage incurred as a result of the crime, the injured party may also claim the reimbursement of costs required to effectively raise their damage claim, including costs incurred by engaging a plenipotentiary or costs expended for sworn expert reports and expert opinions intended to prove the damage claim raised by them under Art. 154 and Art. 155 par. 4, 5, 6 of the Criminal Code. It is imperative that the claim be effectively filed at the latest within one year from legal force of the convicting judgment (enforcement order), i.e. after a legally effective admission of guilt of the person charged with the prosecuted crime was established (otherwise the claim forfeits), regardless of the fact if damages were awarded to the injured party or not.

C. The victim's right to provision of expert assistance

In its Art. 4, the Crime Victims Act set forth the possibility for every crime victim to take advantage of expert assistance by providers of support and assistance to crime victims, where such assistance is provided in the form of psychological consultancy, social consultancy, legal aid, provision of legal information and restorative programs by providers registered in the register of assistance providers to crime victims, which is a public register available at the website of the Ministry of Justice of the Czech Republic. On a general level, such assistance is provided to the victim based on their request, as long as required by its purpose, provided that an especially vulnerable victim needs to receive assistance on the basis of their request without undue delay and always free of charge.

D. Right to information

This refers, without limitation, particularly to the right to request information on the release of the accused from custody, release of the convict from prison sentence, protective medical treatment or security detention and/or on their escape, on a change in the form of protective medical treatment from institutional to outpatient treatment, interruption of serving the prison sentence, change of the security detention to

protective medical treatment, and on any extradition of the accused/convict to a foreign country or on their transfer to another EU Member State (Art. 103a of the Criminal Code and Art. 11 of the Crime Victims Act). It further refers to the duty of the providers coming into contact with the crime victim as the first ones to provide this person with basic information on their rights and options for further course of action, including information on the existence of registered providers of expert assistance to crime victims (Art. 8 of the Crime Victims Act). Law enforcement authorities have an obligation to provide the victim with information on the state of the criminal proceedings, as well as with a copy of a legally effective decision terminating the criminal proceedings in the case at issue. Under Art. 2 par. 15 of the Criminal Code, law enforcement authorities shall at the same time allow the injured party at any stage of the proceedings to fully exercise their rights (explicitly set forth in the Code of Criminal Procedure as well as in the Crime Victims Act), provided that the injured party shall be briefed on such rights in an appropriate and comprehensible manner under Art. 46 of the Criminal Code to allow them to achieve the satisfaction of their claims.

E. Power of the injured party to grant consent

The conduct of criminal prosecution is, for selected crimes fully listed in Art. 163 of the Criminal Code, conditioned by an express consent of the injured party, if they are a close person in relation to the accused, provided the injured party's once refused consent cannot be granted again. Possible exceptions, where the injured party's consent is not required to institute and conduct criminal prosecution of the accused even for the selected crimes are set out in Art. 163a of the Criminal Code.