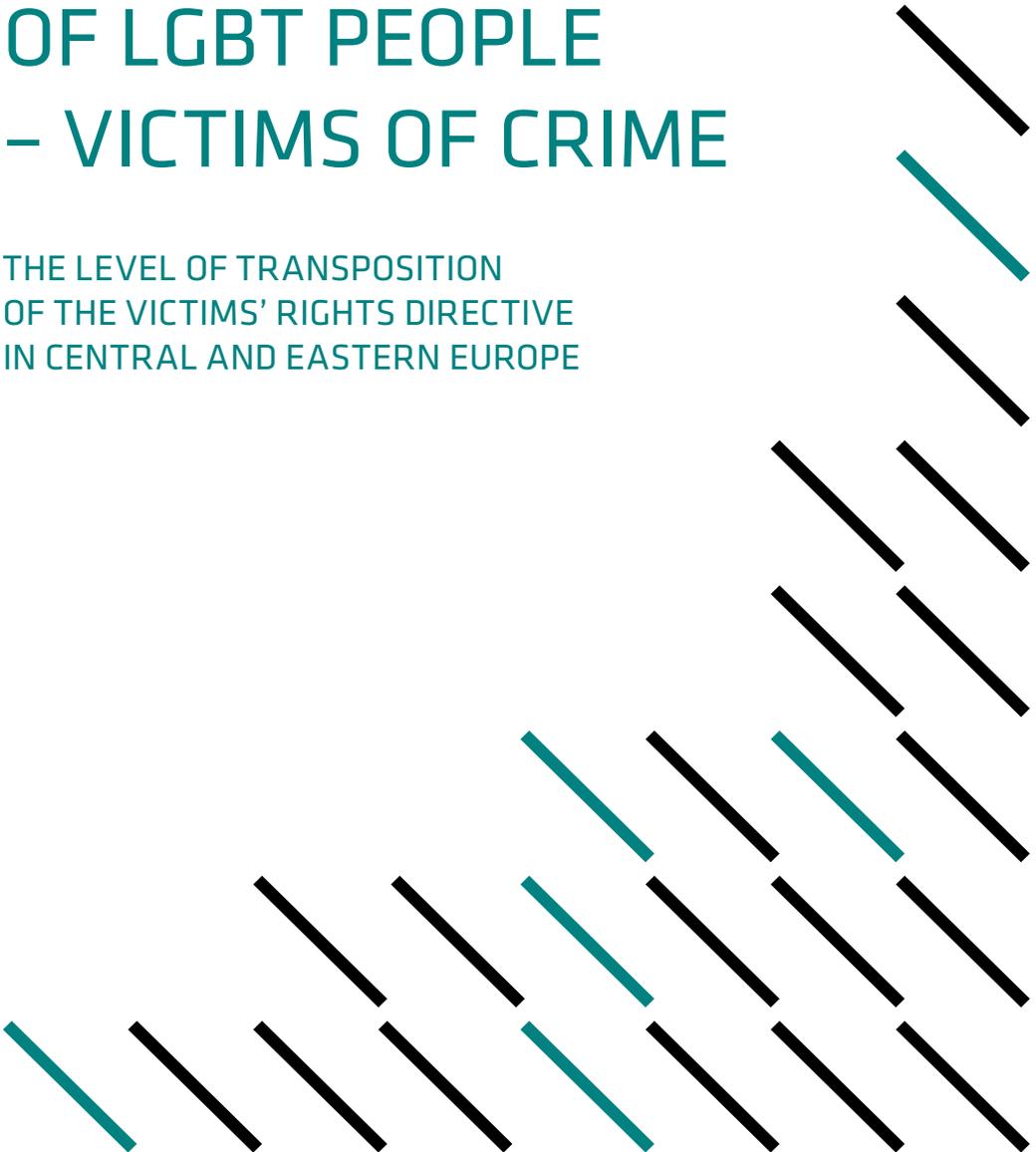


H A T E N O M O R E

LEGAL PROTECTION OF LGBT PEOPLE – VICTIMS OF CRIME

THE LEVEL OF TRANSPOSITION
OF THE VICTIMS' RIGHTS DIRECTIVE
IN CENTRAL AND EASTERN EUROPE



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Budapest, Riga, Vilnius, Warsaw, Zagreb – October 2016

Legal protection of LGBT people – victims of crime. The level of transposition
of the Victims' Rights Directive in Central and Eastern Europe

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Design:

Artur Gąsieniec

pracownia@pandidot.com.pl

Publisher:

Campaign Against Homophobia

ul. Sołec 30a, 00-403 Warsaw

T: 22 423 64 38

www.kph.org.pl

info@kph.org.pl

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State of implementation of Directive 2012/29/EU of the
European Parliament and of the Council of 25 October 2012
establishing minimum standards on the rights, support and
protection of victims of crime, and replacing Council Framework
Decision 2001/220/JHA.

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Summary report

The aim of this report is to outline the state of implementation of the Victims' Directive in five EU member states taking part in the project: Croatia, Hungary, Latvia, Lithuania and Poland. The findings of this report are based on analysis of the national law and practice (regarding the treatment of victims of homophobic, biphobic and transphobic hate crimes) carried out in all partner states. All analyses are based on the same methodology (a list of 137 audit questions related to particular guarantees resulting from the Directive, answered by specialists in the field of hate crimes) which allows for comparison and the drawing of joint conclusions.

Data obtained from national reports constituted the material for the formulation of the final legal characteristics, presented as six separate issues (described in chapters II to VII below) and general findings (covered in chapter I).

I. General findings

The definitions provided in the Directive have been implemented in the legislation and practice of all partner states. Informational guarantees coming from the Directive have been partly implemented in the legislation of all partner states; however there are serious problems with the practical application of these guarantees. The Directive's guarantees regarding the assistance and the protection rights of LGBT crime victims have not been – so far – adopted to a sufficient degree, both in legislation and in practice. The lack of individual assessment of LGBT crime victims and the problem of insufficient recognition of LGBT crime victims with specific protection needs, which were identified as issues in all partner states, raise deep concern. At the moment, Hungary provides the strongest protection of LGBT crime victims (as defined by the Directive), while Croatia and Poland offer the weakest support. The Lithuanian national report shows that improvements to the Lithuanian criminal procedure made in March 2016 might lead to the strengthening of the level of protection of LGBT crime victims. As for Latvia, there is a possibility that the level of protection of LGBT crime victims will improve, as the process of implementation of the Directive will start. It should be pointed out – with some caution – that unfortunately, it seems that the process of implementation of the Directive in the other member countries has terminated.

II. Definition issues

The legal systems of all the member states recognize the term **victim** in a way that reflects its meaning in the Directive. In order to obtain the status of 'victim', in all the member states the person has to be recognized as such (with minor exemptions) by the person directing the pre-trial proceedings or during the court proceedings. Even though the concept of a 'victim' is not used in the Lithuanian legal system, the existing definition of the 'offended' was expanded (in various court practices, and through the latest implementation of the criminal procedure) and corresponds with the requirements of the Directive. However, it should be mentioned that Hungarian legislation contains a restriction based on citizenship (combined with ensuring services for the victims only on the principle of reciprocity), which may result in limiting access to assistance for certain groups of victims.

The legal systems of all the member states recognize the term **family member** in a way that reflects its precise meaning in the Directive. However, it should be mentioned that in all the member states there are specific problems with using the rights arising from this definition, especially by same-sex partners. In Lithuania, people in same-sex relationships are (in practice) excluded from the definition of 'family member' (regardless of the legal form of their relationship). This situation was similar in Poland until the 2016 ruling of the Polish Supreme Court, which confirmed that the definition of family member also covers same-sex partners. In Latvia, after the amendments to the Criminal Procedure Law (March 2016), the term 'family member' should also include same-sex relationships. There is now

only a requirement for persons to have a joint household – a specific legal form of relationship is not a precondition.

Despite the fact that Hungarian legislation includes same-sex partners within the definition of family member, this definition was found to be only partly employed, since it can be applied only in certain conditions (i.e. in the case of having one's own right to receive compensation as a family member) and it excludes certain categories of family members (i.e. siblings or dependants of the victim). Croatian legislation does not include explicit provision that extends the definition of 'victim' to family members of a person whose death was directly caused by a criminal offence (if they have suffered harm as a result of that person's death). There is also no unified practice in relation to this, which means that it is up to the Croatian courts to recognize this status in each case. However, this issue remains uncertain in criminal legislation only. Family members can be awarded damage compensation due to the death or severe disability of a direct victim when it comes to civil law, and this recognition is extended to life partners, their children, and children in a partner's care. Incidentally, it should also be noted that in Poland the definition of family member (in the act implementing the Directive) is vitiated by an error in translation (the definition omits affinity in direct line).

The legal systems of all the member states use the term **child** in a way that reflects its meaning in the Directive. In Latvia, the term 'child' includes all persons who have not reached the age of 18 years. After some amendments to the Latvian legal system at the end of 2015, the legal framework is in line with the wording of the Directive. However, some concerns should be raised about the differentiation of treatment of children at different ages in Polish and Hungarian law, which in certain cases e.g. provisions related to videoconferencing) results in unjustified limitation of the rights of older children.

As for the term **restorative justice**, it should be pointed out that in Poland, Hungary and Latvia, application of this form of restitution is limited to providing mediation. In Lithuania, restorative justice elements – as outlined in the Directive – have not been applied at all. In Croatia, mediation has not been included – specifically – in criminal procedure and only certain elements of this form of restitution (under specific circumstances) can be recognized in the legislation. National reports also identify serious problems with applying mediation in practice (i.e. lack of follow-up mechanisms in Latvia showing whether the offender has fulfilled the conditions and obligations set out in the agreement established between the victim and the offender; in Poland, inadequate provision of information on victims'

rights, on the matter of mediation proceedings or on the possible consequences of a victim's decision, and lack of precise requirements for the position of mediator). There are also clear signs that within the Polish and Hungarian legal frameworks, mediation is still not well recognized and therefore it is not often used.

Finally, in relation to the issue of **limiting the number of family members** entitled to the rights specified in the Directive and the issue of **prioritizing certain family members** in relation to access to the Directive's guarantees, it should be highlighted that criminal procedures in all member states do not impose – specifically – such limits or priorities. However, some concern should be raised about the introduction into Polish criminal procedure of the automatic repeal of the protection of all members of the immediate family of the victim, in the case of repealing this protection for the victim. Likewise, the introduction into the Latvian legal system of a mechanism of state compensation according to which this kind of compensation will be divided proportionally among all family members of a deceased victim (regardless of the number of persons recognized as family members) raises doubts about the effective implementation of this guarantee of the Directive (in the case of a higher number of family members entitled to this compensation).

III. Information for LGBT victims of crimes

Art. 3 of the Directive – Right to understand and to be understood

In Hungary, the legal provisions seem to fulfil the Directive's requirements regarding the victim's right to understand and to be understood throughout the criminal proceedings in a systematic way.

In Latvia, the victim's right to receive information from the first contact with a competent authority are partly implemented, and will be further implemented with anticipated amendments to criminal procedure law, according to which persons directing the proceedings will have specific obligations as to what information and to what extent should be provided.

In the Croatian legal framework, the right to understand and to be understood has been partly applied, but is not ensured appropriately in practice. Nevertheless, it is worth mentioning that the Ministry of Justice has taken some action towards implementing this guarantee and established (in the seven biggest cities in the country) special departments providing support to victims and witnesses. Furthermore, support to victims of criminal offences is also provided in Croatia by civil society organizations and other institutions (e.g. centres for social welfare).

So far, Poland and Lithuania have not taken measures that would allow crime victims, including LGBT victims, to understand and to be understood throughout criminal proceedings in a systematic way.

In Poland, only the legislation on counteracting violence in the family implements, as part of the so-called 'Blue Card' procedure, a consistent process which guarantees that the victim understands and is understood in the proceedings following a report of family violence.

What is common to all the partner states is a serious problem with ensuring the guarantees provided in art. 3 of the Directive in practice: not providing information from police officers (Poland, Hungary and Lithuania), using formal and inaccessible language (all partner states), and providing information which does not reflect the needs of LGBT victims (Poland, Hungary, Croatia and Lithuania).

In Poland, the mechanism for providing the right to understand and to be understood is supposed to be strictly linked to the procedure of individual assessment. Due to the fact that this procedure is not used in practice, there are serious doubts as to whether victims are adequately informed about the gravity of a situation and their rights.

Recent amendments to the Polish and Lithuanian Code of Criminal Procedures ensure the right of victims to be accompanied by a person of their own choosing.

It is worth mentioning – as good practice – project-based initiatives by the Latvian State Police aimed at providing information in more simplified language.

Art. 4 of the Directive – Right to receive information from the first contact with a competent authority

In Hungary, legal provisions seem to fulfil the Directive requirements regarding the victim's right to receive information about available support.

In Latvia, the victim's rights to receive information about available support, protection, and the possibilities of receiving compensation and legal aid are already implemented, and will be further expanded with the amendments to criminal procedure law, according to which persons directing the proceedings will have specific obligations as to what information and to what extent should be provided.

The Polish, Croatian and Lithuanian models of criminal proceedings offer the victim information on available support at an insufficient level. In Croatia, it is usually limited to receiving only written information on victims' rights according to the law. However, there are efforts by the Ministry of Justice to involve volunteers in providing emotional support to victims of crimes. The only exception is the legislation regulating the protection of victims of domestic violence and detailed

information about the right to compensation for victims of violent crimes (the latter applies only to Lithuania).

As a result of the Directive's implementation process, since March 2016 victims are entitled to receive contact details for communication about their case. Victims should also receive printed information about their basic rights (including information about their rights to compensation and available support).

What is common to all the partner states is a serious problem with ensuring the guarantees provided in art. 4 of the Directive in practice, such as not providing information about available support, providing information which does not reflect the needs of LGBT victims, using formal legal language, language barriers and lack of sufficient interpreter services (Poland, Hungary, Lithuania, Croatia) and receiving information about available support from crisis centres instead of police officers (Poland, Lithuania).

Even though Poland and Croatia have established special funds to subsidize organizations working in the field of protection of crime victims, currently no organization providing help to LGBT victims receives grants from these funds. Therefore, in Poland and Croatia, LGBT people do not usually access help from the state network.

Art. 5 of the Directive – Right of victims when making a complaint

In Hungary and Lithuania, the aggrieved party is entitled (upon prior request) to receive a copy of their complaint. In Lithuania, if the victim does not understand the Lithuanian language, the certificate (confirming the filing of the complaint) is translated into the language understood by the victim. However, it should be noted that Lithuanian legislation has not established an obligation to inform the victim that they have a right to obtain such a certificate.

In Poland and Latvia, there are no regulations directly indicating the obligation of delivering confirmation of the filing of a report to the victim. Victims who do not understand Polish are not guaranteed, even if they submit a request, to be given free translation – in a language they understand – of the written confirmation of a report.

In Croatia, due to the lack of legal regulations, there is no obligation ensuring that the victim has the right to report a crime in their native language. However,

in Lithuania, any victim of a crime who does not understand the Lithuanian language has a right to file a complaint or make a statement about a crime in their native language, or any other language they know, or use the services of an interpreter to file the complaint verbally.

What is common to all the partner states is a serious problem with ensuring the guarantees provided in art. 5 of the Directive in practice (i.e. police acquire an interpreter for foreign persons making a complaint, but in Poland and Hungary this is sometimes time-consuming; confirmation of filing complaint is not always ensured in Poland and Hungary, especially if the complaint is made and recorded at the scene of the offence or when it is made by a foreign person; lack of the guarantee in Polish, Croatian and Lithuanian legislation that the victim will receive an answer to their complaint in their native language).

Art. 6 of the Directive – Right to receive information about their case

In Hungary and Latvia, the guarantees indicated in art. 6 of the Directive have been mostly incorporated into national law.

The right of the victim to receive information about their case in Lithuania, Croatia and Poland is only partially implemented.

In Poland and Lithuania, crime victims are not provided with clear information on their right to obtain information about the termination or conclusion of an investigation, or the non-prosecution of the offender.

In Polish legislation, in preparatory proceedings a victim may exercise specific informational rights; however in court proceedings the exercising of these rights depends on having status of the party.

Polish legislation does not guarantee that the victim is notified about the date and place of trial or the charges against the offender. Details about the date of trial or hearing are delivered to the victim with a summons, which does not constitute fulfilment of the obligation defined in the Directive. However, thanks to the latest amendments, Polish criminal procedure provides the right of the victim to receive (at the victim's request) a letter from the court informing them about the final judgement.

Lithuanian legislation does not guarantee that the victim is notified about the nature of the charges against the offender. However, thanks to the latest

amendments, Lithuanian criminal procedure provides the right of the victim to receive information about the status of the criminal procedure. Moreover, it describes how victims could be informed about the offender's release or escape from prison and the security measures that could be applied in such cases. It also provides the obligation for the investigating officer to provide safety-related information to the victim and inquire whether the victim wants to be informed about the above-mentioned whereabouts of the offender.

In spite of the fact that, in Croatian law, victims have the right to receive information about any final judgement, in practice it often happens that the court sends the judgement only to the accused and to the state attorney (plaintiff), so the injured parties have to refer to their rights in order to gain access to the records, and copy the judgement themselves or request a copy of the judgement to be delivered. According to the Croatian legal framework, victims are allowed to modify their wishes (as to whether or not to receive information referred to in art. 6 of the Directive) at any time, but it does not oblige the court to do this. Also, only some categories of crime determine that before the release of the prisoner, victims or their families have to be informed of this. In practice, this is done over the phone or in written form, often through centres for social care. The flow of this information is not reliable and – according to the reports of national organizations – sometimes it happens that the victim does not receive the information on release of the prisoner.

It is worth mentioning – as good practice – the introduction into the Hungarian legal system of the establishment of witness care (still in progress). The witness's caretaker is obliged to enlighten the witness about their rights and, if necessary, to ensure that the witness may wait for their turn in court in the witness room.

What is in common in most of the partner states is a serious problem with ensuring the right to learn about developments within the case (especially during the pre-trial investigation), as usually this right is limited by the prosecutor or police officer performing the proceedings (especially in Poland, Hungary and Lithuania).

It should be mentioned that in Hungary and Poland, if the qualification of the criminal offence is altered so that the original aggrieved party is no longer an aggrieved party to the criminal offence, the right to receive information might be violated.

Art. 7 of the Directive – Right to interpretation and translation

Lithuania and Latvia guarantee the victim's right to interpretation and translation services throughout the process.

The content of art. 7 is included in the Polish, Croatian and Hungarian national legislation as a general principle, but it does not fully prevail in practice.

In Polish and Croatian law, victims who do not speak the Polish or Croatian language, respectively, have limited access to free translator assistance, restricted to those procedural steps which involve their hearing.

It should also be pointed out that the Polish model of criminal proceedings does not include a legal obligation to instruct a victim who does not speak Polish on their rights and obligations. Only in certain situations victims who are being part of the proceedings are entitled to receive judgement subject to appeal with written translation. It should also be highlighted that if the victim does not speak Polish, they do not receive notifications about the place and date of the trial or the type of indictment in a language they can understand.

Finally, the Polish and Croatian models of criminal proceedings do not meet the obligations arising from art. 7, sec. 8 of the Directive, as they do not include the right of the victim to complain against the denial of access to translation.

In Hungary, decisions and other official documents have to be translated into the victim's native language, unless the person concerned expressly rejects this possibility. In practice, however, the number of interpreters is low and their fees are high. It is often hard to acquire an interpreter, and so in these cases the police tend to dissuade the aggrieved party from making a complaint. Even though, in Hungary, the aggrieved party is entitled to the right to use their native language, in practice, the authorities and the courts rarely translate the official documents, minutes and decisions.

Lithuania does not guarantee that victims can receive complimentary written translations in a language they can understand of the information that is necessary to enable the victims to exercise their rights in criminal proceedings.

IV. Assistance and protection of LGBT victims of crimes

Art. 8 of the Directive – Right to access victim support services

Hungary has enacted art. 8 of the Directive only partly, since not all victim support services are free of charge (certain services are ensured on the basis of the victim's indigent status).

The Polish model of criminal proceedings offers the victim assistance and protection at an insufficient level. In Poland, the only exception is the legislation regulating the protection of victims of domestic violence, which does not refer to LGBT victims. The act, which was intended to implement the Directive and lead to the strengthening of assistance and protection to all – including LGBT crime victims – is selective and limited and does not meet expectations. A major flaw of the act is that helping victims is mostly not obligatory and does not directly refer to LGBT people, which – combined with the lack of a mechanism of personal assessment – may result in not protecting LGBT victims. Despite the fact that forms of support provided by this act cover family members of the victim, their protection depends on the submission of a request by the victim, or by the authority with the victim's consent. Moreover, in the case of repealing help and protection granted to the victim, help and protection granted to the immediate family is also repealed. Additionally, in order to be granted the help specified by this act, the victim is obliged to make

a commitment to be granted protection. Implementation of the requirements for granting protection is not understandable and raises great controversy, as it may become an element of secondary victimization. Despite the fact that help resulting from this act is provided by the police, medical facilities, and bodies which received grants from the Victim Fund, it should be highlighted that the entities listed above do not have specialist knowledge and do not provide professional help to LGBT victims. This means that there is a great risk that the burden of providing help and protection to victims of crimes motivated by homo-, bi- and transphobia will still be laid on non-governmental organizations, which do not receive funds from the state.

Lithuania does not properly ensure the right of all victims of crime and their family members to access victim support services. It should be noted that the existing crime victim assistance measures are intended to assist only one group of victims – individuals who have experienced domestic violence. Since Lithuania does not recognize same-sex marriage or partnerships, and the law on protection against domestic violence applies only to people who have experienced domestic violence in families, LGBT individuals are not entitled to use these victim services.

In Latvia, multiple service providers can support victims of crime, but the assistance – whether it is psychological, legal, medical, financial, or providing shelter – is not coordinated and does not form an actual support system. The only exceptions are that, to some extent, support has been developed for victims of human trafficking, child victims, victims of domestic violence and for women as victims of violence, unfortunately not targeted at LGBT victims of crime. There is a strong need for a one-stop agency for all victims of crime, which so far has not been established. The problem in Latvia is only partly caused by the lack of available support, as it is also linked with insufficient information with regard to where the support can be received and to what extent it can be requested. From January 2015, the Latvian legal system foresees the introduction for victims of crime some social rehabilitation services to adult victims of violence. The regulation entitles adult victims of violence to receive support and consultations in the form of individual appointments or a social rehabilitation course (with possible placement in an institution for social rehabilitation). Due to how recently these regulations have come into force, it is still too early to assess their effectiveness and overall contribution to general and LGBT victims' services.

In Croatia, the enactment of art. 8 has been realized only partially. The Ministry of Justice is supporting non-institutional specialized services only to victims of

specific types of crimes (child victims, victims of criminal offences against sexual freedom or the criminal offence of human trafficking). LGBT victims of other criminal offences can obtain support at a state-based level. There is no state-coordinated, financed, targeted and integrated support available aimed at victims of homophobic, biphobic and transphobic hate crimes.

Nevertheless, it is worth mentioning – as good practice – that in 2008, as part of a project for introducing a system of support to witnesses and victims in the Croatian justice system (based on a contract between the Ministry of Justice and the United Nations Development Programme), in seven courts special offices for support were established. What is more, in 2013 a national call centre for protection of witnesses was established. Victims can also use the call centre to obtain information on their rights and available systems of support.

Art. 9 of the Directive – Support from victim support services

In Hungary, the enactment of art. 9 has been realized for the most part. However, there is no state-coordinated, financed, targeted and integrated support available aimed at victims with specific protection needs, such as LGBT persons. What is more, placement in a safe house is restricted. In practice, victims are not referred to LGBT organizations and the involvement of civil society organizations is sporadic. It should also be mentioned that the quality of the service provided by attorneys from the Legal Aid Service list and the psychological support from the Victim Support Centre (which is not obligatory) is variable.

The Polish legal system offers the victim guarantees resulting from art. 9 of the Directive at an insufficient level. Polish legislation provides only basic information on the possibilities of obtaining compensation for damages and harm resulting from a crime or on a victim's rights in criminal proceedings, and there is no counselling or assistance with this matter. It cannot be excluded that as a part of legal aid provided by various institutions and organizations the victims might obtain such information, however this does not fulfil the requirement defined in the Directive, especially in relation to LGBT victims. The instructions given to a victim before their first hearing contains only information about the right to obtain reparation of damage by the defendant and the right to obtain state compensation. It should also be underlined that Polish services providing help to victims are not sufficiently encouraged to pay special attention to the needs of victims who have suffered great harm

due to the seriousness of the offence. This problem particularly concerns LGBT victims, who are generally overlooked and neglected by the services. Polish national legislation, to some extent, provides refuges or other substitute accommodation for victims in need of a safe house due to the risk of secondary and repeat victimization, intimidation and retaliation. Unfortunately, the act which was intended to implement the Directive is flawed by the optional nature (no absolute obligation) of providing this form of help.

Specific and integrated assistance to victims of sexual abuse and gender-based violence in a non-domestic environment, or hate crimes (including those with homophobic, biphobic and transphobic motives) is not very well developed in Lithuania. Among the most important problems that should be mentioned are the lack of specialists in all the relevant fields, the urgent need to investigate such crimes thoroughly, the vital necessity for interviewing victims properly and for providing them with comprehensive legal and psychological assistance. Therefore, in Lithuania, broad targeted assistance to victims with special needs is not developed.

In Latvia, when a victim has been involved with any of the above-mentioned (in art. 8) victim support services, the victim will be guaranteed the minimum standards laid down by art. 9 of the Directive. Nevertheless, there are serious challenges to the practical implementation of the specified rights, and it is worth mentioning among them a lack of inclusion of all types of victims by the support services, since the assistance provided is often targeted and therefore, to some extent, can result in excluding victims who are in need of general support; the lack of equal distribution of support throughout the territory of Latvia (i.e. NGOs that are operating in the capital city, Riga, are unable to provide adequate support to victims in the regions); the lack of developed referral mechanisms, which requires victims to actively seek assistance.

In Croatia, the guarantees mentioned in art. 9 have been implemented only partially. There is a serious problem with the realization of the rights of victims in practice because often victims receive only basic information, and do not receive constructive and practical advice about who to turn to in order to realize their rights. As mentioned, there are offices for support to witnesses and victims of criminal offences that also provide information to victims, but only at municipal courts and only in the seven cities where they were established. Despite the fact that 42 organizations were registered for providing direct legal help (thanks to the adoption of the Free Legal Aid Act in 2013) none of the organizations is an LGBT organization.

V. Participation of LGBT crime victims in criminal proceedings

Art. 10 of the Directive – Right to be heard

In Poland, the guarantees defined in art. 10 of the Directive should be considered as fulfilled in the current regulations, with slight restrictions, especially in terms of the scope of the practical application of the regulations. However, it should be mentioned that in the course of court proceedings the victim loses their status of the party unless they submit a request to act as an auxiliary prosecutor. Should the victim not be granted the status of a party in the course of court proceedings, their rights are significantly limited. What is more, in practice, despite having been instructed on their rights, the majority of victims do not exercise their rights or do not understand the instruction, especially when they are instructed to submit the request to act as an auxiliary prosecutor before the opening of the court proceedings, since people without a legal education find it difficult to understand this term.

As far as the provisions of art. 10 are concerned, the right of the aggrieved party to be heard and to provide evidence has been fully enacted by the Hungarian state, while the related obligations affecting children have been mostly transposed. It is worth mentioning – as good practice – that the Hungarian National Judicial Office, in a project-based programme “Child-sensitive justice system” aimed to

achieve that since 31 December 2014 hearing rooms designed for children would be established in every court building accommodating more than seven persons, which would facilitate children being heard in a sensitive manner. Implementing the programme is in progress.

The victim's right to be heard is guaranteed in Lithuania. It is worth mentioning – as good practice – that in Lithuania specialized juvenile interrogation rooms are set up where an informal environment reminiscent of home is created. In many of these facilities psychologists work together with officials in order to help them to communicate effectively with a minor. Often the psychologists themselves conduct the necessary examination.

In Latvia, victims' rights to participation in criminal proceedings can be viewed as well implemented both in law and in practice, with regard to adults and children. Victims are entitled to participation in criminal proceedings at all stages.

Article 10 has been fully implemented in Croatian legislation and practice.

Art. 11 of the Directive – Rights in the event of a decision not to prosecute

In Poland, current regulations do realize the guarantee to provide the victim with the right to appeal against refusal of prosecution. Nevertheless, in certain categories of crime, it is usual for a person not to be granted the status of victim (e.g. false testimony), in spite of false testimony being a cause of material, emotional or moral loss. Current regulations do include the possibility of appealing against refusal of prosecution in the form of refusal to initiate proceedings or discontinuation of the proceedings, and also in the case of serious crimes defined in art. 11 of the Directive. In Poland, guarantees concerning immediate notification of the victim about their right to receive information sufficient to decide whether they should appeal against refusal of prosecution defined in art. 11 of the Directive are considered fulfilled. It seems that in Poland the current regulations include guarantees exceeding art. 11 of the Directive, as any appeal against refusal to investigate is reviewed by the court and, taking into consideration the aforementioned, the authority which issues the decision does not review the appeal.

The rights enshrined in art. 11 of the Directive have been appropriately transposed by Hungary. However, if there is an alteration to the criteria for the criminal offence, or the act is designated as a less serious criminal offence (e.g.

the qualification of 'violence against a member of a community', i.e. hate crime is changed to 'disorderly conduct') the victim loses their standing as an aggrieved party, and the victim's rights above cease, or the victim cannot necessarily resort to them.

The victim's right to a review of a decision not to prosecute is fully guaranteed in Lithuania. However, it is important to note that there is no national law which outlines the right for the victim to obtain all the information relevant to the case. Prosecutors and other officials also do not inform victims about such a right. Lithuanian national legislation provides the right to access the case materials to the suspect and his/her defence, as well as to the victim and his representative, but the right to have access to this material is given only after approval by the prosecutor.

In Latvia, a victim's right to a review of a decision not to prosecute – whether such a decision has been made as a refusal to initiate criminal proceedings or as a decision to terminate criminal proceedings – is fully guaranteed. The decision itself will include information about the deadlines for submitting an appeal, and to whom the appeal should be submitted.

The Transposition of art. 11 of the Directive in Croatia is incorporated under the Criminal Proceeding Act. The victim can continue criminal prosecution under the conditions proscribed by the law and act as a subsidiary prosecutor. However, all the costs concerning such a proceeding, especially in cases of faulty investigations, would have to be covered by the victim. If a defendant is convicted, it would be his/her obligation to reimburse the victim. Furthermore, the state attorney may take the proceedings back from the victim at any stage and continue to represent the state as a prosecutorial body.

Art. 12 of the Directive – Right to safeguards in the context of restorative justice services

In Poland, the victim's right to guaranteed services of restorative justice defined in art. 12 of the Directive is fulfilled in the legislation. Nonetheless, this kind of restorative justice is in fact limited to the provision of mediation. It should also be mentioned that mediation constitutes a service employed in criminal cases at a marginal level, the qualifications for a mediator are not clear, and there are no entities specializing in providing help to LGBT victims. In practice, mediation is often held during the trial or court hearing, which requires the victim to discuss and decide on

crucial matters within a short time and in an inconvenient environment. Moreover, current regulations do not define the details of this service, thus they do not fulfil the Directive's requirement of providing full and objective instructions about the mediation process and its possible results, or information on the supervision of the execution of the settlement. Within the current legislation, the offender is also not obliged to confirm basic facts concerning the case before or during the mediation process, therefore it should be concluded that the Directive's requirement has not been implemented in national law. Although in Poland statistics and practice indicate an increasing trend towards mediation in criminal and regulatory proceedings, the possibilities for mediation are still not sufficiently used.

In Hungary, art. 12 of the Directive has been almost fully transposed. At the same time, the prosecutor's office is of the view that, in the case of hate crimes, procedures should not be referred to mediation, since it is the punishing of the accused which fulfils the purposes of the punishment. This categorical statement made by a prosecutor gives rise to concerns, since in the case of acts motivated by bias it precludes the aspect of establishing liability beyond punishment, and so it does not necessarily serve the interests of the LGBT community.

Restorative justice services are not available in Lithuania.

In Latvia, the victim's rights to guaranteed services of restorative justice defined in art. 12 of the Directive are fulfilled by the institution of mediation. Latvia was waiting for the adoption of amendments that would strive to prevent a situation in which offenders could avoid fulfilling the conditions of the settlement, and victims would have to use civil procedure measures to receive the full amount of the compensation parties approved within the settlement agreement. As of March 2016, settlement can be used as a basis for termination of criminal proceedings only in cases when all its conditions are fulfilled. It must be noted, however, that State Probation Specialists were not able to recall a case where the mediation process had been focused on LGBT victims.

In Croatia, art. 12 was only partially transposed within national legislation and practice. Mediation was not prescribed for criminal procedures. However, some elements of mediation in civil law, mainly concerning family issues, are provided in the national legal system. Mediation is also possible in cases of discrimination, under the authority of a competent ombudsperson's office and only before any judicial proceedings begins.

Art. 13 of the Directive – Right to legal aid

In Poland, a guarantee of the right to legal aid defined in art. 13 of the Directive is provided in criminal proceedings, with some limitations. The current legislation does not entitle any person other than the defendant to appoint an attorney, and an ex officio appointment of a proxy in the person of an attorney is exercised should the party prove they are not capable of bearing the costs of defence without it affecting their ability to support themselves and their family. In Poland, appointment of an attorney may not precede initiation of criminal proceedings. As a consequence, the current regulations do not involve the appointment of a court-assigned attorney for the purpose of preparation and/or submission of a complaint about a criminal offence. Even though the victim is entitled to free legal aid provided by one of the public or non-governmental organizations, the availability and extent of such aid and the practical realization of the aid depends on numerous factors, and therefore in the case of LGBT people is limited.

In Hungary, art. 13 has been partly transposed. Victims are entitled to receive certain types of legal aid depending on their financial status.

Legal aid is available to all Lithuanian and European Union citizens or persons legally residing in Lithuania or the European Union. Secondary assistance (assistance from a state lawyer) is provided free of charge to victims of crimes that have resulted in damages, including cases where the damages are dealt with in a criminal case, or when the victim does not have sufficient funds.

In Latvia, state-ensured legal aid is available to victims of crime (the formal status of victim is one of the pre-conditions), but within rather restricting conditions.

In Croatia, victims are entitled to receive certain types of legal aid, depending on the circumstances and the type of criminal offence. Victims are entitled to the right to legal aid only when criminal proceedings start in specific cases (children, victims of the trafficking of human beings, and victims of criminal offences against sexual freedom) and in all other cases (including hate crimes) only before testifying at court, leaving them without such support in the investigative phase. However, this does not mean that victims are not allowed to have their own legal or other support in the investigative phase.

Art. 14 of the Directive – Right to reimbursement of expenses

Poland, Lithuania and Croatia guarantee the victim's right to reimbursement of expenses incurred during criminal proceedings.

In Hungary, art. 14 of the Directive has been only partly transposed, since the costs of victims are not fully reimbursed by the state; only if the presence of the aggrieved party (as a witness) is ordered by the authorities. Problems related to the transposition are not LGBT-specific.

Latvia guarantees the victim's right to reimbursement of expenses incurred during criminal proceedings only in the provisions of law. Unfortunately, Latvian legislation was found to be inconsistent in practice, as despite the existence of a well-established legal framework, victims were not informed about such a possibility and reimbursement of expenses happened on rare occasions. As a result of the Directive's implementation process, however, reimbursement of expenses is listed as one of a victim's basic rights – the victim receives this information at the early stages of criminal proceedings.

Art. 15 of the Directive – Right to the return of property

It should be concluded that the victim's right to the return of property defined by art. 15 of the Directive is fulfilled by Polish, Lithuanian and Latvian law.

The guarantee defined by art. 15 of the Directive is mostly fulfilled by Hungarian law. However, it is worth mentioning that there is no express legal provision prescribing that seizure should be terminated without delay, and in practice it is not terminated for years in many cases. The article has no specific LGBT relevance.

In Croatia, only victims who take part in the procedure as the injured person have the right to property law demand. However, in practice criminal courts do not usually decide on complex issues relating to damage compensation, due to lack of competence, and instruct the victim to seek damage compensation through civil proceedings.

Art. 16 of the Directive – Right to decision on compensation from the offender in the course of criminal proceedings

In Poland, financial claims resulting from the offence may be asserted in civil proceedings or, under conditions specified in the national legislation, in criminal proceedings. The right to compensation within reasonable time in fact depends on the duration of the criminal proceedings. Some legal concerns are raised by the possibility of exercising the compensation rights of the victim's family, as this solution is in practice not employed in the process of criminal proceedings. It should also be mentioned that Poland has adopted legal solutions aimed at encouraging offenders to compensate their victims, as payment of compensation or reconciliation can affect the punishment, or enable the offender to access certain provisions of criminal law mitigating the punishment.

According to the Hungarian legal system, it is possible to enforce a civil law claim (damages) within the framework of the criminal proceedings. What needs to be highlighted is that in Hungary there are no rules which would encourage offenders to provide compensation. At the same time, it is taken into account as a mitigating circumstance by the court if the damage is recovered (especially if it is recovered from the defendant). The mediation procedure offers a possibility for the offender to provide the victim pecuniary and non-pecuniary compensation voluntarily, and that may have an effect on the outcome of the procedure regarding the defendant. For these reasons, art. 16 has been only partly transposed. It has no specific LGBT relevance.

Lithuania guarantees the victim's right to decision on compensation from the offender in the course of criminal procedures in two ways (by issuing a civil action within the case or by expressing a separate civil action proceeding). The damage can be compensated by the offender voluntarily, but the national law does not implement any measures or programmes that encourage offenders to pay the damages.

In Latvia, a person's right to compensation for harm that has been inflicted by a criminal offence is stated as one of the basic principles of criminal proceedings. A victim's right to a decision on compensation from the offender is guaranteed in two ways (by issuing an application regarding compensation within the case, or by pursuing a separate civil action proceeding).

Art. 17 of the Directive – Rights of victims resident in another member state

In Poland, national regulations as a rule guarantee organization of the proceedings, which enables the taking of a testimony from the victim as a result of submitting a complaint against a criminal offence. In practice, major difficulties result from the obligation of summoning an interpreter for the hearing of a victim who does not speak Polish, which in turn often results in the necessity for delaying the proceedings or employing a person who is not a professional interpreter. It seems extremely rare that the interpreter has knowledge of legal procedures sufficient to translate legal terms related to the hearing, not only from a linguistic point of view, but also in such a way that the victim is actually able to understand their rights and obligations. What is more, Polish current national regulations enable the use of videoconferences in order to hold hearings of victims living abroad. The current legislation includes only a hearing held with use of equipment transmitting audio and video at the same time, and a conference call does not meet this requirement. Theoretically, in Poland there are no formal obstacles to considering the guarantees defined in art. 17 sec. 2-3 of the Directive as fulfilled, however in practice most of such reports are not accepted (oral refusal), or a written refusal of prosecution or a statement of discontinuation is issued (e.g. resulting from the fact that the offender does not submit to the jurisdiction of the Polish courts, or other factors terminating the prosecution, such as the condition of dual criminality).

In Hungary, national legislation makes it possible to employ videoconferencing in the trial phase, but due to the limited resources available and the technically difficult preparatory work it is used only rarely, in cases of larger volume. It is possible to make a complaint domestically with regard to acts committed abroad, but in these cases inquiries made under international mutual legal assistance are slow and the investigations are mostly ineffective. Thus, in Hungary, art. 17 has been only partly transposed. It has no specific LGBT relevance.

The rights of victims resident in another member state are only partially guaranteed in Lithuania. It must be noted that within the national legislation a requirement has not been established that the victim's testimony has to be recorded immediately after the competent authority receives the report about a criminal offence. In practice, the victim testifies only after the adoption of a procedural decision to launch the pre-trial investigation, which is not taken immediately upon receiving the complaint. It should also be noted that currently the possibility of remote

testimony exists when the victim for some reason cannot appear for questioning or a trial hearing. It is also important to note that the victim is not guaranteed access to file their appeal in their own member state, since under national law complaints about crimes must be filed with the pre-trial investigation bodies with competence relevant to the territory in which the crime was committed. Moreover, proceedings for offences committed by foreign citizens and stateless persons in the territory of the Republic of Lithuania are implemented according to Lithuanian national law. Within the national law there is no specified requirement that the competent authority to which a complaint is submitted by the victim should immediately transmit it to the competent authority of the member state where the offence took place, if the member state in which the complaint was filed has not exercised its competences to proceed.

In Latvia, telephone conferences and videoconferences are used, and currently in all courts there is at least one courtroom where the necessary equipment is available. If the victim is resident in another member state and does not understand the language, the assistance of an interpreter must be ensured. In addition, in accordance with the amendments to criminal procedure law, victims without knowledge of Latvian and resident abroad will be entitled to receive translation of specific decisions, therefore having their rights to participation further safeguarded. As a result, the rights of victims resident in another member state are only mostly guaranteed in Latvia.

Article 17 has been only partially transposed in Croatian legislation and in practice. The national law does not ensure that victims of a criminal offence committed in member states other than where they reside have the option to make a complaint to the competent authorities of the member state of residence, if they are unable to do so in the member state where the criminal offence was committed, or (in the event of a serious offence, as determined by the national law of that member state) if they do not wish to do so. There are also no provisions of national law in force to ensure that the competent authority (to which the victim makes a complaint) should transmit it without delay to the competent authority of the member state in which the criminal offence was committed, if competence to institute the proceedings has not been exercised by the member state in which the complaint was made. Problems with the possibility of audio-video conference and phone conference calls were also indicated, as not all courts are adequately technically equipped in order to implement the provisions mentioned in this article. All the issues mentioned are not problems affecting LGBT victims exclusively.

VI. Protection of LGBT victims of crimes and recognition of victims with specific protection needs

Art. 18 of the Directive – Right to protection

The current regulations in Poland include measures for the protection of the victim and their family members from secondary and repeat victimization, intimidation and retaliation (art. 18 of the Directive). The measures for protection apply to the victim as a witness and provide protection to their family members. The rights may be divided into several categories, including: (i) rights related to testifying, and (ii) measures for help and protection of the victim and the witness, should their life be endangered. The current legislation lacks regulations which directly relate to the dignity of the victim during their hearing or the giving of testimony, despite requests for amendment submitted by several entities, including the Ombudsman, to the Minister of Justice in 2014.

Hungarian law deals with the protection of aggrieved parties and witnesses rather extensively. It may be requested in the course of the procedure that the personal data of the witness are treated confidentially and to declare someone a particularly protected witness. In the case of a more serious threat, there is also a possibility for personal protection. Art. 18 of the Directive has been transposed in Hungarian law. However, the rights pertaining to treating personal data confidentially are often violated in practice.

The rights of victims to be protected from secondary and repeat victimization and retaliation are only partially guaranteed in Lithuania. These rights are not guaranteed at all to family members of the victim. As already examined, the rights of domestic violence victims are protected more effectively. The law on protection against domestic violence clearly establishes that the person who suffered domestic violence has to have protective measures ensured in all cases, including when the acts of domestic violence have been determined and before the case is solved, or even in conjunction with the punishment. However, within the national law regulations and provisions have not been developed that would protect victims from clashes with the offender during the pre-trial period or judicial hearing, to ensure the respectful treatment of the victim, or guarantee that the victim will be questioned without the presence of the offender. In Lithuania, physical protection measures apply only to serious, severely serious and some less serious offences. It should be noted that in practice these measures are not used often, and information about protection from impact is not provided to victims.

In Latvia, it can be concluded that quite a few improvements are still required in the area of protection of victims and their family members from secondary and repeated victimization. These two concepts are sometimes even confused with each other and included into national legal systems with an inaccurate translation. At the same time, there are some project-based initiatives that are trying to address victims' needs in a respectful way, including a guidebook on how to deal with victims of crime and training for police officers who are likely to be in contact with the victim¹. The rights of the child are also better safeguarded, as specialists from law enforcement agencies have had to undergo training for communication with children. Amendments to criminal procedure law are expected to include the immediate family of the victim as persons who are entitled to protection (which would include same-sex couples).

In Croatia, art. 18 has mostly not been transposed into the national law. Although there are existing measures related to protection of victims during questioning and when testifying, there are no special measures to protect victims and their family members from secondary and repeat victimization or from intimidation and retaliation, or procedures for the physical protection of victims against psychological harm, intimidation and retaliation.

¹ Please see more information about the project here: <http://www.vp.gov.lv/?&relid=14173&print=1&fromid=0> (last visited on 29.04.2015).

Art. 19 of the Directive – Right to avoid contact between victim and offender

In Poland, realization of the Directive's provisions on the conditions necessary to avoid contact between the victim and their family and the offender in the rooms where the proceedings are conducted is extremely difficult, for legal and practical reasons. Primarily, the defendant as a party in the proceedings is entitled to attend the trial and to be present at every procedural step. It can hardly be concluded that the Directive's requirement to fit new court rooms with separate waiting rooms for victims or witnesses is fulfilled in Poland in the law or in practice.

In Hungary, the provisions of art. 19 have been partly transposed. The physical separation of aggrieved parties and offenders is not fully ensured either by law or in reality – especially if the aggrieved party is not represented in the procedure. At the same time, the introduction of witness care and the establishment of hearing rooms designed for children at courts may be considered good practice. Unfortunately, at police stations victims usually have to wait in the corridor, and there are usually no separate waiting rooms for victims. There are usually no separate waiting areas for victims in court buildings either, but certain courtrooms have two entrances, so, based on individual initiative, meetings between the defendant and the victim may be avoided.

In Lithuania, the provisions of art. 19 have been partly transposed. Examinations during the pre-trial process take place only in the presence of the victim and the officer. Usually, examinations in the court sessions are held with the participation of both the offender and the victim. In addition, there are no separate waiting rooms in the courts. Everyone waits in the same room next to the courtroom.

In Latvia, the issue of the right of the victim to avoid contact with the offender is not fully addressed. However, transposition of the Directive has led to a requirement to avoid contact between the victim, their family and the offender to the greatest possible extent, unless contact is necessary for the achievement of the purposes of the criminal proceedings. In addition, it is planned to introduce an obligation for new court premises to have a separate waiting area for victims and their family members.

In Croatia, the provisions of art. 19 have been transposed only partially, in practice, in some criminal courts. Case law is different when it comes to proceedings regarding hatred against LGBT people, since legislation changes were recent and not many cases appeared before the courts. It is expected that the introduction of

hate crime legislation will challenge the existing tendency of the police to proceed with misdemeanour proceedings rather than with criminal prosecutions. Also, there are still regulations which create confusion between criminal and misdemeanour offences, in breach of the *ne bis in idem* principle, which brings difficulties in practice and can infringe on the rights of victims in judicial proceedings.² Additionally, there are no separate waiting areas for victims in criminal courts. In only some criminal courts, offices for the support of victims and witnesses provide assistance in such cases.

Art. 20 of the Directive – Right to protection of victims during criminal investigations

The guarantees of art. 20 of the Directive are generally fulfilled in Poland. However, it should be mentioned that current regulations fail to specify when the hearing of the victim in relation to the crime report should take place, and how to limit the number of hearings (there are exceptions regarding limiting the number of hearings of a victim or a witness under 15 years of age and in certain types of crimes). The new legislation allows that in the course of preparation proceedings the victim may be accompanied by a person they choose, unless they would hinder or prevent the procedure. Theoretically, the aforementioned framework allows the companion to be a same-sex partner, however in the majority of cases, a same-sex partner acts as a witness to the events they were directly involved in (e.g. witness to an assault) or as a so-called hearsay witness (confirming circumstances testified to by the victim, e.g. gang attacks motivated by sexual orientation). What means is that partners will probably be heard separately. Some additional time is needed to assess how these new regulations will work in practice.

At the time of the drafting of the first version of this report the transposition of art. 20 in Hungary was very poor. The transposing legislation brought significant improvements, and the provisions of art. 20 are now mostly transposed. Interviews of victims are conducted as a priority, investigative steps requiring the presence of the victim should be organized in a way that they need not be repeated, and the victim can be accompanied by a person of their choice when making a report

2 See the ECHR case of *Sabalić v. Croatia* (App. No. 50231/13) of January 7, 2014.

or being interviewed as a witness. Although there is no express legal provision to that end, the good practice that victims do not need to appear at repeated medical examinations has been introduced.

The national legislation of Lithuania does not set a time limit during which the victim has to be questioned. When the victim is a minor it is ensured that they would not normally be questioned more than once, and in the hearing would be summoned only in exceptional cases. In the rest of the cases, there is nothing to guarantee that victims are questioned only once. Most officers who are investigating the crime determine whether to question the victim again. It must be noted that every victim is guaranteed the right to a legal representative; however Lithuania does not guarantee that the victim can take part in the process together with a chosen person who has no legal training. National law does not specify in which cases a medical examination of the victim should be carried out, and how many times that should be done.

Currently, in Latvia, the requirements of the Directive's art. 20 can be identified only from basic criminal procedure principles, which does not always make it possible to take them into consideration. Therefore, it is planned to indicate clearly that the number of interviews should be kept to a minimum and carried out only where strictly necessary for the purposes of the criminal investigation, without unjustified delay. It will be possible to include victims' reports about the offence in the protocol of interrogation, therefore avoiding the need for double the work and time – the submission of the victim's complaint will be combined with the interviewing process. As to whether a victim can be accompanied by a person of their choice, it should be mentioned that the participation of a legal representative is regulated to its full extent and does not cause practical difficulties. On the other hand, the participation of a person of choice does not have a specific legal framework, and in practice this participation may be limited by the person directing the proceedings.

Art. 21 of the Directive – Right to protection of privacy

The guarantees of art. 21 of the Directive are generally fulfilled in Poland. However, it should be noted that the regulations for criminal proceedings do not include specific provisions on the protection of the victim's family members' picture. Moreover,

the current regulations do not include additional provisions concerning the specific protection of images or protection from identification of minors (children).

In Hungary, the content of art. 21 of the Directive has been mostly transposed. As a new provision, a closed hearing can be ordered by the court if needed to protect a victim in need of special treatment. In practice, personal rights are often violated because of the carelessness of the authorities³. It is worth mentioning that a few years ago in a case concerning a lesbian couple, the court found that the protection of their privacy as a sole reason is not sufficient for excluding the public from a trial. Not enough time has passed since the new provision has been introduced to assess whether this practice has changed.

The victim's right to protection of privacy is not ensured properly in Lithuania. The code of criminal procedure does not regulate the data protection of the victim. The data is stored only about the victim, where the victim is granted anonymity or partial anonymity, which is determined only in serious cases where there is a danger to the victim's life, health and so on. Within the national law there is no legal regulation which would establish measures to prevent the distribution of information about an under-aged victim.

The guarantees of art. 21 of the Directive are generally fulfilled in Latvia. It is worth mentioning – as good practice – that in order to promote self-regulatory measures for mass media representatives, educational seminars and events will be organized, where representatives from the press and other mass media will be informed about issues of secondary victimization, examples of good practice and the possible consequences of media coverage.

In Croatia, art. 21 has not been transposed in legislation or in practice. Moreover, cases of deliberate and unlawful violation of privacy of LGBT victims of hate crimes by state officials during the investigation phase have been recorded by national LGBT organizations. Croatian authorities also do not encourage the media to take self-regulatory measures in order to protect the privacy, personal integrity and personal data of victims.

3 See e.g. case no. BRFK V. 5150/2012/bü.: in the case of a homophobic hate crime the police served an official document on the parents of the aggrieved party in spite of his explicit earlier request not to do so. The parents found out about their child's sexual orientation from the letter from the police. Source: archives of Hättér Society.

Art. 22 of the Directive – Individual assessment of victims to identify specific protection needs

In Poland, current regulations, apart from a few exceptions, do not include conducting an individual assessment of a crime victim in the course of criminal proceedings, as defined in art. 22 of the Directive. One of the exceptions is the personal assessment which was developed for the victims of family violence as part of the Blue Card procedure. The act that was supposed to implement individual assessment into Polish national legislation was limited to merely a general declaration without any specific legal solutions. This act does not include – specifically – personal characteristics such as sexual orientation or gender identity. Moreover, the aforementioned factors are, as a rule, neglected by the courts and the prosecution, and sexual orientation or gender identity in crimes related to homo-, bi- and transphobia are not usually even considered within the scope of an offender's motivation or circumstances. According to information obtained by NGOs, two individual assessment inventories prepared by the Ministry of Justice (one for law enforcement officers and one for NGOs) are not used in practice, as there is no legal obligation to perform an individual assessment using these tools.

The latest improvements to the Lithuanian criminal procedure state that the investigating officer or the prosecutor has to perform an assessment of the special protection needs of the victim and that it has to take place not later than during the first interview with the victim. A psychologist or any other person possessing special knowledge or skills might be summoned for this procedure. The findings of the assessment should influence the entire criminal procedure of the case and help to decide if any of the measures have to be applied. According to this legislation, the results of the individual assessment should be kept separately from the other case files without access to the offender and his/her defender. Unfortunately, the nature of the needs assessment procedure in Lithuania is still unknown, since the law instructs it to be prepared by the Attorney General, and this process is still not completed.

In Latvia, there is no individual assessment of crime victims within criminal proceedings. However, since March 2016 the Criminal Procedure Law lists several categories of victims as victims with specific protection needs. Unfortunately, victims of crime motivated by their sexual orientation and gender identity will not be addressed by this new legislation. Nevertheless, it is believed that in practice LGBT victims will be entitled to be recognized as victims with special protection needs,

as separate criteria will enable the person directing the proceedings to recognize all victims who are particularly vulnerable and unprotected as victims who are in need of special protection.

Hungary introduced the category of 'victims in need of special treatment' in its Code of Criminal Procedure in order to comply with the Directive. The Code lists personal characteristics, life situation, type and circumstances of the crime as reasons for special treatment. The police, the prosecution and the court are obliged to monitor whether the victim is in need of special treatment. On first contact with the police, an individual assessment should be performed on every victim by completing a form. The assessment can be repeated later on if needed. The form contains questions on age, gender and disability, but no direct questions on sexual orientation or gender identity; however, such information can be included under the section 'Any other circumstance justifying special treatment'. The questionnaire also lists seven specific types of crime, including, among others, hate crime. It is of concern that the form contains no guidance on what constitutes a hate crime, and since Hungarian criminal law specifies no crime under that name, it might be confusing for both victims and authorities. The form ends with an assessment of whether, based on the above information, the victim is in need of special treatment or not. The form does not contain the list of protection measures needed.

Art. 23 of the Directive – Right to protection of victims with specific protection needs during criminal proceedings

In Poland, the right to protection of victims with specific needs of protection in the course of criminal proceedings, defined in art. 23 of the Directive, has been partially implemented in Polish law. The hearing of a victim is almost exclusively held in a specially-prepared room in the case of victims of sexual crimes, violent crimes or unlawful threats, or rape victims, and part of the regulations apply only to minors under 15 years of age. The obligation to hold a hearing by or in the presence of specialists has not been implemented in criminal proceedings, except for the possibility of being heard by or in the presence of a psychologist, should there be a doubt as to the mental state of the witness, who can also be the victim. The Directive's obligation for all hearings to be held by the same person and to hold all hearings of sexual, gender-based violence or violence in close relationships by

a person of the same sex as the victim, should they request this, is not realized normatively and is incidental.

As part of the transposition of the directive a series of new special protection measures have also been introduced into Hungarian legislation, including the general duty to perform any investigative steps needing the presence of a victim in need of special treatment with the utmost care, respecting the wishes of the victim. The legislation specifically lists some, but not all, of the measures listed in the Directive; those completely missing are interviews being carried out in specially designed or adapted premises and by professionals trained for that purpose, and by the same person. It is worth noting that legislation on hearing rooms designed for children at the police station was replaced by legislation on hearing rooms designed for persons under 14 years of age and for victims in need of special treatment; however, the legislation only requires setting up at least one such room in each county, not at each police station, making their use very difficult.

The latest improvements to the Lithuanian criminal procedure provide a group of articles and rules that establish and describe special protection needs and the means of responding to them. According to these improvements, special protection needs are personal characteristics and needs conditional upon the nature or the circumstances of the offense, designed to protect the victim from mental trauma or other negative consequences and effects of the crime. In addition to this, when it is necessary to ensure a victim's special protection needs, one or more measures regarding 'interrogation of a juvenile witness and victim' (interviewing in a special room and only once per proceeding, carrying out additional interviews by the same person, filming or transcribing the interviews for further usage in the court room, limiting a suspect's right to participate in the victim's interview, limiting – in some cases – only to a judge the right to address the victim during the court proceedings, separation – physically – from any other participants in the criminal procedure), could be taken into account. Finally, victims of sex crimes, domestic violence, human trafficking and prostitution, as well as victims in cases related to gender-based discrimination and hate can request to be interviewed by a person of the same gender, unless it would compromise the investigation. Even though these improvements are perceived as a welcome attempt at ensuring a victim's rights, there are serious doubts as to whether these measures will be useful for LGBT persons.

In Latvia, since the amendments of March 2016, victims with specific protection needs have the rights to be interrogated in separate, suitable premises or without

the presence of other people, to request that their participation in criminal proceedings is ensured via technical means, and victims with specific protection needs are entitled to request a notification if the offender has been released or escaped from prison.

Article 23 has been only partially implemented in Croatia. For example, national legislation provides the right to remove the accused from the courtroom while the victim is testifying. However, it should be mentioned that the accused has the right for the testimony of the witness given in his absence to be read to him. After that, the accused has the right to pose questions to the witness and there is even the possibility of confrontation that completely minimizes the effect of protecting the witness (the victim that is being heard).

Art. 24 of the Directive – Right to protection of child victims during criminal proceedings

The right to the protection of child victims during criminal proceedings, defined in art. 24 of the Directive, has been only partially implemented in Polish law. The national law lacks regulation relating to providing legal counsel to a child, providing legal representation, or appointing a legal representative for the child, pursuant to art. 23 of the Directive. Similarly, the current regulations lack provisions specifying that, should establishing the age of the victim be impossible and there are reasons to believe that the victim is a child, the victim should be treated as a child.

In Lithuania, if there is doubt about the victim's legal age, the person is considered a child until the real age is determined. If the person becomes of legal age during the criminal procedure, a prosecutor or a court might decide to continue to apply one or more guarantees provided for minors. Moreover, thanks to the latest amendments to the Lithuanian criminal procedure, if juveniles are being interrogated, it usually takes place in a special room and only once per proceeding. If an additional interview is needed, it has to be carried out by the same person. Interviews may be filmed or transcribed and then used in a court room or shown to the offender and other participants in the criminal procedure. The suspect, in some cases might not be allowed to participate during the interview, as well as any other person, who might be influencing the interviewee. In some cases, during the court proceedings, the child might be addressed only by the judge, physically separated from any other participant in the criminal procedure. A representative of the child

might be participating during the interrogation and a psychologist or a specialist of a children rights institution might be invited to assist in conducting the procedure with accordance to child's social and psychological maturity.

In Hungary, art. 24 has been mostly transposed. Provisions for making audio-visual recordings have been added to the legislation: making such a recording is compulsory for interviews of children under the age of 14, and should be strived for in the case of other victims in need of special treatment.

In Croatia, art. 24 has been transposed in national legislation and practice.

VII. Miscellaneous

Art. 25 of the Directive – Training of practitioners

Currently, in Poland there are no systematic solutions which would involve training on the issue of LGBT people to be raised during training on broadly-defined human rights and issues of anti-discrimination. Programmes for attorney and solicitor training do not cover issues related to LGBT victims; however, the Supreme Bar Council, in cooperation with the Commission on Human Rights, organizes occasional conferences, training and meetings at least partially devoted to the situation of LGBT people. Judge and prosecutor training is provided by the National School of Judiciary and Public Prosecution, where part of the courses concerns the issue of LGBT people, however there are no profiled courses. It is worth mentioning – as good practice – that LGBT-related topics are relatively common in training for police officers, which has resulted from the establishment of the network Police Representatives in Charge of Protection of Human Rights.

In Hungary, victim support is not mentioned among the output requirements of university level legal education, nor in the curricula for the advanced legal exam ('bar exam') published by the Ministry of Justice. Concerning the education of police officers, the professional requirement module called 'criminal tasks of the police' contains, among others, the following requirement: performing the tasks of the police related to victim support and domestic violence. The obligation to provide in-service training to police, lawyers, judges, prosecutors and attorneys

likely to come into contact with victims has not been transposed. The in-service training for such professionals is carried out on an ad hoc basis as part of projects financed through submitting grant applications. Topics related to victim support appeared in the training programme of the Hungarian Justice Academy in the last five years only occasionally and tangentially, and the concerns of LGBT victims were not addressed. In 2015, the National Judicial Office initiated a sensitization training programme for all judges which specifically includes LGBT topics, but its implementation so far has been limited and experimental.⁴

It should be noted that Lithuanian law does not provide general training for all specialists (court staff, police officers etc.) who would be trained to properly communicate with the victims, assess their needs. Moreover, the legislation does not outline an obligation to participate in such training. Specialists are trained to interact with victims with special needs only in training organized by the non-governmental sector, which does not cover LGBT issues. The professional police training is of a general nature and does not pay extra attention to sexual orientation nor gender identity related issues. The same lack of specialized information has been identified among prison staff during their professional training. More training and certain special programmes have been adopted so far in relation to the victims of domestic violence.

Even though in Latvia the issue of victims' rights and needs has been included in several programmes, in no way can the overall knowledge and understanding be assessed as sufficient; training that might address LGBT victims and their needs is only project-based. At the moment, implementation of the Directive has not resulted in training with regard to crime victims, but there is a possibility for that to happen in the foreseeable future as the Cabinet of Ministers has approved a 'Plan for strengthening capacity and developing competences for specialists of judiciary and law enforcement agencies, 2015 – 2020'. The Plan includes direct references to the Directive and its set obligations to ensure training for specialists who might be in contact with crime victims, in order to improve their understanding about victims' needs and to promote an objective, respectful and professional attitude

4 The Hungarian Justice Academy, operating as part of the National Judicial Office, launched the programme in March 2015. So far, two one-day train-the-trainers training sessions were held, which are to be followed by local level training sessions around the country. The Hättér Society was invited to the train-the-trainer sessions and to one local level training event in Northern Hungary.

towards all victims. Unfortunately, it is still not clear if the Plan will refer directly to LGBT victims of crimes.

Article 25 has not been implemented in Croatia. There is no specific funding for victim support organizations, especially those working with LGBT persons. There are general calls for funding of civil society organizations by the National Foundation for Civil Society, but these funds are insufficient. Only the police are – to some extent – open to implementing education on hate crimes against LGBT persons.

Art. 26 of the Directive – Cooperation and coordination of services

Poland occasionally, and to a limited extent, takes part in cooperation between the member states aimed at increasing the availability of the rights defined in the Directive, the lack of which results from incomplete implementation of the Directive's provisions, based on partial and numerous amendments. Informational campaigns concern the rights of the victim in criminal proceedings (publications, information on the Internet, awareness campaigns), but do not contain any information about LGBT people, as there are no systematic solutions or a planned approach to this matter.

In Hungary, legislation requires that both the Victim Support Service and the police – when performing victim support tasks – cooperate with various government agencies, as well as with civil society organizations, but cooperation with civil society organizations at a local level is sporadic; the central coordination of county-level victim support units is weak, due to the indirectness of the institutional setup, and the strength of the coordination effort is further decreasing. Ad hoc steps have been taken in the direction of international cooperation, but there is no explicit regulation adopted in that regard. The Victim Support Service is represented in the international organization World Society of Victimology, and it also joined a European victim support organization called Victim Support Europe. No information is available about the details of the cooperation. The Hungarian state tried to provide information on the rights of victims, to facilitate the prevention of secondary and repeat victimization, to provide information about the negative impact of criminal offences, and to target groups at risk within the framework of the Social Renewal Operative Programme ('TÁMOP') realized from European Union and national sources, through a central programme and calls for applications from

local organizations. The programmes had research and education elements, and they involved civil society organizations, but only to a small extent. Neither the call for proposals, nor the actual project submitted included the LGBT community or the victims of hate crimes as target groups. LGBT organizations were not involved in the implementation of the programmes as partners either.

In Lithuania, national law does not outline its general provisions and programmes to promote international cooperation and the sharing of best practice. Measures to combat domestic violence are most widespread. It should be noted that Lithuania lacks specialized programmes aimed at informing the public about the rights set out in the Directive, or programmes aimed at reducing the risk of secondary victimization, etc. However, attention to LGBT victims is generally given.

In Latvia, project-based initiatives (where Latvian state institutions are both the applicant and the partner organization) are one of the main platforms for awareness-raising in general and for addressing the needs of LGBT victims, as well as victims who have suffered from crimes motivated by sexual orientation and gender identity.

In Croatia, art. 26 has not been transposed at all in national legislation or in practice.

