Abstract: Secondary victimization is an act of further (repeated) harm inflicted towards a victim by people to whom they requested for help. The phenomenon takes on significance in reference to disabled people who due to violated mental and physical efficiency are especially exposed to experience harm. Therefore, every possible effort should be taken in order not to make a victim of crime incur further harm – also caused by people whose goal and obligation, by virtue of their occupation, is to bring help to such a victim. The article is an attempt to indicate actions which will protect disabled people from secondary victimization particularly experienced from official workers.

Key words: Secondary victimization, disabled people, preventing.

Secondary victimization is an extremely dangerous phenomenon that can be most simply defined as the experience of repeated unjustified harm caused by the reaction of the nearest environment. It should be noted that law enforcement authorities and the justice system may also inadvertently inflict secondary harm on victims. One of the most important features of this process is that victims are much more affected by secondary victimization than primary victimization. This is related to psychological factors such as: sense of threat, social alienation, unjustified harm, pressure from the immediate environment (family, professional group, peer group) and distant one (media, justice system, law enforcement authorities, local society) (Bobrowicz 2012).
Secondary victimization occurs when the victim of a crime suffers another (secondary) harm from other people – the environment, family, relatives. Characterized by lack of empathy, harmful attitudes of other people are often the result of curiosity, ignorance, inability to put oneself in the suffering person’s shoes. They are also – far too often – caused by stereotypes that result in the condemnation and stigmatization of the victim. Secondary victimization is the result of the inappropriate attitude of officers or officials; in extreme situations it results from bad will, sometimes from indifference. This phenomenon is greatly influenced by bureaucracy and professional burnout, which, unfortunately, often occurs in the group of police officers, prosecutors, doctors or social workers. It makes them distance themselves from the victims, being incapable of empathy. It happens that people with good intentions, who lack knowledge about the psychology of the victims, may cause secondary harm (Goetz, 2012). Therefore, the reason for exposure to repeated harm is usually the lack of competence of law enforcement and judiciary employees (police officers, prosecutors, judges, court experts, defense counsels), whose task, due to their profession, is to provide assistance.

Overcoming the effects of victimization depends to a large extent on the victim themselves, but a large responsibility also lies with the institutions established to provide assistance to victims of crime.

Article 2 par. 1 item 3 of the Code of Criminal Procedure stipulates that the provisions of the Code aim at shaping criminal proceedings in such a way as to take into account the legally protected interests of the victim. A large group of victims are people with disabilities. For these persons, it is particularly difficult to achieve the objective specified in this provision. This issue requires special attention, and the previous theoretical discussion on this issue seems to be insufficient. The manner of exercising procedural rights of disabled victims is left to the intuition of employees of law enforcement authorities and the judiciary, which does not always guarantee proper achievement of the indicated objective (Bilewicz, Bilewicz, 2014).

Disability, according to the United Nations Convention on the Rights of Persons with Disabilities adopted by the United Nations General Assembly on 13 December 2006, means the long-term physical, mental, intellectual and sensory impairment of a person which, in interaction with various barriers, may hinder full and effective participation in social life on an equal basis with other citizens. The Charter of Rights of Persons with Disabilities adopted by the Sejm of the Republic of Poland in 1997 recognizes that disabled persons are persons whose physical or mental fitness permanently or periodically hinders, restricts or prevents them from living, studying, working and performing social roles in accordance with legal or customary norms.

It should also be emphasized at the beginning that the issue of combating violence against people with disabilities is linked to the fundamental right of every human being – the right to protection against all forms of exploitation,
violence and abuse. With regard to persons with disabilities, this right has been expressed in a number of legal acts and international declarations, but most explicitly in Article 16 of the aforementioned Convention on the Rights of Persons with Disabilities, which emphasizes the importance of the individual autonomy of persons with disabilities, including the right to their own decisions. The Convention provides for the elimination of laws, regulations and practices that may cause discrimination of persons with disabilities (Article 4 of the Convention) and in Article 10 – the right to live at the same level as other citizens. The provisions of the Convention should be of particular importance in shaping the entire legal system of the state and its implementation in the social policy of persons with various disabilities.

Access to courts and prosecutors’ offices must be ensured for everyone, but disability increases the obligations of the state to ensure that people with disabilities can actually exercise their rights. The difficulties of people with disabilities should not be exacerbated by the legal system, hence there is the need to ensure full access to justice by removing both architectural and procedural barriers (Pudzianowska, Jagury, 2016). Article 13 of the UN Convention on the Rights of Persons with Disabilities – “Access to Justice” specifies that “States-Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through procedural and age-appropriate adjustments, in order to facilitate effective participation, directly or indirectly, especially as witnesses, in all legal proceedings, including at the stage of investigation and other forms of preparatory proceeding. In order to support guarantees of effective access to justice for persons with disabilities on an equal basis with others, States-Parties shall promote appropriate training for those working in the field of justice, including the police and prisons”.

Those working in the judicial system should have knowledge of the disability of the victim and know their limitations as well as the possible means of compensating for these difficulties. Disability should be identified at the beginning of the proceeding. This will facilitate its effective course, taking into account the subjectivity of the disabled person. This is undoubtedly easier for people with visible disabilities. “However, it should be noted that not all persons who are disabled in the biological sense are disabled in the “legal” sense, i.e. not all such persons have legal confirmation of this fact in the form of a certificate of disability or degree of disability. Therefore, disability shall be distinguished in legal and biological terms. Persons with disability in legal terms are those who have a current decision issued by a body empowered to do so. Persons with disability in biological terms are those who do not have a certificate, but have wholly or partially limited ability to perform basic activities. For various reasons, some people with disabilities do not seek legal confirmation of this circumstance, which may be due, for example, to difficulties in accepting their state of health (Pudzianowska, Jagury, 2016, 26–27).
The inappropriate approach to people with disabilities and the way in which the institutions obligated to execute legal regulations are the result of adopting mainly the medical model of disability. This model is still valid for issuing certificates and is firmly rooted in the consciousness of officials. However, the social model of disability is underestimated.

The medical model of disability is based on the assumption that disability is a personal tragedy of an individual. In this model, the issue of disability is “located” within an individual, and the causes of the issue are seen in the functional limitations or psychological defects that result from disability. In the social model of disability, on the other hand, there is a view that disability is largely caused by the obstacles and barriers experienced by persons with disabilities. Thus, it is not individual limitations, but the failure of society to provide adequate services and to meet the needs of people with disabilities that “create” disability. In this model, the causes of disability are not sought for within an individual, but in the environment and in various social, economic and physical barriers (Balcerzak-Paradowska, 2002).

The social concept of disability was developed as a result of the criticism of the biological concept and was initiated mainly by the people with disabilities. This concept emphasizes the social aspect of disability, assuming that disability is not only a property of a person, but also a set of social and physical environment conditions (social, economic, legal, architectural and urban barriers) that cause difficulties, limitations and problems of a person with disabilities. The cause of disability is not individual limitations, but the consequences of the way in which environment is shaped, taking into account only the needs of people without disabilities, and the lack of appropriate services to equalize the opportunities of people with disabilities. This concept places the problem of disability within society (Kirenko, 2002).

The Social Alternative Report (Społeczny Raport Alternatywny) on the implementation of the Convention on the Rights of Persons with Disabilities in Poland (2015) states: “The concept of the social paradigm of the phenomenon of disability, based on human rights, is generally unknown in Poland. A paternalistic-medical approach dominates, which is reflected in the entire Polish legal system. From regulation through solutions, procedures, judicial practice, negative and erroneous stereotypes and actions taken or lack thereof – i.e. omissions”.

The implementation in practice of the social model of disability means the awareness of officials that equal treatment of people with disabilities sometimes means taking exceptional measures. The implementation of different improvements entails certain costs for the institutions. An example is the cooperation with a sign language interpreter in matters going beyond the usual procedural steps. In order to rationalize the costs incurred, the services of the so-called video interpreter can be used. This service consists of sign language translation via devices or instant messengers and is successfully used by many public administration au-
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In the beginning, however, it is necessary to make sure which language is spoken by the deaf person: Polish sign language or manually-coded language. Polish sign language is an independent and natural language, while the manually-coded language is an artificial means of communication, consisting of elements of sound speech and signs, which only support and complement the spoken word. This distinction is important when sign language interpreting is required. In addition, the communication with people with auditory disabilities shall not include abstract terms that a person with a hearing impairment may not understand. In conversation with such a person you have to stand in front of them, speak a little louder than usual, move your mouth more clearly (the person often reads speech from people’s mouth), and remember about visual contact. You should also not make gestures without words and turn your head away while you are speaking.

It should therefore be considered as a good practice to ensure that communication with a person with a particular disability is understood by that person. In the case of blind persons, it would be advisable to draw up letters in a form accessible to them, i.e. in Braille, especially when they act without an assistant. Taking into account the universality of computer programs that allow blind people to read the text, it will be sufficient to provide them with an electronic form of writing in an appropriate format (Pudzianowska, Jagury, 2016). Blind and partially sighted people can use modern technologies (braille notetakers, refreshable braille display and braille terminals, speech synthesizers), which enable them to communicate and receive information efficiently. For most visually impaired people it will be sufficient to enlarge the font size and set a contrast. In the case of persons with visual impairment, detailed verbal messages – explanation of the location of the rooms, how to get to the right place – should also be given. We naturally use the terms such as “look” or “see you later” (they are a part of the dictionary of blind people, just like of other people), but we should avoid expressions that are unclear to these people: “there”, “here” (they do not bring any content to blind people).

An example of specific difficulties in communicating with people with disabilities are people with autism. Autism is a general developmental disorder with neurological background. The main features of autism are: social skills disorders, communication skills disorders, limited patterns of behavior, interests and activity, as well as sensory issues. The very definition of autism points to a number of problems that may arise during the procedural activities. Therefore, taking into account the attachment of people with disabilities to the schemes, it is necessary to inform the person with autism about the actions to be taken within the framework of the case already at the beginning. It is necessary to formulate questions or instructions clearly, precisely and concisely (sometimes it is necessary to repeat a question or an instruction even several times). Avoid a flow of words (extensive discussion) because of the difficulty in selecting information; indicate what is important and what is less important. People with autism are more likely to
assimilate written information more quickly, so use information and instructions in writing, if possible, or even in the form of pictures. Consideration should also be given to calling a specialist (psychologist, pedagogue) who can help you to establish appropriate communication.

It seems that the most important issue when it comes to effective exercise of rights in the criminal proceeding is also to define the ways and principles of communication with intellectually disabled victims and to become aware of the need to take into account the characteristics of disability in these contacts. The Code of Criminal Procedure points to the possibility of participation of other people in criminal proceedings, in addition to intellectually disabled victim, which is to facilitate the exercise of the rights of the victim. If the victim is fully or partially incapacitated, pursuant to Article 51(2) of the Code of Criminal Procedure, a legal representative or a person who is taking care of the victim on a permanent basis shall exercise their right. Added by amendment of 10 January 2000, § 3 article 51 of the Code of Criminal Procedure enables representation of the victim who is a physically or mentally challenged person, although enjoying full civil rights, by the carer. This helplessness can undoubtedly be caused by intellectual disabilities. The carer may appear in criminal proceedings next to the victim when the victim is a person who is not able to deal with life issues independently and therefore is assisted by another person under the care of whom the victim remains (Grzegorczyk 2003).

Every effort should be made to ensure that social utility buildings are accessible to people with disabilities. Unfortunately, many buildings still do not meet the needs of these people. There are no lifts, driveways, adequate width of doors or toilets adapted to the needs of people with disabilities. This makes it difficult to reach the seat of the court, the prosecutor’s office or the police station. When the presence of persons concerned is necessary, the embarrassing situations of bringing wheelchair users onto the appropriate floors or carrying out activities in front of a building or in premises on the ground floor which are not intended to be used for procedural purposes happen. “The hearing may also be held in the form of a video conference/teleconference or by way of performing the judge or prosecutor’s activities at the home of the person concerned. Although such forms are provided for in the legislation, they are rarely used in practice. In the case of people with disabilities, the system of distance hearing should be used as widely as possible” (Pudzianowska, Jagury, 2016, p. 33).

In the case of persons with mild physical disabilities, the judge should propose to the person to remain seated. This form of hearing is allowed by the regulation of the Minister of Justice of 25 June 2015. People with physical disabilities may have difficulties with finding a correct sitting position, especially for a longer period of time (this causes rapid fatigue, hinders concentration). It is therefore necessary to provide for more frequent breaks. It is worth to determine the ways of communication, the need for a break.
When setting the date, account must be taken of any difficulties in reaching the institution caused by the need to use special transport. In the course of the activities, also the presence of an assistance dog should be taken into account, with the help of which blind people often move around. It is worth noting that pursuant to Article 20a of the Act of 17 August 1997 on professional and social rehabilitation and employment of disabled persons, a person moving with an assistance dog has the right of access to public utility buildings, including courts and prosecutor’s offices. In addition, the assistance dog may also need a break during the procedural steps, which a blind person has the right to report.

In contacts with people with disabilities, a high degree of individualization should be maintained. Everyone with a disability is different, although sometimes of a similar type and degree of disability. It is conditioned by personality traits, life situation, degree of acceptance of disability and many other factors. It is embarrassing for some people to talk about their problems, therefore you should subtly ask about the expected support, without looking at the nature of the disability itself. Disability should not be a dominant issue, but should result in the application of appropriate improvements. Here it is worth noting the applicable terminology. Although in many legal acts we can find terms that are currently considered obsolete and stigmatizing, it is not advisable to use them. Nowadays, it is assumed that the most appropriate is to use the term “person with disabilities”, which emphasizes the subjectivity of the person and indicates that disability is one of the characteristics and not the most important one. We should not use terms: “crippled”, “invalid”, “blind”.

A manifestation of subjective treatment is also the need to address a person with disabilities directly. It is unacceptable to direct questions concerning a person with disability to third parties, the presence of which in the room should be allowed (they give people with disabilities a greater sense of security, have a supporting function, are able to anticipate and respond to certain situations). Such behavior is a sign of disregard, disrespect and a stereotypical approach to people with disabilities as completely incapable of being dependent on others.

It should also be possible to use assistive devices such as Braille notetakers (a device that allows notes to be recorded and read, which can also have functions such as a calendar or a clock) in the case of blind people or of assistive listening devices in the case of deaf or deaf without speech. A judge, prosecutor or police officer should not refrain from speaking through a personal microphone, which makes it much easier for a person with impaired hearing using a hearing aid to understand the contents of the messages (Pudzianowska, Jagury, 2016). It is advisable that at least one room in public utility institutions is equipped with an audio loop. The audio loop makes it easier for listeners with impaired hearing to receive sounds. It allows for conversion of sounds into electromagnetic waves that are received by hearing aid users in the “headset” mode. Nowadays, the use of such solutions is a sign of breaking down barriers in the society of equal op-
opportunities, as well as better room lighting in the case of visually impaired people or adapting buildings to the needs of people with physical disabilities.

As indicated in the 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, victims of crime should be recognized as such and treated with respect, tactfully and professionally, without discrimination in any form on the basis of disability. Possible disabilities should be taken into account in all contacts with the competent authority operating in the context of criminal proceedings and any services that have a contact with victims, such as victim support services or the ones providing services within the scope of restorative justice. The directive also states that the Member States of the European Union should ensure that victims who are disabled are able to fully enjoy their rights on an equal level with others. Article 22 of the Directive points to the need for an individual assessment to identify the specific needs of victims in terms of protection. Such an individual assessment shall take into account in particular the personal characteristics of the victim, including the extent of the victim’s disability.

Victims who have been identified as vulnerable to repeat and secondary victimization, intimidation and retaliation should be offered adequate measures to protect them during criminal proceedings. The risk of repeat victimization by the offender or as a consequence of participating in criminal proceedings should be reduced by conducting proceedings in a coordinated and sensitive manner so that victims are treated with respect and have a chance to gain trust in the authorities concerned. Contacts with the competent authorities should be as easy as possible, at the same time reducing unnecessary contacts between the victim and the competent authorities, for example by audio-visual recording of hearings and by allowing the use of recordings in court proceedings. The widest possible range of measures should be made available to specialists to prevent stress to victims during legal proceedings, in particular through visual contact with the perpetrator, their family, associates or the public. To this end, the aim should be to introduce, in particular in court buildings and police stations, feasible and practical measures to provide amenities in these facilities, such as separate entrances and waiting areas for victims, hearings in specially designed and adapted rooms or, for example, by calling on the victim and the offender to attend the trial at different dates (Bilewicz, Bilewicz, 2014).

Not without significance in the context of protection against secondary victimization of disabled victims is appropriate preparation of employees of law enforcement agencies and justice administration. In accordance with Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, officials involved in criminal proceedings who may have personal contact with victims should be able to access and participate in appropriate initial and continuous training, at a level appropriate to their contact with victims, in order to be able to identify and deal with victims in a professional manner.
The implementation of the recommendations will help to prevent secondary victimization of people with disabilities. On the one hand, this should be done by means of legislative changes that will enable the needs of disabled victims to be met more fully during the criminal proceedings. On the other hand, there is a need to prepare employees of law enforcement agencies and the judiciary to perform their duties in a way that will allow to avoid errors resulting in secondary victimization. Perhaps a good solution would be to appoint proxies specializing in the exercise of the rights of victims with disabilities.

References


