

infovictims



KNOW
YOUR **RIGHTS** AS A
CRIME VICTIM

APAV[®]



associação portuguesa de

Apoio à Vítima

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INTRODUCTION

Anyone can be the victim of crime

Being the victim of a crime is a negative event that can happen to anyone in their lifetime. Apart from the physical, psychological, financial and social consequences that a crime may have, it is normal for anyone involved in court proceedings to have many questions and to feel anxious and apprehensive.

If you were a victim of crime or if you know someone who was, this website can help you. Here you will find information about criminal proceedings, your rights and the public services that can provide you support.

We hope you find this website useful and productive!

DISCLAIMER

Some of the information on this brochure has been intentionally simplified, so that it can be easily understood by the general public. This simplification does not affect the thoroughness and accuracy of the content.

Owing to legislative changes and developments, different court practices and the fact that every case is different, it is advised that the information available on this brochure be complemented by the legal advice that is indispensable for each particular case.

The content for this brochure was compiled by APAV as part of the INFOVICTIMS project and co-financed by the Criminal Justice Support Programme of the European Commission – Directorate-General for Justice. The content reflects APAV's point of view and the European Commission cannot be held liable for any use of the information available on this brochure.

CRIMINAL COURT PROCEEDINGS

It's only natural that taking part in court proceedings can make you feel anxious and that you'll have a number of questions. You'll want to know what is going to happen and what you're supposed to do.

Here you will find a brief description of the stages in a criminal case. We'll try to give you short simple answers to questions such as "How do I report a crime?", "How is the investigation conducted?", "What happens in court?", "What is an appeal?" and many others.

The process described below only applies when the individual who committed the crime is 16 or over. In cases where the crime is committed by a child or young person under the age of 16, a different kind of procedure known as educational guardianship is used.

**"HERE YOU WILL
FIND A BRIEF
DESCRIPTION OF
THE STAGES IN A
CRIMINAL CASE."**



THE CRIME

A crime is understood as voluntary behaviour (or, in some cases, negligent behaviour) that infringes either the Criminal Code (Código Penal) or other specific laws. The purpose of these laws is to protect and safeguard the legal interests that are fundamental for society, such as life, freedom, physical and moral integrity, sexual self-determination and property.

Depending on how criminal proceedings are initiated and some of their other features, crimes may be classified as:

PUBLIC CRIMES

Examples of public crimes are murder, kidnapping, child sex abuse, domestic violence and robbery. It is sufficient that the Public Prosecution Service¹ becomes aware of the crime in any way for criminal proceedings to be initiated. In other words, the case begins regardless of whether or not the victim wishes to press charges and the crime may be reported by anyone.

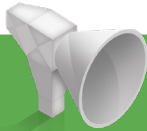
SEMI-PUBLIC CRIMES

Semi-public crimes include rape, theft and some offences against physical integrity. Criminal proceedings for these crimes only begin after the victim of the crime has filed a complaint. In other words, the public prosecutor may only initiate criminal proceedings if the victim indicates their intention to do so by filing a complaint within six months of the crime.

¹ The service composed of public prosecutors, which represents the State and which, apart from the other tasks conferred on it by law, conducts criminal proceedings: receiving complaints and reports of crimes, conducting the inquiry, drafting the charge sheet, closing cases and lodging appeals.

PRIVATE CRIMES

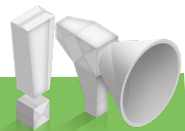
Private crimes include defamation, libel and slander, among others. The procedure for initiating both private crimes and semi-public crimes begins in the same way: the Public Prosecution Service may initiate proceedings if the victim files a complaint. After the complaint is made, the victim has ten days in which to apply for the status of assistant² and for a lawyer to be appointed. This is necessary so that if it is considered, at the end of the investigation stage, that there is sufficient evidence to send the defendant³ to trial, the victim may press charges. If he/she does not do so, the case will be closed.



REPORTING A CRIME

Reporting the crime is always the first step. It is only after the complaint has been made that it is possible for the authorities to know that a crime occurred and to launch an investigation.

THE IMPORTANCE OF REPORTING A CRIME



If you were the victim of a crime, it is very important that you report it to the authorities. If you do so, it is more likely that the person who committed the crime will be caught, held responsible and prevented from doing the same thing again, to you or to others.

Furthermore, it may be necessary to have reported the crime to be able to claim any rights to insurance or compensation, for example.

² This is the victim of the crime (the injured party/complainant) who works with the Public Prosecution Service and who should contribute to the inquiry stage and the examination stage (e.g. by submitting evidence) and appeal against the decisions that affect them. For public and semi-public crimes, it is optional for the victim to have the status of assistant, but it is compulsory for private crimes. Having the status of assistant implies paying the court fee and appointing a lawyer, but legal aid benefits may be granted.

³ This is the status given in court proceedings to someone suspected of having committed a crime and affords him/her a number of procedural rights and duties.

Reporting the crime to the authorities is also important for the purposes of crime statistics and general prevention or even for holding specific activities in certain cases and places to promote safety.

Police forces and personnel are required to report any crime they become aware of, whether in the course of their duties or because of their duties.

Reporting a crime is also mandatory for anyone who becomes aware of situations that endanger the life, physical or psychological integrity, or freedom of a child or young person under the age of 18.

If you would like to talk to someone before making your decision, the APAV's victim support staff are available to provide information and advice.

THERE ARE SEVERAL REASONS WHY YOU MIGHT BE UNWILLING TO REPORT A CRIME:

"It wasn't important".

Even a minor crime can be distressing and upsetting. The authorities know this and will take your complaint seriously.

"It's embarrassing".

You may be ashamed to report the crime. This often happens in cases of sexual or domestic violence. Authorities should deal with these situations sensitively and not judge you. Whatever your gender, sexual orientation, religion, nationality or ethnicity, being a victim of crime can be traumatic.

"The authorities don't care".

The authorities have many cases and may not deal with yours as quickly as you would expect, but they will give it the proper attention. They may not always be able to identify or catch the person responsible for the crime, but their duty is always to try.

"It's over and it hasn't affected me".

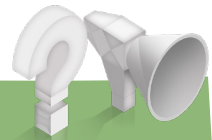
If the crime has not had much impact on you, all the better. Some people are able to cope well with these difficult situations and act almost as if nothing had happened, even when a serious crime was committed against them. Nevertheless, if you don't report the crime, the authorities will not be able to try to catch the person who committed the crime and he/she might do it again. You should consider the fact that the next victim might not be as able as you are to overcome the effects of the crime.

"I'm worried about what will happen next".

It's normal to feel nervous about having to go to the police, make a statement and then go to court to testify, but don't forget that help is available to you throughout the entire process.

Whatever you decide to do, you are entitled to support. Even if you don't report the crime against you, it is very important that you talk to someone about what happened and how you feel, and that you receive all the help you need.

HOW TO REPORT A CRIME



You can file your complaint or report with any of the following authorities:

- » Public Prosecution Service (Ministério Público, MP)
- » Judiciary Police (Polícia Judiciária, PJ)
- » Public Safety Police (Polícia de Segurança Pública, PSP)
- » National Republican Guard (Guarda Nacional Republicana, GNR)

“REPORTING A CRIME OR FILING A COMPLAINT IS FREE OF CHARGE, DOES NOT REQUIRE ANY FORMALITIES AND CAN BE DONE VERBALLY OR IN WRITING.”

Each of these authorities has a duty to receive all the complaints and reports made to them, even if the crime was not committed within their territorial area or, in the case of the police forces, if they do not have jurisdiction for the investigation.

In some cases or in relation to certain crimes, complaints and reports may be filed with the Immigration and Border Service (Serviço de Estrangeiros e Fronteiras), at the branches of the National Institute of Legal Medicine and Forensic Sciences (Instituto Nacional de Medicina Legal e Ciências Forenses), forensic offices and hospitals with forensics experts or via the Electronic Complaints Site of the Ministry of Internal Affairs (Ministério da Administração Interna).

You can file a complaint or report even if you don't know who committed

the crime. It is for the authorities to then investigate and ascertain the identity of the offender.

For public crimes such as murder, robbery or domestic violence, it doesn't have to be the victim that reports it. Anyone who knows of the crime can do so and this is sufficient for the Public Prosecutor to initiate criminal proceedings, even if the victim doesn't wish to press charges. If you wish to report a crime but are afraid of retaliation, for example, and don't want to reveal your identity, then you may do so anonymously.

“YOU CAN FILE A COMPLAINT OR REPORT EVEN IF YOU DON'T KNOW WHO COMMITTED THE CRIME.”

It is usually preferable that you identify yourself, however, so that you can be called upon to cooperate in the investigation at a later stage.

For other types of crimes, whether semi-public crimes such as non-aggravated theft, non-aggravated offences against physical integrity or private crimes such as insults, the victims themselves must file the complaint within 6 months of the crime.

“FOR PUBLIC CRIMES SUCH AS MURDER, ROBBERY OR DOMESTIC VIOLENCE, IT DOESN'T HAVE TO BE THE VICTIM THAT REPORTS IT. ANYONE WHO KNOWS OF THE CRIME CAN DO SO.”

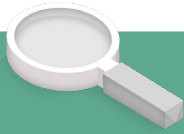
Otherwise, the Public Prosecutor will not be able to initiate criminal proceedings. If the victim cannot do so, because he/she is under 16, has died, or is ill, or for any other reason, then

“REPORTING A CRIME OR FILING A COMPLAINT IS FREE OF CHARGE, DOES NOT REQUIRE ANY FORMALITIES AND CAN BE DONE VERBALLY OR IN WRITING.”

a close relative such as a husband or wife, father or mother, son or daughter, can file the complaint. The complaint (unlike the report of the crime) may be withdrawn by the victim, that is to say, if for any reason the victim does not wish the proceedings to go ahead, he/she can withdraw the complaint, as long as the defendant is not against this. The application to withdraw the complaint must be submitted to the authority responsible for the proceedings at that time, i.e. the Public Prosecutor during the inquiry stage and examination stage or the judge during the trial stage.

Reporting a crime or filing a complaint is free of charge, does not require any formalities and can be done verbally or in writing. You should include as many details as possible to help the investigation, such as the date, time, place and circumstances of the crime, identification of the suspect(s) and the names of any witnesses and any other evidence.

When the victim reports a crime or files a complaint, he/she is entitled to receive a certificate showing that the complaint was registered, that is, a document confirming that the complaint was made and stating the type of crime, along with the date and place, and the harm or damage caused.



THE INVESTIGATION: THE INQUIRY STAGE

Once the crime is reported or the complaint filed, an inquiry is launched, which starts the investigation. The criminal investigation encompasses all the actions aimed at ascertaining whether there was a crime, who committed it and their liability, and finding and gathering evidence.

This is the first stage of criminal proceedings, which is also called the inquiry stage and is carried out by a criminal police force⁴ under the supervision of the Public Prosecutor.

At this stage, the police officers in charge of the investigation will collect evidence by, for example:

- » talking to the victim, the suspect and the witnesses
- » examining the crime scene for trace evidence;
- » identifying the suspect, that is, asking the victim or witnesses to describe in detail the person who committed the crime, whether they had seen this person before and in which circumstances and, ultimately, whether they can identify him/her from among a group of people or a number of photos as the offender of the crime;
- » requesting the opinion of expert witnesses⁵: for example, a ballistic expert who analyses bullet trajectory, or a psychologist who evaluates the suspect's personality, or a doctor who evaluates bodily harm, etc.;
- » requesting potentially relevant documents such as the report from the health centre where the victim was attended, or the list of phone calls made by the suspect, etc.

⁴ These are the police forces that work alongside the court authorities in criminal investigations and include the Judiciary Police (Policia Judiciária, PJ), the Public Safety Police (Policia de Segurança Pública, PSP), the National Republican Guard (Guarda Nacional Republicana, GNR) and the Immigration and Border Service (Serviço de Estrangeiros e Fronteiras, SEF).

⁵ Someone with specialised technical, scientific or artistic knowledge who is called upon by the court to observe, analyse and interpret certain facts relevant to discovering the truth.

“AFTER GIVING EVIDENCE TO THE POLICE, IT IS NORMAL FOR SOME TIME TO GO BY BEFORE RECEIVING INFORMATION ON THE PROGRESS OF THE CASE.”

After giving evidence to the police, it is normal for some time to go by before receiving information on the progress of the case. The inquiry stage may last from a few weeks to several months, depending on the amount of evidence to be gathered and the complexity of the investigation.

It may even be necessary for police officers to talk to the victim more than once during the investigation. If the victim wishes to know how the case is progressing, they should contact the police officer in charge of the investigation or the public prosecutor assigned to the inquiry process, provide the case number and ask whether there is any information about it.

If there is a risk that the suspect might escape, or a danger to the gathering and preservation of evidence of the crime, a danger to public order and/or danger of the criminal activity continuing, then other measures that restrict the freedom of the defendant may be implemented.

“THE VICTIM MUST COOPERATE WITH THE AUTHORITIES WHENEVER REQUESTED TO DO SO AND INFORM THEM ABOUT ANYTHING THAT COULD BE HELPFUL FOR THE INVESTIGATION.”

FORENSIC EXAMS



Forensic examinations of the victim of a crime are a key part of the legal system. The victim's body is examined for marks caused by violence used during the crime, such as scratches, redness, wounds, bruising or other injuries. They are also used to find any biological or non-biological traces on the victim's body and/or clothes and items which may have been left or used by the offender, such as blood, sperm, vaginal fluids, skin, hair, fibres, etc.

These forensic exams are very important because they can provide very significant evidence for criminal proceedings. Besides their usefulness in gathering evidence of the violence used, these exams may also play an important role in the victim's recovery, as they provide a time of quiet and healing in contrast to the violence of the crime.

If you are the victim of a sexual crime, you should contact the Judiciary Police (Policía Judiciária). Apart from taking any urgent measures which may be necessary, they will refer the victim, if necessary, to the local health unit and/or forensic branch or office of

the National Institute of Legal Medicine and Forensic Sciences for diagnosis, treatment and/or gathering evidence. If you go directly to one of the Legal Medicine and Forensic Branches (located in some hospitals) of the National Institute of Legal Medicine and Forensic Sciences or to a local health unit after suffering a sexual crime or an assault which caused you injury, you will be able to report the crime there and be seen either by a forensic doctor or, in hospitals where these doctors are not available on a 24-hour basis, by an emergency room doctor.

“FORENSIC EXAMS ARE VERY IMPORTANT BECAUSE THEY CAN PROVIDE VERY SIGNIFICANT EVIDENCE FOR CRIMINAL PROCEEDINGS.”



CLOSING THE INQUIRY STAGE: CHARGING, CLOSING OR PROVISIONALLY SUSPENDING THE CASE

At the end of the investigation stage, the criminal police force sends all the evidence gathered to the Public Prosecution Service, which will decide whether or not there is enough evidence that the suspect committed the crime:



If the Public Prosecutor believes that there is, the defendant is formally charged and will stand trial. In the formal charge sheet, the Public Prosecutor will state the name of the suspect, which acts they are believed to have committed, what crime they are charged with and what evidence the Public Prosecutor intends to present to the court.



If the Public Prosecutor considers that there is insufficient evidence, then the case is closed. Unfortunately, not all cases are solved. Sometimes it may not be possible to find out who committed the crime or there is not enough evidence for the Public Prosecutor to take the case to court. If the victim does not agree with the case being closed, he/she can file an application with the direct superior of the Public Prosecutor who decided to close the case, asking them to press charges against the defendant or to continue the investigation. In the latter case, the victim should submit new evidence to be taken into consideration. When several crimes are involved, the defendant may be charged with only some of them, and the other cases closed. A closed case can be reopened if significant new evidence.



There is also a third possible course of action, which is like an opportunity for the defendant: the provisional suspension of the case. For a certain period of time established by the judge, the case is suspended and one or more obligations are imposed on the defendant– for example, to pay compensation to the victim, to donate a certain sum of money either to the State or to private charities, to provide a community-interest service, not to live in particular areas, or not to contact specific people, etc. If the suspect complies with these obligations during the suspension period, then the case is closed. Suspending the case temporarily only applies to crimes punishable with a term of imprisonment of not more than 5 years if the suspect agrees and, when the victim has the status of assistant, the victim also agrees.

“THE ASSISTANT’S ROLE IS TO WORK WITH THE PUBLIC PROSECUTION SERVICE.”

In the case of a less serious crime – a private crime – the procedure is different. After filing the complaint, the victim has 10 days to apply for the status of assistant. The assistant’s role is to work with the Public Prosecution Service and the fact of having this status allows the victim to participate more actively in the case.

In order to be granted the status of assistant, the victim has to have a lawyer and pay the court fee of one Account Unit . If the victim cannot afford these expenses, they can request legal aid. When private crimes are involved, it is compulsory for the victim to have the status of assistant since, at the end of the inquiry stage, the Public Prosecution Service, rather than deciding whether

to charge the suspect or not, will send the evidence gathered to the assistant to decide whether or not they wish to press charges against the suspect, that is, whether or not to take the defendant to court. For other kinds of crimes, the status of assistance is optional but this status may be very useful and effective, especially to have a say in deciding on the provisional suspension of the case, agreeing or otherwise to close the case, or filing applications and lodging appeals.

“IN ORDER TO BE GRANTED THE STATUS OF ASSISTANT, THE VICTIM HAS TO HAVE A LAWYER AND PAY THE COURT FEE ”

6 The court account unit (Unidade de Conta, UC) is set at 1/4 of the social support index (Índice de Apoio Social, IAS) for the previous December. It is rounded up or down to the nearest euros and updated automatically each year based on the IAS update rate. In 2019, the UC was 102 Euros.



THE EXAMINATION STAGE

This stage is optional and only takes place when requested by the victim, in their role as assistant in the proceedings, or the suspect, because they do not agree with the decision of the Public Prosecutor at the end of the inquiry stage.

The examination stage is therefore a stage where the grounds for the decision are discussed and where both the victim and the defendant can submit evidence which, for whatever reason, was not taken into account in the investigation stage, such as new witnesses or documents.

In this stage, a judge - called an examining judge - will review the evidence gathered during the inquiry stage, any other evidence which they understand should be obtained, or which is submitted at this stage and which they considers relevant.

The examining judge will question the victim whenever he/she deems it necessary and whenever the victim requests it.

The examination stage ends with a discussion known as the examination discussion. This is managed by the judge and involves the Public Prosecutor, the defendant and the defence lawyer, the victim and the victim's lawyer.

At the end of this discussion, the judge decides whether or not to confirm the Public Prosecutor's decision in the investigation stage:

If the examining judge decides to dismiss the case, the defendant will not go to trial. This decision is called a non-indictment decision and may be appealed.

If the judge decides to proceed with the case, the defendant will go to trial. This decision is called an indictment decision and, as a rule, may not be appealed.

In short, if the Public Prosecutor and the victim, as long as he/she has the status of assistant, do not agree with the examining judge's decision, they may appeal it.

N.B. In order to request the commencement of the examination stage, whether in order to take part in the examination discussion or to appeal the examining judge's decision, the victim must request the status of assistant.

“IF THE EXAMINING JUDGE DECIDES TO CHARGE THE DEFENDANT, THE CASE GOES TO TRIAL.”





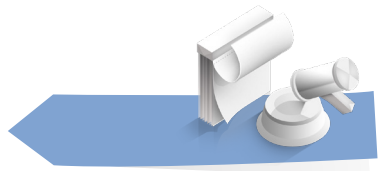
THE TRIAL

If the defendant was charged at the end of the inquiry stage or indicted in the examination stage, the case moves on to the trial court.

The trial is a hearing that takes place in a courtroom. The purpose of the trial is to decide whether there is enough evidence to convict the defendant of the crime of which he/she is accused and, if so, to impose a sentence.

At the trial, it is also discussed and decided whether the victim and any other people who suffered losses as a result of the crime and requested compensation are entitled to receive it.

SCHEDULING THE TRIAL



After receiving the case file, the judge (who is not the same judge as the examining judge) schedules the trial date and a summons or notice is sent by letter to all the people who have to participate in it.

Write down the date in your calendar or wherever you write down important events to ensure that you will not forget to attend.

The trial must be scheduled at least 30 days in advance.

PREPARING FOR TRIAL



It is perfectly normal to feel anxious and uncertain before the trial. This is a new situation and one to which you are not accustomed. That's why it is important that you prepare for it.

If you get the chance, go to the courtroom a few days before the trial so you become familiar with different areas, such as the courtroom and the witness waiting room and, if possible, attend another trial or at least part of it.

On the day of the trial, you are likely to meet the defendant and his/her friends and relatives. You should prepare for this possibility by planning in advance what

you should do: trying to keep away from them, not reacting to any provocation and, if you feel threatened, informing the court officer and/or the police officer in the courtroom immediately.

“WHAT THE JUDGE EXPECTS YOU TO DO IS TO TELL THE COURT WHAT HAPPENED IN YOUR OWN WORDS.”

If possible, take someone with you. Whatever your role in the proceedings, you are entitled to be accompanied by a lawyer.

At the trial, you will be asked questions by the judge, the Public Prosecutor, the defence lawyer and your own lawyer, if you have one. It is natural that you will be asked to provide as much detail as possible, because the more information the court has, the better its decision will be. What the judge expects you to do is to tell the court what happened in your own words. Therefore, before the trial, you should try to arrange in your mind all the information you think it is important to transmit to the court. You could also take some notes with you, such as the dates of the most relevant facts. However, it is normal that you will not remember some details, especially

if some time has gone by since the day of the crime. In these cases, don't be afraid to say “I don't remember”.

Don't forget that if you were the victim of a crime, attending the trial can play an important part in your recovery. Criminal behaviour is neither accepted nor tolerated by society and the trial plays a key role in conveying this message: those who break the law must be held responsible and suffer the consequences.

“BEFORE THE TRIAL, YOU SHOULD TRY TO ARRANGE IN YOUR MIND ALL THE INFORMATION YOU THINK IT IS IMPORTANT TO TRANSMIT TO THE COURT.”

WHAT HAPPENS IF I MISS THE TRIAL



Do not miss the trial! Your presence is very important! Your knowledge about what happened is essential and can be decisive for the judge's decision. Missing the trial will delay the proceedings or make it difficult to find out the truth or for justice to be done.

If you know in advance that you cannot attend the trial, you should inform the court in writing at least 5 days in advance and enclose any documents that justify your non-attendance. If something unexpected happens to prevent your appearing in court, such as illness or transport delays, you must inform the court as soon as possible and, within 3 days, submit evidence proving why you could not attend the trial, such as a medical certificate or a declaration from the transport company confirming the delay.

Needing to work is not a valid excuse as the court issues attendance declarations to justify your absence from your place of work.

If you don't attend the trial and don't provide any justification, you will have to pay a fine. The court may also order the police to detain you and bring you to court.

**“DO NOT
MISS THE
TRIAL! YOUR
PRESENCE
IS VERY
IMPORTANT!”**

**“YOUR KNOWLEDGE ABOUT WHAT HAPPENED IS ESSENTIAL
AND CAN BE DECISIVE FOR THE JUDGE'S DECISION.”**

WHERE AND WHEN TO GO



If you received a summons or notice to attend a trial, you must attend on the date and at the place stated. Do plan your trip to the court in advance by getting information about its exact location and estimating the travel time.

If possible, try to arrive a little early as security checks sometimes take time, particularly in the larger courts, and to find out exactly where you must go. If you are not sure, ask a court officer, who will be able to direct you to where you need to go. After reaching your destination, wait until a court officer calls the names of the people attending the trial. Respond when your name is called so that your presence there is recorded. You should then wait until the court officer calls you into the courtroom. If you are attending as a witness, then you can only enter the courtroom when it is your turn to testify.

**“DO PLAN
YOUR TRIP
TO THE
COURT IN
ADVANCE”**

You cannot attend the trial before that, but you may do so after testifying.

Sometimes the trial may start late either because not all the participants have arrived or because the previous trial is running late. In either case, you must wait. It is a good idea to take a book, a newspaper or a magazine to read, and/or music to listen to while you wait.

WHO MAY ATTEND

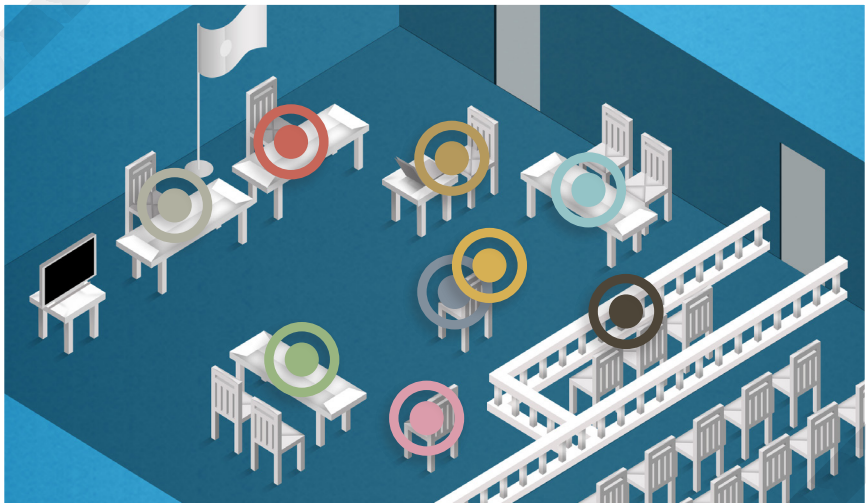


Trials are almost always open to the public, that is, anyone can go into the courtroom and attend the hearing. There are a few exceptions, however, such as in cases involving sexual crimes or human trafficking. In this kind of trial, the public is not usually allowed into the courtroom in order to protect the victim's privacy.

THE COURTROOM



The trial hearing is presided over by the judge. In cases involving more serious crimes, the court is composed of three judges and is called a collective court (a panel court). For some of the more serious crimes, there may be a jury trial, comprising a panel of 3 judges and 4 citizens.



The other people present at the trial are:

- » the Public Prosecutor
- » the court officer
- » the defendant and the defence lawyer
- » the assistant, when the victim has been granted this status, and his/her lawyer
- » the civil parties, that is, the people who have filed a civil action for damages against the defendant because the crime caused them some kind of loss
- » the witnesses
- » the expert witnesses.



JUDGE



**PUBLIC PROSECUTION
SERVICE**



**COURT
OFFICER**



**THE VICTIM'S
LAWYER**



DEFENDANT



DEFENCE LAWYER



WITNESS



EXPERT WITNESS



INTERPRETER

THE VICTIM'S ROLE IN THE TRIAL



The victim can participate in the trial as an assistant, as a civil party or as a witness.

As an assistant, the victim has an active role in the trial. He/she cooperates with the Public Prosecutor in producing evidence of the facts described in the indictment and his/her lawyer may, for example, submit evidence, cross-examine

**“WHATEVER THE VICTIM’S ROLE IN
THE TRIAL, HIS/HER PRESENCE THERE
IS VERY IMPORTANT.”**

the defendant, the witnesses and the expert witnesses. At the end of the trial, the assistant may also present his/

her arguments, that is, give his/her opinion on the evidence presented and on whether or not the defendant should be convicted.

As a civil party, the victim will defend his/her right to damages. The victim’s lawyer, if he/she has one, may cross-examine the defendant, the witnesses and the expert witnesses about aspects related to the claim for damages, particularly about the harm which the crime caused to the victim.

Whatever the victim’s role in the trial, his/her presence there is very important.

The victim’s relatives may not necessarily be called as witnesses but they are entitled, with a few exceptions, to attend the trial.

THE BEGINNING OF THE TRIAL



The trial may only be postponed in exceptional circumstances, such as the absence of a person whose presence is deemed essential or the need to gather some last-minute evidence.

Ideally, the trial takes place without interruption from start to finish. In many cases, however, this is not possible, especially when there are many people who must be examined – defendants, witnesses, expert witnesses or other participants in the proceedings. Therefore, the judge can adjourn the hearing and schedule its continuation for another day.

If the defendant was served a summons to appear in court but fails to attend, the trial may be held even in his/her absence and the sentence communicated to him/her at a later stage. If it was not possible to serve the summons, because, for example, the defendant's whereabouts were unknown, this means that the defendant breached his/her duty to inform the court of his/her absence from the address given. In this case, the proceedings will be stayed while the authorities attempt to locate him/her. In these cases, the defendant is classified as wilfully disobedient and his/her name is included in a register of wilfully disobedient⁷ persons. This carries a number of negative consequences, including arrest warrants being issued in their names, not being able to obtain documents such as identity cards or driving licences, and possibly having their property seized, all with the objective of finding them and holding them liable for the acts they are suspected of having committed.

"IF THE DEFENDANT WAS SERVED A SUMMONS TO APPEAR IN COURT BUT FAILS TO ATTEND, THE TRIAL MAY BE HELD EVEN IN HIS/HER ABSENCE."

The trial starts by identifying the defendant and then the judge reads the charge. Next, the Public Prosecutor and the lawyers, if they wish, have their turn to speak so that they can describe briefly what they intend to prove. It is however normal to move directly on to the evidence stage.

⁷ A situation that arises when the authorities are not able to serve a summons on the defendant or arrest him/her for trial. The authorities resort to a number of measures aiming at pressuring the defendant to appear (e.g. not being allowed to apply for certain documents such as a national identity card or driving licence).

THE EVIDENCE



All the evidence is presented at the trial to the judge and to the other participants to make their experience with the evidence as direct as possible. The defendant is examined and the witnesses questioned even if they had already given evidence during the investigation. The expert witnesses may be asked to explain the exams they conducted and documents such as medical reports are reassessed.

“WITNESSES ARE ENTITLED TO REIMBURSEMENT OF THE EXPENSES THEY INCURRED BY PARTICIPATING IN THE TRIAL.”

The first person to be questioned is the defendant. He/she is entitled to refuse to provide any statement since no one can be forced to testify against themselves. However, the statements he/she made at earlier stages may be

used and weighed up by the judge. If the defendant is willing to make a statement, because he/she considers it may be helpful for his/her defence, the judge starts by asking whether or not what is written in the charge is true, that is, whether or not the defendant confesses to the facts. The defendant then has the chance to give his/her version of what happened and the judge may interrupt in order to ask specific questions. After that, the judge first asks the Public Prosecutor and afterwards the lawyers if they want to ask questions.

If the defendant confesses to the facts of he/she is accused, the crime is considered proven and therefore, in principle, it is not necessary to submit further evidence. If there is no further evidence to be submitted. e.g. if there is no civil action for damages, the trial moves directly on to the closing statements.

“IF YOU FEEL THAT ANY OF THE PARTICIPANTS IS BEING RUDE OR AGGRESSIVE, CALMLY CONVEY YOUR FEELING TO THE JUDGE.”

“WITNESSES ARE ENTITLED TO REIMBURSEMENT OF THE EXPENSES THEY INCURRED BY PARTICIPATING IN THE TRIAL.”

If the defendant does not confess, then in general the victim is called to testify. The judge starts by asking questions about his/her identity and the victim must remain standing while answering these questions. Next, the judge hands over to the Public Prosecutor, who will ask the victim to describe the facts. It is normal for the Public Prosecutor to interrupt your responses sometimes with questions because it may be necessary to give

a better or more detailed explanation of some aspects that are less clear. It is then the turn of the lawyers who are present to ask questions. It is possible that you may feel uncomfortable with some questions asked by the defence lawyer and think that they are challenging what you went through. Don't forget that the defence lawyer has to defend his/her client's interests. Stay calm and always answer as objectively as possible. If any question exceeds the acceptable boundaries, it is for the judge to interrupt and maintain order and discipline. If you feel that any of the participants is being rude or aggressive, calmly convey your feeling to the judge.

Next, the witnesses are examined. The prosecution witnesses are first examined by the Public Prosecutor or by the assistant's lawyer if it was he/she who requested their presence, and then by the other participants. The defence lawyer is always the last to ask questions. Any witness under the age of 16 may only be questioned by the judge, but the other participants can ask the judge to ask the questions they consider relevant. Witnesses are entitled to reimbursement of the expenses they incurred by participating in the trial.

The defendant may be removed from the courtroom while some witnesses are testifying, particularly

“ALL THE ORAL EVIDENCE GIVEN IN COURT IS RECORDED .”

the victim, if the court considers that his/her presence may deter the victim from telling the truth, or if he/she is under 16 and there are reasons to believe that testifying in the presence of the defendant may have a serious adverse effect.

Expert witnesses are then heard if this has been requested or when the court wants to clarify any detail of the exams they conducted. This usually occurs after the witnesses have testified.

All the oral evidence given in court is recorded so that, if there is an appeal, the appeal court can listen to the recordings and does not need to have the participants called to testify again.

Apart from witness testimonies, other evidence such as documents may be relevant and these must be included in the case file in order to be taken into account. The judge may also consider it important to visit the crime scene in order to get to know it better and for any re-enactment of the facts in the presence of all the participants in the proceedings.

“STAY CALM AND, WHEN ASKED TO CONTRIBUTE, TELL THE TRUTH WITHOUT GETTING ANNOYED OR LOSING YOUR TEMPER.”

It is natural that, during the trial, the defendant and/or the witnesses may say something that you may find disturbing or unpleasant, particularly when you know that it is not true. Stay calm and, when asked to contribute, tell the truth without getting annoyed or losing your temper.

HOW DOES THE TRIAL END



After the evidence stage, the judge will ask the defendant some questions about his/her personal, family, professional and financial situation. The answers to these questions may be important for the court's decision, particularly with regard to sentencing: for example, the defendant's financial situation is taken into account when deciding which fine to impose.

Afterwards, the Public Prosecutor, the assistant's lawyer, the lawyer for the civil parties and the defence lawyer are entitled to make their closing statements, that is, to tell the judge what they consider was proven or otherwise and, if they think it was proven that the defendant committed the crime, which punishment should be imposed. After these statements, the defendant may still, if he/she wishes, add anything else he/she considers important for his/her defence.

If the case is a simple one and the decision is easy, the judge may announce it immediately. However, it is more common for the judge to schedule a date some days later for reading the decision.

A red banner with a white document icon and a white gavel icon on the left. The text "THE JUDGMENT" is written in large white capital letters on the right side of the banner.

THE JUDGMENT

The judgment is the decision in the proceedings and includes the facts which the judge considers proven, the unproven facts and the evidence on which it was based. If the defendant is convicted, the decision also includes the type of sentence and the information taken into account for deciding on the sentence.

In cases tried before a collective court (panel court), the decision is reached by a simple majority of the votes of the 3 judges. In cases tried by a jury court, the decision is also reached by a simple majority of the votes cast by the 3 judges and the 4 jurors. When the decision is made by a collective court or by a jury court, it is called a ruling.

The defendant may be convicted of one or more of the crimes with which he/she was charged and acquitted of others, or even acquitted of all the crimes with which he/she was charged.

**“THE PARTICIPANTS
IN THE
PROCEEDINGS
ARE ENTITLED TO
RECEIVE A COPY OF
THE JUDGMENT AND
SHOULD REQUEST
IT FROM THE
ADMINISTRATIVE
OFFICE OF THE
COURT.”**

If the defendant is convicted, the main sentence⁸ may be either an actual or suspended term of imprisonment⁹ or a fine¹⁰. A secondary sentence may also be imposed.

The participants in the proceedings are entitled to receive a copy of the judgment and should request it from the administrative office of the court. Anyone is entitled to read the judgment and should request it at the administrative office of the court if they wish to do so.



APPEALS

If the defendant, the assistant or the civil parties disagree with the judgment, they can lodge an appeal via their respective lawyers. The Public Prosecutor may also lodge an appeal.

The appeal must be lodged in writing with the court where the trial took place within 30 days. In particularly complex cases, the time limit for lodging the appeal may be extended by another 30 days.

The appeal must state the reasons for not agreeing with the judgment and must weigh up the evidence submitted and/or whether the applicable legal procedures were followed.

8 This is the punishment imposed on any defendant convicted in criminal proceedings. The main penalties are a term of imprisonment or a fine.

9 A term of imprisonment is one of the main kinds of penalty in criminal proceedings and consists of depriving the offender of his or her freedom by ordering them to spend time in prison.

10 A fine is one of the main kinds of penalty and is a monetary penalty. The range of fines goes from 10 to 360 days, depending on the financial situation and personal expenses of the offender.

You can lodge an appeal not only against the judgment but also against other decisions made at different stages of the proceedings - for example, the final decision in the examination stage.

When it is no longer possible to lodge an appeal, either because the time limit has expired or because the law does not allow further appeals, the decision becomes final or, in other words, the case has been judged.

Any parties to the proceedings who are affected by the lodging of the appeal are notified so that they may lodge their response within 30 days.

The appeal and the responses to it, along with any other elements relevant to the case, are then sent by the trial court to the court of appeal. In some cases, for example, when it is only a point of law that is being challenged, the appeal is sent directly to the Supreme Court of Justice.

After the appeal is examined by the judges and by the Public Prosecutor assigned to the appeal court, a hearing may be scheduled at which all the parties affected by the appeal will have the chance to present oral arguments about the same. Once the appeal hearing has ended, or a few days later, the appeal court makes its ruling.

**“THE APPEAL
MUST STATE THE
REASONS FOR
NOT AGREEING
WITH THE
JUDGMENT .”**



SPECIAL PROCEEDINGS

In addition to the ordinary criminal proceedings, there are three special types of proceedings: Summary judgment procedure; Fast-track procedure; Simplified procedure.

SUMMARY JUDGMENT PROCEDURE



The summary judgment procedure is used to judge people who are caught in the act of committing a crime, have just committed the crime or, immediately after the crime, have been pursued by any person or found with objects or signs which show clearly what they had just done.

It is extremely likely that the defendant committed the crime and, consequently, no investigation stages are necessary and the trial is held 48 hours after the defendant's arrest. This period can be extended to 5 days if it includes a weekend or a holiday. However, the trial of the defendant may be postponed for up to a

“THE SUMMARY JUDGMENT PROCEDURE IS USED TO JUDGE PEOPLE WHO ARE CAUGHT IN THE ACT OF COMMITTING A CRIME.”

maximum of 20 days after the arrest if he/she requests time to prepare a defence, when the Public Prosecutor takes the view that it is necessary to collect essential evidence to

uncover the truth, or when this is essential to ensure the presence of witnesses or to file exams, expert witness reports or documents, which the judge considers vital for the court's decision.

The victim can be named as an assistant or act as a civil party if he/she requests this, even if only orally, at the beginning of the trial.

This form of proceedings is not used for cases of highly organised crime, crimes involving racial, religious or sexual discrimination, torture or offences against state security.

THE FAST-TRACK PROCEDURE



The fast-track procedure is, as the name implies, shorter than the ordinary procedure. Where there is clear and simple evidence that the offence committed is one punishable with a fine or a term of imprisonment of not more than five years (for example, some cases of bodily harm, threats, petty theft, etc.) and as to who

committed the crime, the Public Prosecutor may charge the defendant, in the 90 days after the crime, on the basis of the charge sheet prepared by the police or after a brief investigation.

Clear and simple evidence essentially includes document evidence or the evidence of witnesses who were present and have identical versions of what happened.

“WHERE THERE IS CLEAR AND SIMPLE EVIDENCE.”

Upon receiving the charge, the judge schedules a date for the trial, which takes precedence over ordinary trials (except urgent proceedings).

This type of proceeding was created to deal with crimes such as bouncing a cheque or media libel where the proof is practically already available as it consists of documents. Hence, the intention is to speed up these proceedings by shortening the different stages in the case.

THE SIMPLIFIED PROCEDURE



The simplified procedure applies in cases involving crimes punishable with either a term of imprisonment of not more than five years or only a fine (for example, non-aggravated bodily harm, threats, petty theft). Its purpose is to simplify criminal proceedings by reaching a consensus. At the end of the inquiry stage, the Public Prosecutor, at the request of the defendant, or after questioning the defendant and taking the view that in this particular case, the penalty to be

“ITS PURPOSE IS TO SIMPLIFY CRIMINAL PROCEEDINGS BY REACHING A CONSENSUS.”

imposed should not be a term of imprisonment, files an application with the court in which, after describing the facts, the

evidence and the laws infringed, he/she justifies the reasons for not imposing a term of imprisonment, and closes with the proposed penalty.

Afterwards:



If the judge agrees, he/she notifies the defendant of the application filed by the Public Prosecutor and asks whether or not the defendant agrees with the proposed penalty. If the defendant agrees, he/she is convicted accordingly and the case comes to an end.



If the judge does not agree or if he/she agrees but the defendant does not accept the penalty proposed by the Public Prosecutor, the case will proceed as a different kind of proceeding.

There are no civil parties allowed in this kind of proceeding but the court may grant financial reparation to the victim.

In summary, as this form of proceeding is based on an agreement between the judge, the Public Prosecutor and the defendant (and the assistant, in private crime cases), there is no trial.

A vertical red ribbon graphic on the left side of the page, with a white dashed line running down its center. The ribbon has a folded, arrow-like shape at the bottom.

20 TIPS ON TESTIFYING FOR VICTIMS AND WITNESSES

1

ALWAYS TELL THE TRUTH.

Telling the truth is describing everything that happened in as much detail as you can remember. This is your role as a witness.

2

LISTEN CAREFULLY TO THE QUESTIONS YOU ARE ASKED.

Wait until the end of the question before replying.

3

TAKE AS MUCH TIME AS YOU NEED.

Take as much time as you need to think about the question you were asked and about your answer.

4

RESPOND SLOWLY AND CALMLY.

Respond slowly and calmly to all the questions using short clear sentences.

5

DO NOT BE AFRAID TO SAY EVERYTHING YOU KNOW.

Do not be afraid to say everything you know and all the details you can remember. All the information you can provide may be important to finding out what happened. If, in order to describe what happened, you need to use less appropriate words, such as swear words used by the defendant during the crime, you should do so.

6

REPLY ONLY TO WHAT YOU ARE ASKED.

Don't try to please whoever is asking the questions by providing information about subjects with which you are not familiar.

7

DON'T REPLY TO QUESTIONS YOU DIDN'T FULLY UNDERSTAND.

You can and you should ask for the question to be repeated or explained better. You can say: "I'm sorry. I didn't understand. Can you please repeat that/explain that better?"

8

"I DON'T KNOW"

When asked questions to which you don't know how to reply, there is only one answer: "I don't know". Remember that your role is to tell what you know about what happened. Don't make up a reply just to answer the question. Don't assume and don't give your opinion. Testify to the facts that you saw, heard, know of or learned directly. Testimonies based on rumour or hearsay are irrelevant.

9

TRY TO ANSWER IT THE SAME WAY.

It is possible that you will be asked the same question more than once. Try to answer it the same way.

10

DON'T BE AFRAID TO SAY "I DON'T REMEMBER".

It is only natural that you can't remember all the details or that you can't recall some things accurately. If this happens, stay calm and don't be afraid to say "I don't remember". Forgetting some things that happened in the past is a natural memory process. This may be associated with the passage of time (very often, witnesses have to testify about something that happened many months or years ago) or with discomfort caused by recalling a negative life experience.

11

IT IS NATURAL TO FEEL AFRAID.

It is natural to feel afraid, nervous and tearful. Testifying is an experience that can make anyone anxious and frightened. Talking about the crime or answering questions about the crime you witnessed (or were a victim of) is not a pleasant task, because it forces you to remember things you would like to forget and 'erase' from your memory. One of the reactions that can occur is crying. Don't feel ashamed about this. Your reaction will be understood, as it has already happened to many people in the same situation.

12

YOU CAN REQUEST A BREAK.

12. If you feel tired or overly nervous, you can either request a break to go to the toilet or ask for a glass of water and a tissue.

13

DON'T BE AFRAID OF THE DEFENDANT .

Don't be afraid of the defendant or let his/her presence inhibit you. Avoid looking at him/her while answering the questions. Look only at the person asking you the question. If you'd rather speak without him/her being there, you can say so to the judge. If the judge thinks this is reasonable, the defendant may be removed from the room while you are speaking.

14

THE WITNESS ISN'T BEING ACCUSED OF ANYTHING.

The witness isn't being accused of anything: the witness hasn't committed any crime. The only person being accused is the defendant. The witness is there to help the authorities gather important information so that they can make the right decisions.

15

TRY TO STAY CALM AND NOT LET IT AFFECT YOU.

It is natural that during the trial some of what is said or some of the questions you are asked may cause you discomfort, if you feel that what you went through is being challenged. Keep in mind that this may be part of the defendant's defence strategy, so try to stay calm and not let it affect you.

16

YOU ARE NOT RESPONSIBLE FOR THE COURT'S DECISION .

Remember that you are not responsible for the court's decision about the defendant. Carry out your role: tell what you know about what happened. The decision as to whether or not to convict the person accused of committing the crime always lies with the judge.

17

YOU MAY NOT TALK TO OTHER WITNESSES .

After you testify, it is possible that the trial will proceed and that other witnesses will be questioned by the judge. You can either stay and watch the rest of the trial or leave the court. You may not talk to other witnesses who haven't testified yet about what you know or what happened when you testified.

18

YOU DON'T HAVE TO ATTEND, BUT YOU MAY IF YOU WISH.

After all the witnesses have testified, the judge announces the day and time for reading the judgment. You don't have to attend, but you may if you wish.

19

BEING ACQUITTED IS NOT THE SAME AS BEING INNOCENT.

If the defendant is acquitted, it doesn't mean that the judge didn't believe your testimony. Being acquitted is not the same as being innocent. It means that the evidence gathered and given at the trial was not sufficient (and valid) for the judge to make a sound decision about the defendant's guilt.

20

REPORT IT TO THE POLICE IMMEDIATELY.

If anyone threatens or intimidates you or tries to attack you after you testify, report it to the police immediately. If someone has threatened or intimidated you or tried to attack you before you testify, then, besides reporting it to the police, you should also inform the court.

THE RIGHTS OF VICTIMS OF CRIME

Victims of crime are recognised to have a set of rights which they can exercise in order to meet their needs and defend their interests and expectations.

These rights are set out not just in national laws but also in international legal instruments, such as the European Union Directive establishing minimum standards on the rights, support, and protection of victims of crime.

Here you can get to know these rights better and learn how they can be put into practice.

If any of these rights are not respected, the victim should report this to the authority responsible for ensuring compliance with the infringed right.

APAV can help you exercise some of these rights by providing information and explanations and guiding you through any procedures with the authorities. However, please note that APAV does not represent crime victims in criminal proceedings.

"IF ANY OF THESE RIGHTS ARE NOT RESPECTED, THE VICTIM SHOULD REPORT THIS."



RIGHT TO INFORMATION

The right to information is very important, because only well-informed victims can participate fully in the proceedings and exercise their rights.

Information should be given to the victims in a simple and accessible form, so that they may fully understand it. If any victim feels fragile and in need of support, they can be accompanied by a family member, a friend, a lawyer or a victim support officer, who can help them understand and remember the information provided.

“VICTIMS OF CRIME ARE ENTITLED TO RECEIVE INFORMATION ABOUT THEIR RIGHTS, THE PROGRESS OF THE CASE.”

Victims of crime are entitled to receive information about their rights, the progress of the case – with the exception of situations where this is not permitted because of judicial secrecy requirements – and the main decisions made in their case. Information should be provided to them at each stage of the proceedings by the responsible authority and the Public Prosecution Service has a particularly significant role. In addition, victim support services have an important function as a source of information. APAV can help you by providing information about your rights, how to exercise them and how to obtain information about the case.

INFORMATION ABOUT RIGHTS

From the first moment of contact with any authority, whether it is the Public Prosecution Service or the police, the victim is entitled to be informed about the following:

- » what kinds of support are available and who can provide them, including medical assistance, psychological counselling, specialised services and, if necessary, accommodation;
- » how and where to file a complaint or report a crime;

- » how and under what conditions you may obtain protection;
- » how to obtain legal advice and legal aid;
- » how and when to seek compensation from the offender;
- » in the case of violent or domestic violence crimes, how and when to claim compensation from the State;
- » how to obtain interpretation and translation services;
- » if the victim does not live in Portugal, what special procedures are in place to defend their rights in this country;
- » how to make a complaint if your rights are not respected by the authorities;
- » contact details of authorities which the victim should use to give or ask for information about the case;
- » which mediation services are available;
- » how and when to claim reimbursement of expenses for participating in the proceedings and when this is applicable.

This information may vary depending on the specific needs and personal circumstances of the victim and on the type of crime. Additional information is available at different stages of the case.

INFORMATION ABOUT THE CASE

The victim is entitled, upon request, to be informed about any follow-up done on the report made, including the decision to charge the defendant or to close or provisionally suspend proceedings. The victim is also entitled to be informed of the date, time and place of the trial and of the judgment.

To this end, when victims are given information about their rights, they should declare their wish to be notified of any decisions made in the criminal proceedings and the reasoning for such decisions.

Victims are entitled not to want to be informed about all of the above. However, they cannot refuse to be informed if their role in the proceeding as a civil party or as an assistant requires them to be notified so that the defence of their rights and interests can go ahead.

Victims are entitled to be informed if the defendant or convicted criminal is released or escapes from prison, particularly when the defendant is considered potentially dangerous to the victim, and given information about key judicial decisions affecting the defendant's status, in particular the use of restrictive measures.

This information should be provided at each stage of the proceedings by the responsible authority - the Public Prosecution Service, police, examining judge or trial judge.

Victims are also entitled to view the case file, except when judicial secrecy applies during the inquiry stage or the public prosecutor opposes the viewing on the grounds that it could jeopardise the investigation or the rights of the parties in the proceedings.



RIGHT TO RECEIVE ACKNOWLEDGEMENT OF THE COMPLAINT

Any victim who files a complaint or a report is entitled to receive a written acknowledgement immediately without having to request it. This acknowledgement is evidence that the complaint or the report was filed and contains a description of the essential facts of the crime, including the type of act, the date and place of this occurrence and the damage caused.

Victims who don't speak Portuguese are entitled to receive this written acknowledgement either in their own language or in one they understand.



RIGHT TO TRANSLATION

In all case procedures, whether verbal, such as interviews with witnesses, or written, such as letters notifying participants to attend the trial, the language used is Portuguese.

When a victim doesn't speak Portuguese and must participate in any procedure, they are entitled, upon request to the authority responsible for the procedure in question, to an interpreter who speaks both the Portuguese language and the language spoken by the victim. For example, if the victim is Russian and does not speak Portuguese, an interpreter will be appointed to translate into Portuguese what the victim says, and to translate into Russian or another language which the victim understands what is said or asked in Portuguese.

If a victim is participating in the proceedings as a civil party or as an assistant, they are also entitled to receive translations in a language they understand of all the information in the case that is essential to the exercise of their rights, such as the judgment.

If a victim is deaf or hard of hearing, a sign language interpreter will be appointed. If the victim is dumb, the questions are asked orally, and the victim responds in writing.

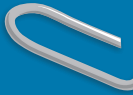
“THE APPOINTMENT OF AN INTERPRETER DOES NOT INVOLVE ANY COST FOR THE PARTICIPANTS.”

The role of the interpreter in all these situations is very important to ensure that victims understand what is conveyed to them and enable them to participate actively in the criminal proceedings.

The appointment of an interpreter does not involve any cost for the participants.



RIGHT TO VICTIM SUPPORT SERVICES



Victims are entitled to confidential victim support services free of charge before, during and after the case.

APAV - Associação Portuguesa de Apoio à Vítima / Portuguese Association for Victim Support- is a national non-profit social solidarity organisation. APAV

“VICTIMS ARE ENTITLED TO VICTIM SUPPORT SERVICES EVEN IF THE CRIME WAS NOT REPORTED.”

works towards promoting awareness, esteem and respect for the status of crime victim in Portugal.

Its mission is to support victims of crime, their

families and friends, by providing them quality services that are free of charge and confidential and by contributing to the improvement of public, social and private policies concerned with the status of victim.

APAV supports everyone who was a victim of crime and violence, their families and friends. We support victims of any crime: domestic violence, ill-treatment, threats, murder, sexual crime, kidnapping, abduction, mugging, theft of or with a motor vehicle, pickpocketing, burglary, robbery, fraud, extortion, abuse of trust, document falsification, damage, cybercrime and racial discrimination, among others.

Anyone who is a victim of crime will find at APAV the emotional, practical, legal, social and psychological support that they need to deal with and overcome the consequences of being a victim. This support is provided by professionally trained and certified victim support officers.

Victims are entitled to victim support services even if the crime was not reported.



During any criminal case, the victim is entitled to be heard and to provide information that may be important for the investigation and submit evidence.

When the crime is first reported (if this is done by the victim), he/she has the opportunity to provide as much relevant information and evidence as possible to the authorities receiving the report.

Later on in the investigation, the victim will be called on by the police or, in some cases, by

the Public Prosecution Service, to make a statement. At this time, the victim can add details that were not mentioned in the formal report or complaint.

If the defendant is charged, the victim will be called upon again to give a statement and to answer the questions of the different participants in the trial.

In the case of victims of human trafficking or sexual crimes, the examining judge may, or must when a victim of a sexual crime is a minor, question the victim at the inquiry stage or the examination stage. This means that their statement

“DURING ANY CRIMINAL CASE, THE VICTIM IS ENTITLED TO BE HEARD AND TO PROVIDE INFORMATION THAT MAY BE IMPORTANT FOR THE INVESTIGATION .”

may, if necessary, be taken into account during the trial, so as to avoid having them repeat their testimony more than once. The participants in this examination, besides the examining judge, are the public prosecutor, the defendant and the defence lawyer and the lawyers of the assistant and of the civil parties. This statement is known as a statement for future recall and is recorded for use during the trial. However, the trial judge will very often want the witnesses to testify and they may be called and questioned again.

In addition, whenever the victim has information they consider important to communicate immediately, they can, and should, do so straightaway, preferably in writing, to whichever authority is dealing with the case at the time. The authorities can also, at any time, ask the victim for further information or clarification.



RIGHTS IN THE EVENT OF A DECISION NOT TO CHARGE THE DEFENDANT



If at the end of the inquiry stage the Public Prosecution Service considers that there is insufficient evidence to send the defendant to trial, the case is closed. When several crimes are involved, it may happen that the defendant is only charged with some of them and the rest of the case is closed.

Any victim who disagrees with the decision of the Public Prosecution Service is entitled to apply to the examining judge to begin the examination stage. The time limit for applying for the examination stage to begin is 20 days from the

“ANY VICTIM WHO DISAGREES WITH THE DECISION OF THE PUBLIC PROSECUTION SERVICE IS ENTITLED TO APPLY TO THE EXAMINING JUDGE TO BEGIN THE EXAMINATION STAGE.

notice of the Public Prosecution Service decision, and the victim will have to have the status of assistant in order to do so.

Alternatively, the victim may file an application with the direct superior of the public prosecutor who decided to close the case, asking for the evidence to be re-examined or the investigation continued. In this case, the victim can provide

new evidence to be taken into account. If the victim chooses this course of action, they need to apply for it within 20 days of the date on which the examination stage can no longer be requested – in this case it will not be necessary to have the status of assistant.



In cases involving petty crimes or less serious crimes, such as threats, petty damage and non-aggravated assault, among others, the law allows the situation to be resolved through mediation between the victim and the defendant, as long as the defendant has acknowledged the commission of the crime.

Accordingly, during the inquiry stage, the Public Prosecution Service may, on its own initiative or at the request of the victim or the defendant, refer the case to mediation, informing the victim and the defendant of the fact and that they will be contacted by a mediator.

Mediators have specialised training for the purpose and their role is to promote and facilitate communication between the participants in the mediation process.

The mediation process is free of charge, confidential and voluntary, that is, victims need only participate if they agree to it and may withdraw at any time.

“THE MEDIATION PROCESS IS FREE OF CHARGE, CONFIDENTIAL AND VOLUNTARY, THAT IS, VICTIMS NEED ONLY PARTICIPATE IF THEY AGREE TO IT AND MAY WITHDRAW AT ANY TIME.”

The mediator, in the first contact with the victim, should explain what mediation is, what results and consequences it may have, what rights and duties the participants have and what the role of the mediator is. This information is very important for the victim to be fully aware and able to decide if they want to participate or not.

The mediation process provides a place of communication between the victim and the offender with the help of an impartial mediator, where the victim may let the offender know about the harm caused by the crime and the offender

can assume responsibility for the crime. The victim and the offender can also try to reach a settlement together, which may include the payment of compensation, the provision of a service by the offender either for the benefit of the victim or of the community in general, or even an apology. In the case of a settlement, the mediator will inform the Public Prosecution Service and the case will be closed; otherwise the case will go ahead.



RIGHT TO LEGAL INFORMATION AND PROTECTION

Access to justice seeks to ensure that nobody is hindered in or prevented from exercising or protecting their rights because of their social or cultural background, financial means or knowledge.

Victims are entitled to legal aid and advice about their role during the entire procedure.

Victims are also entitled to legal aid when they have the status of assistant or of a civil party, or when, as witnesses, they would like to be accompanied by a lawyer at any procedure but cannot afford the expenses.

Legal aid includes:

- » Total or partial exemption from the payment of court fees;
- » appointment of a lawyer and payment of his/her fees; or
- » payment of court fees or legal fees in instalments.

“VICTIMS ARE ENTITLED TO LEGAL AID AND ADVICE ABOUT THEIR ROLE DURING THE ENTIRE PROCEDURE.”

the social security services, and may be submitted in person, by fax, by post or online. The application must be accompanied by documents proving the applicant’s lack of means, and the decision will be given within 30 days. The application is free of charge for the victim.

Applications for legal aid are decided by the social security services on the basis of a calculation of the assets, income and expenses of the applicant. Legal aid application forms are provided free of charge by

“APPLICATIONS FOR LEGAL AID ARE DECIDED BY THE SOCIAL SECURITY SERVICES.”

When an application for the appointment of a lawyer is approved, the social security services will ask the Portuguese Bar Association (Ordem dos Advogados) to assign a lawyer to represent the victim.

Victims of domestic violence, female genital mutilation, slavery, human trafficking, sexual coercion and rape are exempt from payment of court fees.



RIGHT TO COMPENSATION FOR PARTICIPATION AND TO REIMBURSEMENT OF EXPENSES

Any victim who takes part in the proceedings as a witness is entitled to be compensated for time spent and to be reimbursed for any expenses incurred as a result. Compensation must be applied for in writing using the special form available from the courts.

Witnesses are entitled to between 7 and 13 euros in compensation for each trip to court. The exact amount is calculated on the basis of the distance travelled and the time spent on the journey.



RIGHT TO THE RETURN OF PROPERTY

Some property belonging to the victim may have to be taken away for the subsequent investigation of the crime. For example, the victim's car, or clothes, may contain important evidence for the investigation. If this is the case, the authorities can appropriate the property to be used as evidence.

As soon as the appropriated items are no longer required, the victim is entitled to have them returned. This should be done as soon as possible, so that the victim is not deprived of them beyond what is strictly necessary for the purposes of the case.

In some cases, the victim must make a written application for the return of their property. The victim has three months in which to collect any property after receiving a notice to do so.

“AS SOON AS THE APPROPRIATED ITEMS ARE NO LONGER REQUIRED, THE VICTIM IS ENTITLED TO HAVE THEM RETURNED”



RIGHT TO COMPENSATION



It is only fair that anyone who suffers losses as a result of a crime should be compensated for such losses. The duty to compensate falls to the offender but, in some cases, the State may advance this compensation when the victim is facing financial difficulties as a result of the crime and it is impossible to obtain compensation from the offender within a reasonable period.

COMPENSATION FROM THE OFFENDER

Victims are entitled to be compensated by the offender for the material damage and moral distress which he/she caused to them.

As a rule, compensation should be claimed within the criminal proceedings. Victims should therefore inform either the police or the Public Prosecution Service by the end of the inquiry stage that they wish to file a claim for compensation. They can do this, for example, when they go to give a statement. Later, when the victim receives the notice with the charge against the defendant, they will have a time limit of 20 days in which to file the claim.

If the claim is for more than €5,000, it should be filed by a lawyer representing the victim. If it is equal to or less than €5,000, the victim may file it.

The civil compensation claim does not have to be in any particular form: it should simply contain a brief description of the facts on which the application is based and state the damage and its value:

» **Material damage**, comprising:

- » damage caused directly by the crime, for example, hospital treatment costs, cost of medicines, travel to medical appointments, damaged clothing, etc.
- » and the benefits the victim lost because of the crime, for example, salaries that the victim didn't receive because he/she was unable to work.

» **Moral (or non-material) damage:** losses which cannot be assessed financially, since they concern the health, well-being, honour and reputation of the victim; these can only be compensated by obliging the offender to pay a certain sum to the victim. Moral damage includes, for example, physical pain, psychological distress, emotional suffering, loss of prestige and damage to reputation, etc.

“ALONG WITH THE CLAIM FOR COMPENSATION, VICTIMS SHOULD ENCLOSE OR MENTION ANY SUPPORTING EVIDENCE.”

»

Along with the claim for compensation, victims should enclose or mention any supporting evidence, such as hospital bills, and people who were at their side during the period of greatest suffering and who know what they went through, etc.

Whenever there is a claim for compensation, the decision on this claim is included in the judgment.

Even if no compensation claim is filed, the judge, on his/her own initiative and taking into account the victim's situation, may order the offender to pay the victim a certain amount in compensation for damage, unless the victim does not agree to this.

If an individual is ordered to pay compensation and doesn't do so voluntarily, the victim will have to file an enforcement order (ação executiva) against the offender. This means that the victim applies to the court to order the seizure of his/her assets – bank accounts, properties, vehicles or other assets – to guarantee payment of the compensation.

COMPENSATION FROM THE PORTUGUESE STATE

FOR VICTIMS OF VIOLENT CRIMES

Protection for victims of violent crimes includes the payment of compensation from the State, when the offender is unable to pay and the disruption caused to the quality of life and standard of living of the victim has been considerable.

Those entitled to this compensation are:

- » victims of grievous bodily harm (i.e., causing permanent disability, total temporary incapacity for work for at least 30 days, or death) caused directly by acts of violence;
- » those who have a legal right to maintenance if the victim dies - for example, their children and anyone cohabiting with the victim;
- » those who helped the victim or cooperated with the authorities in preventing the crime or finding and arresting the offender for any damage caused as a result.

In cases of sexual crimes, the 30-day requirement of permanent incapacity or total temporary incapacity for work for claiming compensation may not apply.

“THIS APPLICATION DOES NOT CARRY ANY FEES OR CHARGES FOR THE VICTIM.”

While this type of crime does not, as a rule, cause an incapacity for work of at least 30 days, this exception is justified by the seriousness of the crime.

The compensation claim may be filed up to a year after the date of the crime or, if criminal proceedings take place, up to a year after the final decision. A victim who is under-age at the time of the crime can claim for compensation up to a year after reaching the age of 18 or of emancipation.

The application should be made using the online form available from the Commission for the Protection of Victims of Crime’s website.

This application does not carry any fees or charges for the victim and all the necessary documents and certificates for filing the claim can be obtained free of charge.

If the crime was committed in another European Union Member State, the claim for compensation from that Member State can be filed with the Commission for the Protection of Victims of Crime as long as the person applying for compensation is resident in Portugal.

FOR VICTIMS OF DOMESTIC VIOLENCE

Victims of domestic violence are entitled to receive cash benefits from the State whenever, as a consequence of the crime of domestic violence, they find themselves in a situation of serious financial hardship.

The application should be made using the online form available from the Commission for the Protection of Victims of Crime's website. The victim should send a copy of the complaint or of the police report. The claim must be filed within 6 months of the date of the crime.

The amount of the monthly benefits cannot exceed the national minimum salary. These benefits are provided for a period of three months and may be extended for another three months. In situations of particular need, they may be extended for another six months, up to an exceptional maximum of 12 months. If the victim is in serious financial hardship, compensation may be paid, on an exceptional basis, in a lump-sum payment.



RIGHT TO PROTECTION

Victims and their family members are entitled to protection from retaliatory or intimidatory acts or continued crimes against them. They are entitled to protection from acts that can endanger their lives, physical integrity, emotional and psychological wellbeing, and their dignity when giving evidence and testifying.

Whenever authorities consider that there is a serious risk of acts of revenge or reliable evidence that the safety and privacy of the victim may be seriously and deliberately compromised, they should provide an adequate level of protection to the victim, the victim's family and other people close to them.

“IF, FOR SAFETY OR PROTECTION REASONS, ANY VICTIM DOES NOT WISH TO PROVIDE THEIR HOME ADDRESS FOR THE CASE FILE, THEY MAY CHOOSE ANOTHER ADDRESS TO WHICH NOTICES CAN BE SENT.”

If, for safety or protection reasons, any victim does not wish to provide their home address for the case file, they may choose another address to which notices

can be sent. It may be their work address or the address of the APAV Victim Support Office (Gabinete de Apoio à Vítima da APAV) which is assisting them.

PROTECTION MEASURES

During criminal investigations, interviews of victims are conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the competent authority.

The number of interviews and medical examinations of victims is kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal investigation.

Victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary.

NO CONTACT WITH THE DEFENDANT

Victims are entitled not to meet or have any contact with the defendant, particularly in court buildings and police stations. For that purpose, whenever possible, there should be separate entrance and exit points and waiting rooms for victims and defendants and for their family members and others close to them.

Unfortunately, many Portuguese courts are not equipped for this and do not have the facilities to fully guarantee this right. However, whenever a victim has solid reasons for avoiding contact with the defendant, he/she should demand, that, as much as possible, the court provides an alternative exit and entrance point, as well as a waiting room not used by the defendant and their family members.

PRIVACY

Victims and their family members are entitled to privacy during the proceedings.

The fact of the proceedings being public does not mean that the private details of those involved are also public, particularly when these details do not constitute evidence.

In addition, the media may not, before the judgment, disclose details of the proceedings unless they have a judge's authorisation to do so. They are also not allowed to transmit images or sound of any proceedings, particularly the trial, unless the judge allows it and none of the participants object.

In proceedings relating to sexual crimes or human trafficking, the public cannot attend any court sessions. In these cases, as well as in cases of crimes against honour or the right to privacy, the media may not publish the victim's identity.

If any media body fails to respect these rules, the victim should file a criminal contempt complaint (*queixa pelo crime de desobediência*). The victim should also inform the media regulatory body (*Entidade Reguladora da Comunicação*).

PROTECTING THE VICTIM AND OTHER WITNESSES IN EXCEPTIONAL SITUATIONS

Whenever the lives of the victims or of another witness, their physical or psychological integrity, freedom or material assets of considerable value are compromised due to their contribution to the investigation and to providing evidence, they may request protection measures. The following protection measures are exceptional and may only be used if they are necessary and appropriate for the protection of the parties and for the purposes of the criminal proceedings:

» **Concealment:** based on circumstances that point to a high level of witness intimidation, the court may decide that image concealment measures should be used in any public hearings, with or without voice distortion methods, allowing the witness to remain anonymous.

» **Teleconference:** in the case of serious crimes, and whenever there are strong protection reasons to justify it, teleconferencing may be used, that is, the witness will give their testimony not in the court room but from another public building, preferably in judicial, police or prison premises, and in the presence of a judge. This testimony can also be given using image concealment and voice distortion.

» **Restriction on revealing the identity of the victim or of another witness:** the identity of the victim or of another witness may be concealed at some or all the stages of criminal proceedings. A victim or witness whose identity is not revealed can testify using image concealment (with or without voice distortion) or teleconferencing.

» **Special protection measures:** in the case of serious crimes and whenever there are justifiably strong protection reasons, a victim or other witness may have the benefit of special security measures that may include, for example, the use of official transportation to participate in any proceedings, or police protection or relocation to a new address.

» **Special protection programme:** in some of the most serious crimes, the witness, his/her spouse, ascendants, siblings and other persons close to the victim may benefit in particular circumstances from a special protection programme, if they so wish, during or after the proceedings. The special protection programme includes the use of one or more administrative protection and support measures, namely supplying “new identity” documents to the victim or witness, alteration of features and physical appearance, relocation to a new address, within the country or abroad, for a given period of time or the provision of a living allowance for a set period.

RESTRICTIVE MEASURES

The protection and safety of victims may be safeguarded by imposing one or more restrictive measures against the defendant. A restrictive measure is a constraint on the freedom of the defendant. It may be imposed during the course of the proceedings if there is a risk that the defendant might abscond, a risk to the gathering and preservation of evidence, a danger to public order and/or a risk of continuing criminal activity.

There are a variety of restrictive measures, including:

- » declaration of identity and residence - the defendant may neither move from the address indicated in the case file nor be absent from that address for more than 5 days without reporting in advance the contact details of the new address or the place where they may be found;
- » the defendant must report from time to time to a specified police station, usually in their area of residence;
- » the defendant must suspend his/her profession, functions, activities and rights;
- » ban on certain behaviours and orders to behave in a certain way, for example, the defendant must not contact the victim;
- » the defendant must stay in his/her named address and not leave, with or without electronic monitoring;
- » remand to prison.

If a victim considers that the imposition of a restrictive measure is the best way to guarantee their safety, they should present their arguments and request that it be imposed. The authority to which the arguments should be presented depends on which stage the case is at: to the Public Prosecution Service during the inquiry stage, to the examining judge during the examination stage or to the trial judge during the trial stage. Whenever the judge considers it necessary, the victim should be heard whenever current restrictive measures are being revoked or substituted.



Victims with specific protection needs are people who, owing to their personal characteristics, the type or nature of the crime, and the circumstances in which it occurred, are particularly vulnerable to repeated victimisation, secondary victimisation, intimidation or retaliation. These victims will therefore require special care, especially with regard to their level of protection.

This vulnerability should be assessed on a case-by-case basis. Particular attention should be paid to victims who suffered considerable harm due to the

“ARE PARTICULARLY VULNERABLE TO REPEATED VICTIMISATION, SECONDARY VICTIMISATION, INTIMIDATION OR RETALIATION.”

severity and gravity of the crime, to victims of crimes committed for discriminatory reasons related to their personal characteristics, and to victims whose relationship to and dependence on the offender make them particularly vulnerable. Special care should

therefore be given to victims of terrorism, organised crime, human trafficking, gender-based violence, violence in close relationships, sexual violence and hate crimes. Regardless of the type of crime, children, the elderly and those who suffer from an illness or disabilities should be given particular attention when being assessed for specific protection needs.

When a particularly vulnerable victim has to participate in any part of the proceedings, the Public Prosecution Service or the judge should take steps to ensure that this takes place under the best possible conditions. The purpose is to ensure that the victim answers spontaneously and sincerely:

- » the statements of particularly vulnerable victims should be taken as soon as possible;

- » these interviews should be carried out by a trained professional and, if the victim needs to be questioned more than once, the interviews should, in principle, be conducted by the same person;

- » interviews with victims of sexual violence, gender-based violence or violence in close relationships, when not conducted by a judge or a public prosecutor, should be conducted by a person of the same sex as the victim, if the victim so wishes;

- » all parts of the proceedings should be organised so that a particularly vulnerable witness does not meet certain participants in the same proceedings, particularly the defendant;

- » when it is necessary to avoid visual contact between the victim and the defendant, the victim should be questioned using an appropriate means of concealment or teleconferencing and need not even be in the courtroom;

- » the victim will be questioned by the judge, and afterwards, the other judges, the public prosecutor, the defence lawyer and the lawyers of the civil parties may suggest additional questions which are then asked, not directly by these people but by the judge;

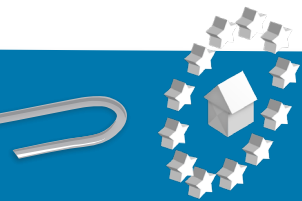
- » victims must not be asked questions about their private lives that are unrelated to the offence committed against them;

» in some cases, the different parts of the proceedings, including the trial, may take place without the presence of the public.

As soon as a particular vulnerability of the victim is identified, a social worker or other person who is suitably qualified should be appointed to accompany them and, if necessary, psychological support should be provided by a specialised professional.

At any stage of the proceedings, the judge, at the request of the Public Prosecution Service, may decide to have particularly vulnerable victims removed from their family or closed social group and have them placed in an institution.

All these measures may also be applied to witnesses who may be considered particularly vulnerable according to the criteria mentioned above.



RIGHTS OF VICTIMS RESIDENT IN ANOTHER EU MEMBER STATE

Being the victim of a crime in a foreign country places victims in a particularly vulnerable situation, as they do not know how criminal proceedings work or what support services are available, they have difficulty understanding another language and their stay in the country where the crime was committed is usually a short one, which makes it difficult to participate in and keep abreast of the case. People who are the victims of a crime in a country other than their country of residence should be able to avail themselves of measures that make it easier for them to participate and, in particular, to be informed about the progress of the case.

**“BEING THE VICTIM OF A CRIME
IN A FOREIGN COUNTRY PLACES
VICTIMS IN A PARTICULARLY
VULNERABLE SITUATION.”**

These measures include the authorities providing all the necessary information and appointing an interpreter to ensure the victim fully understands the different procedures in which they participate.

A resident of a European Union Member State who is the victim of a crime in another Member State may report the crime to the authorities in their country of residence, if they have not reported it in the country where the crime was committed. In this case, the authorities of the victim's country of residence should promptly transmit the complaint to the relevant authorities of the country where the crime was committed.

In the European Union, the victim of a crime that occurred in a country other than their country of residence may make a statement immediately after the crime was committed. In Portugal, a victim who resides in another country may make a statement that can later be used as evidence at the trial, thus avoiding the victim having to return to Portugal. This statement is called a statement for future recall (*declarações para memória futura*).

However, if it is necessary to question the victim again but they are no longer in the country where the crime was committed, they may be questioned in a telephone conference or videoconference call from the country in which they reside.

Victims of a violent crime committed in a European Union Member State who usually reside in another Member State may file their claim for compensation with the authority in their country of residence which has the jurisdiction to assess and decide on this kind of request. This authority should transmit the request to the relevant authority of the Member State in which the crime occurred. In Portugal, the authority with the jurisdiction both to receive claims from people who reside in other countries and who were victims of crime in Portugal and to send the claims of persons resident in Portugal who were the victims of crime in other European Union countries is the Commission for the Protection of Victims of Crime.



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