

Safe Justice for Victims of a Crime

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1. Aim of the paper

This paper aims to provide a first take on the question “How to ensure safe justice from a victim’s perspective?”. In doing so, it will discuss the current practical problems and barriers for victims in achieving justice in the course of a real-life victim’s journey from crime to the outcome of criminal proceedings. Additionally, the paper will challenge conceptual concerns and preconceived notions that lie at the basis of (some of) the current justice systems and that may influence the victim’s ability to achieve safe justice.

With this paper, we aim to address ways in which the justice system harms victims unnecessarily. We thereby want to start the conversation on how to make the criminal justice system work in a way that is less harmful to victims and victims’ families, as well as is considered more successful by victims and their families regardless of the outcome of guilt of the offender.

We have an opportunity to significantly influence the EU criminal justice legislation, particularly because the European Commission is currently revising EU victims’ laws as well as working on legislative proposals that impact the rights of victims of a crime in criminal justice processes.

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2. Methodology

The paper will be largely based on desk research, including best practices that have been assembled through VSE's past research projects. This desk research will be supplemented by views and opinions of experts in the field via the consultation of an expert panel and a wider consultation with VSE members during the workshop on 2 December.

The expert panel consists of 8 experts coming from different professional backgrounds (victim' advocates, academics, victim support workers, policy makers, judges, prosecutors, etc.) and from various European countries (balanced geographical division). On at least three occasions (in October, November and December), this expert panel will be requested to provide input on proposed approaches taken in the orientation paper. The expert panel will further be invited to contribute more actively to the drafting of the paper, depending on their availability.

On 2 December, a workshop will be held to gather input and exchange knowledge and opinions with VSE members. During this workshop, we aim at consulting VSE members to ensure that we are framing the issues at hand correctly. Following the workshop, a questionnaire may be shared with members with the aim to collect more detailed information.

3. Outline

The proposed outline for the paper reflects a victim's journey from crime to outcome of criminal proceedings, similar to the approach of the 2019 paper on Compensation, written by Victim Support Europe. The outline of the paper follows a hybrid model, combining that of a victim's journey with inserts (e.g., boxes) on topics of overarching importance, such as victim support services and notions of justice.

Executive summary

Introduction

Approach to this chapter

This paper aims to lay the groundwork and further the conversation on the notion of **safe justice** for victims of crime in the EU. It will explore the concept of safe justice as a whole and the barriers victims

face when seeking and achieving justice. While deeply rooted in reality, particularly in the existing justice systems and national as well as international legislation, good practices, and gaps, this paper also examines some of the theoretical concepts and ideas that lie at the basis of some of the current justice systems and the way they influence victims' ability to achieve safe justice and their perceptions thereof.

The concepts discussed in the paper and covered in more depth in the introduction are:

- Justice systems; Justice; Safe justice; formal and informal justice processes
- Victim; Victims' role and participation in criminal proceedings; Victims' rights
- Safe reporting;
- Protection measures
- Secondary victimisation; Resilience
- Satisfaction and experience of victims.

Key points

- Justice, in its broadest sense, is understood as receiving what one 'deserves', which, in turn, is determined by various moral, ethical, religious, or legal norms. Integral justice, conceptualized more recently, consists of politico-legal, societal, cultural, ecological, and spiritual/metaphysical justice. Nation states have long played an important role in defining and delivering justice, especially with regard to politico-legal justice.
- There are various types of criminal justice systems – common law, civil law. These systems stem from various theories of justice, most notably, retributive and distributive justice. There are also overlaps with non-criminal justice systems such as civil and administrative proceedings.
- In these systems, victims of crime can be assigned different roles if they choose to report a crime to a competent authority. A victim's position in subsequent proceedings is largely dependent on the legal role assigned to them. Some examples of these roles are: 'civil party', 'injured party', 'witness', 'assistant'/'auxiliary prosecutor', etc.
- While the specific role assigned to a victim is important, it is a proxy for the more important indicator of whether victims' rights are guaranteed, needs met, and justice achieved. More specifically, the interest of this chapter and the overall paper is establishing most effective ways to guarantee that minimum rights are met regardless of the role assigned to a victim.
- A reflection on the availability and use of informal justice processes, in particular restorative justice processes.

I. Crime

Approach to this chapter

The European Commission estimates that 15% of Europeans, or 75 million people in the European Union fall victim of crime each year. Crime is an inevitable and unfortunate part of life, and impossible to avoid. This chapter will touch upon the prevalence of crime and the impact it has on direct victims, their social network and society as a whole.

I.1 Types of crime

a. Overview types of crime

Key points

- According to recent figures of EUROSTAT, among the crimes recorded by European police forces in 2019, assaults, sexual violence and drug-related crimes reached the highest number since 2009, while reports of robbery, burglary and thefts reached the lowest number since 2009 (Eurostat, 2021).
- However, certain crimes remain traditionally underreported for several reasons (see chapter II), such as hate crime (FRA, 2021), child sexual abuse, sexual violence amongst men. Additionally, there are also certain population groups that traditionally underreport (minorities, undocumented migrants, LGTB+...).

b. Emerging types of crime

This subchapter on emerging types of crimes will touch upon the changing forms of crime, which provide new challenges for victims, including the cross-border nature of the crime and the provision of sufficient evidence of a connection to the crime.

a. Environmental crimes

Key points

- 8 October 2021: first resolution of UN on environmental crimes (48/13) - the right to a safe, clean, healthy and sustainable environment
- The UN Human Rights Council decided to appoint a special rapporteur on the promotion and protection of human rights in the context of climate change, for a period of three years (48/14)

b. Cyber crimes

Key points

- There is no universal conceptualisation of the different types of cybercrime. This subchapter will briefly touch upon these categories of cybercrime, including the current trends.
- Considering the diversity of needs and consequences usually felt by victims of cybercrime, there is a requirement for interdisciplinary support and intervention which may involve the action of professionals with different technical backgrounds, as well as the intervention of different organisations (APAV, 2021)
- Identity theft in particular can cause great harm. Since cybercriminals tend to use fake identities to commit their crimes, police generally view (online) identity theft as a by-product of other online crimes. This has led to identity theft victimisation being ignored or not properly addressed by the police. (VSE, INDEED project)
- The difficulties of different systems/services and institutional structures in responding to the needs of victims of cybercrime may be due to the several constraints (i.e. need for specialised training/knowledge for contacting and intervention with cybercrime victims; difficulties associated with the criminal proceedings, including identification of a suspect...) (APAV, 2021)

I.2 Impact of crime

This subchapter will discuss the impact of the crime on victims. Following the impact of the crime on their lives, victims may face barriers that are withholding them from achieving justice, including trauma, vulnerability to secondary victimisation, inability to cope with the administrative burdens linked to criminal proceedings.

Key points

- Whether as a result of directly or indirectly experiencing a crime, those involved may suffer serious physical and psychological consequences. The impact of crime affects a victim and its social network, but can affect the broader society (i.e. healthcare, work environment...).
- Certain crimes, such as environmental crimes or cyberattacks on governmental institutions, hospitals... have a collective impact, on entire communities or society as whole. There has been a rise in cyberattacks with collective entities (hospitals, multinationals, government institutions...) as target of the crime for example. These entities may suffer substantial losses as a result of cybercrime, either due to losing clients and/or compromised or stolen confidential information, or through immediate financial losses, which may even affect and harm individual clients. (APAV, 2021).
- Crime also has an economic impact on society. The impact of intimate partner violence against women for example, is estimated to cost the European Union 109 billion euro per year (EIGE). However, collecting statistical data on the costs of crime is difficult and availability of these data within the EU is rather limited. As this is done differently in the US, their approach in measuring and estimating the economic impact of crime will serve as an example in this paper.
- Touching upon the efforts to promote victims' rights, as many EU citizens not aware of their rights as a victim of crime
 - o Promoting the rights of victims of crime by raising awareness (good practices)
 - o Promoting the European helpline for victims of crime.

I.3 Addressing the needs of victims

Key points

The Victims' Directive framework is based on the five basic needs of those that fall victim to a crime:

1. Respectful treatment and recognition as victims;
2. Protection from intimidation, retaliation and further harm by the suspect/accused, before and during criminal investigations and court proceedings;
3. Support, including immediate post-crime assistance, longer-term physical/psychological assistance and practical assistance;
4. Access to justice to ensure victims are aware of, and understand, their rights and can participate in proceedings;
5. Compensation and restoration, whether financial damages paid by the state or the offender, or through mediation or another form of restorative justice.

It is recognised that these five needs are common to all victims. Some needs will depend on the specific group of victims or a specific crime. Additionally, the personal characteristics and circumstances of the victims will also influence their needs.

This subchapter will elaborate on how these victims' needs should be properly addressed in a victim-centric justice system.

II. Reporting

Approach to this chapter

One of the largest barriers in access to justice is reporting a crime: many victims never report a crime and, therefore, in most countries, cannot access most of the rights guaranteed to them under the Victims' Rights Directive. (A notable exception is access to support services.) This chapter examines the barriers victims face on their way to reporting a crime and various internal as well as external factors that contribute to a victim filing (or not) a complaint with competent authorities. This chapter also investigates possible solutions for these internal (e.g., raising awareness of rights and building resilience in victims) as well as external (ensuring proper policy/firewall in place) factors. Furthermore, this chapter also explores a broadened definition of reporting a crime (beyond filing an official complaint with a competent authority).

Key points

- There are many reasons why victims choose not to report a crime. Concern for one's own safety and protection along with mistrust in authorities are some of the most cited reasons for not reporting (following not seeing the crime as serious enough) (FRA, 2021). Victims who are usually considered vulnerable, such as undocumented migrants or LGBT+ people tend to report the least.
- Reporting a crime can and should be encouraged through various measures introduced by EU Member States but not be pushed on victims as their only option.
- The understanding of the meaning of 'reporting' a crime may be extended to instances of a victim sharing what has happened to them beyond filing an official complaint with a competent authority. Such an approach can enlighten alternative solutions both to underreporting (to competent authorities) and to achieving justice in general.

III. Criminal proceedings

Approach to this chapter

Despite numerous attempts, ensuring a place for victims within the traditional adversarial justice system remains a challenge. This chapter elaborates on victim-centred approaches to criminal justice proceedings. It is divided into two subchapters, the pre-trial stage and the trial stage. The current organisation of criminal justice systems in EU member states, including good practices, will be mentioned. In conclusion, the crucial approaches that should be present to achieve justice from a

victim's perspective throughout the stages of the criminal proceedings, will be outlined. In what follows, a short overview of the content of this chapter is provided, allowing VSE members to be consulted on how the issues at hand will be presented.

In the **investigation and evidence gathering phase**, victims often feel that their requests for information and support in light of their case are regarded as annoying. In case of longer investigations, victims may further feel that their case is not a priority to law enforcement services. We believe that these feelings can be mitigated through the provision of proper information (timely, multi-format, repetitive, accessible and simple) and the setting up of mandatory referral systems to (generic and specialist; governmental and/or non- governmental) support services (GDPR conform, with an option to opt-out). Additional measures should be in place to mitigate the distress of particularly vulnerable victims (following the individualised needs assessment), in particular via the setting up of multi-disciplinary centres following the Barnahus model.

Furthermore, victims are often refraining from providing extensive evidence throughout the pre-trial stages, due to the insensitive attitudes of law enforcement officers and prosecutors, and the possibility to be confronted with the suspect/offender. Within a safe justice system, the victim is encouraged to provide evidence, through the following measures: the avoidance of repeating testimony unnecessarily, trauma-informed approaches and effective interviewing strategies of law enforcement officers (provided through training), third-party assistance and support (person of trust, victim support worker and/or legal representation), and the availability of various protection measures (based on the individual situation of the victim).

Particular attention should be paid to victim's needs in the case of a **decision not to prosecute** the suspect. Following such decision, victims may believe that the suspect's rights are prioritised over their own rights. Due to a lack of timely information provision and/or the lack of (legal and emotional) support, victims may lose the opportunity to appeal such decision. In this paper, it will be argued that all decisions not to prosecute should be properly reasoned, and that this decision can be appealed within a reasonable time limit. The appeal process to decisions not to prosecute should further be simplified, allowing victims to challenge a decision not to end proceedings without requiring the assistance of a lawyer. In case of simplified procedures, the assistance of a case worker may suffice in this instance, thereby cancelling out the need for formal legal representation at the pre-trial stage.

During the **trial stage**, victims may experience various forms of secondary victimisation – in attending court hearings and in the process of providing evidence before the court – given the adversarial and professional nature of the court proceedings. Victims may feel dissatisfied about their involvement in the proceedings, when they do not receive proper recognition and are not treated respectfully by the legal practitioners, by court staff and other involved services. Within a safe justice system, we believe that these issues are addressed by the availability of various protection measures for victims (based on an individual needs assessment), the use of multi-agency case management systems, the availability of third party assistance for victims throughout the proceedings (court accompaniment, legal aid and legal representation, a person of trust), the availability of generic and specialist support services (based in the specific needs of the victim), respectful treatment and recognition of the victim (victim impact statement, victims' participation) and well-organised reimbursement procedures for victims' attendance of court sessions. Attention will be paid to the potential impact of digitalisation of

justice on the position of the victim in the criminal justice proceedings. Attention will further be paid to the specific challenges experienced in appealing the court's decision, including the lack of state-funded legal representation. Lastly, the linkages between the formal justice process and informal, alternative justice processes, and the challenges and benefits that they pose to victims, will be discussed.

In current justice systems, the role of victims (witness, private prosecutor, *partie civile*, etc.) stipulates the level of their participation throughout the proceedings. In this paper, we want to explore ways in which the victim can participate actively (if they so wish) and receive acknowledgment in the course of the proceedings, without having to carry heavy administrative burdens.

III.1 Pre-trial stage: Investigation and evidence gathering

Key points

- Proper information provision to victims about their rights: simple and accessible language, repetition at different intervals, availability of information in multiple formats, and ensuring a balance between provision of sufficient information and victims feeling overwhelmed;
- Engagement with victims by law enforcement agencies and prosecution: respectful treatment of victims (based on trauma-informed approaches), and the availability of support offered by court services, law enforcement agencies and victim support organisations;
- Organisation of referral (mandatory; opt-out; GDPR conform) to generic and specialist support services, offered by governmental organisations and victim support organisations, based on the individual assessment of the victim's needs;
- Victims' ability to provide evidence during the investigation phase, in particular by providing statements to the police;
- Victim's access to updated information about the investigation;
- Availability of protection measures, including protection from secondary victimisation and protection orders, as well as the (re-)assessment of protection needs by the prosecutor at pre-trial stage: timing for approval of special measures, requirement of court's approval and the effects of the potential retraction of protection measures issued by law enforcement agencies;
- Available remedies following the decision not to prosecute or to terminate proceedings:
 - a. Timely provision of information to victims about this decision not to prosecute
 - b. Victim's ability to challenge a decision not to prosecute / to terminate proceedings, which is impacted by the following:
 - i. Proper reasoning of decision (currently, often a standard template is used)
 - ii. Requirement of third-party assistance to victims, including qualified legal assistance, to challenge the decision
 - iii. time limits for challenging the decision

Recommended good practices that will be discussed in this subchapter

- Family justice centres (Barnahus model);
- Construction of specialised victims' units within law enforcement agencies;

- Creation of a sharing platform with complete and updated information about the status of investigation and criminal proceedings;
- In case of lengthy investigations, the organisation of meetings with victims and the law enforcement officers working on the case, allowing time for victims to ask questions about the ongoing investigation.

III.2 Trial stage

Key points

- Victims' access to case-related documentation and information about court procedures;
- Active participation of victims in courts (testimony, victim impact statement, attendance of proceedings) and the organisation of this participation;
- Third-party assistance to victims: court accompaniment services, access to legal aid and legal assistance, access to other support services;
- Availability of protection measures, including avoidance of contact with offender;
- Legal standing of NGOs and other organisations in cases of collective victimhood;
- Specific issues linked to the appeal procedures, including the availability of legal aid and legal representation;
- Relationship with other forms of justice, including restorative justice processes and civil remedies.

Recommended good practices that will be discussed in this subchapter

- Therapeutic jurisprudence, that use the law as an instrument of healing and rehabilitation and focus on the psychological well-being of all involved parties, including victims, during interactions with court officers & criminal offenders;
- The employment of facility dogs in the courthouse;
- Virtual tour of the court premises available to victims;
- Single point of contact for victims throughout court proceedings, for instance a justice assistant at courthouse.

IV. Outcome of the criminal proceedings and alternative justice practices

Approach to this chapter

Providing victims of crime with a form of compensation is often viewed as the 'final stage' in a victim's journey. Access to compensation and reparation, as well as access to alternative justice processes, represent an official acknowledgement and recognition of the victim's suffering, and a means (financial or otherwise) of 'making up' for any damage caused by the crime; in other words, returning the victim to a situation which most closely resembles their pre-crime state. In a safe justice system, the administrative burdens on victims in achieving this recognition should be alleviated.

This chapter will briefly discuss the victims' journey following the outcome of criminal proceedings. It will further discuss the availability of alternative forms of justice outside of the criminal justice process,

in particular restorative justice practices. This chapter will particularly examine whether the finding of guilt by a court or the admission of guilt by the offender is crucial for a victim to achieve a sense of justice.

The parole hearings and the release of the offender after imprisonment, and the victims' involvement in the release process will not be discussed in this chapter. The matters connected to the longer-term aftermath of the outcome of criminal proceedings will be discussed in a follow-up paper.

Key points

- Timely provision of information to victims regarding court decisions;
- Involvement of victims in decisions on remedial actions following the finding of guilt;
- Remedies available to the victim against acquittal of suspect on procedural grounds;
- The victim's access to compensation and other forms of reparation: accessible and inclusive compensation systems, availability of appropriate and fair compensation for victims, the victim's access to third-party support throughout the process of applying for damages, the availability of various forms of reparation apart from pecuniary damages;
- Access to offender compensation (Should the Dutch model on offender compensation be implemented as a rule?);
- Remedies available to the victim for the enforcement of a compensation order;
- The availability of alternative forms of justice outside of the criminal justice process, in particular restorative justice practices.

Conclusion

- Reflect on crucial approaches that would be a part of a model system for safe justice from a victim-centred perspective based the outcomes of this paper;
- Provide recommendations on how criminal justice systems in Member States should ensure safe justice for victims, taking into account the resource constraints of states.

Victim Support Europe, November 2021

4. Annex with key resources

Introduction

- Vanfraechem, I., Pemberton, A., & Ndahinda, F. M. (2014). *Justice for Victims: Perspectives on rights, transition and reconciliation*. Routledge. <http://site.ebrary.com/id/10888541>
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I. Crime

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- FRA (2021). Encouraging hate crime reporting: The role of law enforcement and other authorities
- ILGA Europe. Hate crime & hate speech (<https://ilga-europe.org/what-we-do/our-advocacy-work/hate-crime-hate-speech>)
- FRA (2018). Being Black in the EU. Second European Union Minorities and Discrimination Survey
- Text of Resolution 48/13, on the right to a clean, healthy and sustainable environment <https://undocs.org/A/HRC/RES/48/13>
- Text of Resolution 48/14, Mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change <https://undocs.org/A/HRC/RES/48/14>
- Landmark UN resolution confirms healthy environment is a human right <https://www.unep.org/news-and-stories/story/landmark-un-resolution-confirms-healthy-environment-human-right>
- Access to a healthy environment, declared a human right by UN rights council <https://news.un.org/en/story/2021/10/1102582>

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- VICToRIIA: How to identify victims' support needs? Guidelines to develop an individual needs assessment

II. Reporting

- European Union Agency for Fundamental Rights. (2021). *Crime, safety and victims' rights: fundamental rights survey: Summary*. Publications Office of the European Union. <https://data.europa.eu/doi/10.2811/84781>
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- GDPR/Law Enforcement Directives

III. Criminal proceedings

- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA
- European Commission (2020) EU Strategy on victims' rights (2020-2025)
- VSE (2019) VOICIARE Synthesis Report: Victims of Crime Implementation Analysis in Europe
- Resources compiled in light of the ongoing study to support the evaluation of the Victims' Rights Directive
- European Union Fundamental Rights Agency (2016) Handbook on European law relating to access to justice
- PICUM (2021) Preventing Harm, Promoting Rights: Achieving Safety, Protection and Justice for People with Insecure Residence Status in the EU
- Dr. Deirdre Healy (2019) Exploring Victims' Interactions with the Criminal Justice System: A Literature Review
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- E. Erez, J. Jiang and K. Laster (2020) From Cinderella to Consumer: How Crime Victims Can Go to the Ball
- N. Lacey and H. Pickard (2019) A Dual-Process Approach to Criminal Law: Victims and the Clinical Model of Responsibility without Blame
- The Council of the Baltic Sea States Secretariat (2021) In Need of Targeted Support: The role of Barnahus in identification and investigation of child trafficking and the support and assistance provided to victims

IV. Outcome of the criminal proceedings and alternative justice practices

- Council Directive 2004/80/EC relating to compensation to crime victims
- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA
- US Office for Victims of Crime (OVC), Civil Remedies, see: https://www.ncjrs.gov/ovc_archives/directions/pdfxt/chap16.pdf

- VSE (2019) A journey from crime to compensation: an analysis of victims' access to the EU
- Milquet (2019) Strengthening Victims' Rights: From Compensation to Reparation
- UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law : resolution, adopted by the General Assembly, 21 March 2006, A/RES/60/147
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