

VOCIARE

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NATIONAL REPORT



**Victims of Crime
Implementation Analysis
of Rights in Europe**



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Victims of Crime
Implementation Analysis
of Rights in Europe

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DISCLAIMER

All views expressed in the present report are those of the authors and not of the European Commission.

Most findings of the report are based on the research conducted by national researchers, between June 2018 and March 2019, and any inaccuracies in the interpretation of national results lays with the authors of the present report only. Additional support research, in particular regarding international experiences, was conducted by the authors of the present report.

The findings compiled in the present report represent, to the best of authors' abilities, the current situation of the practical implementation of the EU Victims' Rights Directive. Given its scope and ambition, authors are aware that some elements may be inaccurate or out of date. However, it was still important to offer the first overall picture, even if incomplete, of the practical implementation of the Directive, to inform future work of Victim Support Europe, its members and the policy initiatives at the EU and national level. Future efforts will be plan to improve the findings and provide a more detailed analysis of key rights defined in the Directive.

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EXECUTIVE SUMMARY

Directive 2012/29/EU, commonly known as the Victims' Directive, establishes minimum rights to all victims of crimes and constitutes the core of the European Union's legislative package aiming to guarantee that all victims of crimes have access to information, support and protection. The Victims' Directive was transposed into Austrian law in 14th November 2012. Its implementation in Austria was essentially pushed forward by the Criminal Law Amendment Act 2016 (*Strafprozessrechtsänderungsgesetz*).

Implementation of the Victims' Directive in Austria has progressed quite a bit, yet still there are identifiable gaps and suggestions for improvement.

A central right of victims in Austria is psycho-social and legal victim advocacy. Victims entitled to it have further rights in criminal proceedings. Due to funding of the BMVRDJ, victim support institutions focus on offering such services. Yet not every victim of a criminal offence is entitled to **victim advocacy**. In implementing the Directive, the notion of victims was extended by introducing the concept of "victims with specific protection needs".

Funding for general victim support is especially insufficient, which is why one has to depend on commitment from civil society by means of voluntary work and donations.

Understanding and being understood still needs improvement in Austria. Very often information is not comprehensible for victims. Leaflets were created in easy-to-read language but are not available everywhere yet. There are brochures at police stations for victims entitled to victim advocacy (in 15 different languages) to facilitate access to victim advocacy.

Victims often face huge difficulties in the area of the judiciary when it comes to understanding documents. This holds especially true for decisions about the discontinuation of proceedings or a restorative measure. Even in main trials, unaccompanied victims are often insufficiently informed about their rights. Support and information duties in this respect are fulfilled by victim support institutions, e.g. the victim emergency helpline.

Yet direct **referral** to a victim support institution by the police rarely takes place in Austria.

A victim who has reported an offence to the police has to receive a written acknowledgement of the complaint that must feature essential elements of the reported crime, in order to enable the victim to further pursue the case. The right of victims to oral and written translation has been extended. Still, this is problematic, especially for victims speaking uncommon languages or in

rural areas, where interpreters are not always quickly available.

As per § 68 Par 2 StPO, victims have got the right to access the files as far as their interests are affected. Many victims, however, believe to „automatically“ be sent a copy of the files and know too little about their right.

A central element of the **right to receive information about their cases** as mentioned in Article 6 of the Directive are the notifications about the discontinuation of proceedings, restorative justice measures, release of the accused from pre-trial custody etc. Victims need to be informed by request. Penal institutions not reliably informing the victims have been identified as a problem.

There is indeed a great difference concerning the right to information about the case between victims who receive victim advocacy and such victims who do not.

Further files are only translated on application of the victim, under the condition that this is necessary for safeguarding his/her rights and interests. In Austria, the lack of **interpreters** for certain languages (e.g. Arabic) poses a problem in practice. It happens far too often that victims who want to report an offence are sent away with the order to return with a person who can translate for them.

When supporting victims, also counselling talks need to be translated. Finding appropriate interpreters sometimes is difficult in Austria. In the context of victim advocacy, costs for interpreters can be accounted for via the BMVRDJ.

The **access to victim support services** in Austria is manifold. The WEISSER RING is a general contact point for all victims of criminal offences, which also offers support to victims who do not have a specialised victim support institution for their needs. The WEISSE RING furthermore operates the victim helpline 0800 112 1121 on behalf of the BMVRDJ. This helpline is free of charge and available anytime.

Other important specialised victim support institutions are NeuStart, the anti-violence protection centres, women shelters, child protection centres and the intervention centre for women as victims of trafficking.

Support from victim support services also can take on many forms in Austria. A low-threshold contact point is the victim emergency helpline. It offers anonymous and extensive counselling as well as quick help in emergency situations and orientation for victims. This is the only fully state-funded service in the context of victim protection in Austria.

Many other services of the WEISSER RING are offered when required and are primarily financed through donations and commitment from civil society.

There are cases of deficits in safeguarding victims' right to be heard, if they are only interrogated superficially by the police and proceedings are discontinued by the prosecution. Another problematic situation is that of perpetrators accused of several offences, where the criminal act against one particular victim is considered „minor“ in comparison to the other charges, leading to a discontinuation of proceedings in that particular case.

In practice, unfortunately, the obligations to inform are only insufficiently attended to, and experts report that victims are only granted the possibility to make a statement prior to a decision about restorative measures in exceptional cases.

Victims without entitlement to victim advocacy can be provided with a free-of-charge lawyer.

Victims not entitled to legal victim advocacy have to bear the expenses for legal representation themselves.

If the possession seized from the victim cannot be returned, the sentence has to include the judgment of indemnity or compensation.

In cases of violence in intimate relationships and with offences that violate the sexual integrity and self-determination, executive authorities generally take care to **protect the victim from unnecessary meetings with the accused**.

Law enforcement agencies are in general coerced to carry out proceedings without unnecessary delay (§ 90 StPO). The lack of medical examinations in this context is, however, problematic, since evidence is lost that way.

The protection of one's personal address is an important need for many victims, often as a means to increase security and protection of privacy. Victims are hardly informed about this right.

An individual assessment of all (other) victims is envisaged. The assessment is to be carried out as soon as possible. As a rule, the first observation of specific protection needs is thus conferred to the police. It seems particularly problematic that assessments of specific protection needs are documented and thus become part of the criminal file. Accused persons thus gain access to sensitive data when inspecting the files.

There is a portion of underage victims who do not have access to victim advocacy.

Children are in principle interrogated themselves in a criminal procedure. Normally, there are two interrogations, one with the police and one adversary examination in the investigation proceedings. Hence, children do not have to testify another time in the main trial.

For the purpose of **coordination and better enforcement of victims' interests** there are both, European networks and also national initiatives for certain sub-domains of victim support.

To sum up the results, Austria succeeded in establishing an intense support for criminal proceedings for certain victim groups. Especially victim advocacy has gained more ground over the years, and certain quality standards could be established. Finances for victim advocacy by the BMVRDJ increase on a yearly basis.

A backlog demand in terms of extension of victim advocacy for certain victim groups and the training of executive officials in terms of sensitisation for victims' needs and the abilities to assess specific protection needs was identified – among others – by this report.

INTRODUCTION

For this report, an adequate **methodology** was created and adopted. The first step was a legislative analysis, while the relevant legal texts were placed into context with the requirements of the Directive. For this purpose, subject literature and judicature are used. Other sources were analysed, such as shadow reports, activity reports, but also newspaper articles and articles from subject literature.

The second step was the mapping of competent authorities and organisations. In order to assess how the Victims' Directive has been implemented, it is vital to know more about national legislation, to know how the Directive was transposed into national law in order to further analyse if such legislation is being implemented, how and by whom. Mapping competent authorities and organisations is essential to guarantee that detailed answers will be provided by the competent authorities and organisations which relate to victims.

To support the work presented in this report, three research tools were developed in order to obtain the desired information: a desk research, an online survey, and interviews.

The desk research was the first stage of national research. As mentioned before, it included research of legal and policy instruments, literature and existing studies, opinions, discussions and other sources which are related to victims' rights. It collected and systematized existing quantitative and qualitative information on the research topic, covering, for example, statistics on the situation of victims, academic literature on the topic of victims' rights implementation, media reports on the topic, relevant NGO researches and government reports to Intergovernmental Organisations.

The second research tool was the survey. 76 experts from police, judiciary and victim support organisations were reached by an online survey. Their answers and the analysis of the survey mark further material incorporated in the discussion of the single articles of the report. This was particularly important for the research as it enabled a much broader evidence base and allowed for statistical analysis.

The third research tool was the interviews with experts from various fields in touch with victim support. They shared experiences on the implementation of the Directive from completely diverse angles. This diversity of viewpoints characterises this report and thus distinguishes it from a classic shadow-report of an NGO. Interviews were carried out following a structured guideline. Any questions to which desk research could not respond, or where findings were inconclusive, the researchers identified a stakeholder/key informant with whom to discuss such specific

questions, in addition to the list of questions which were provided via the research tools. We would like to thank all experts for their time and knowledge they shared for this report.

Regarding its structure, this report first provides a basic overview of the legal framework, an important element to take into account in a first approach in order to understand the transposition status of the Directive into national law. Subsequently, an evaluation of the practical implementation of the Directive will be presented. This document will explain if and how articles and rights provided by the Directive are transposed into Austrian law. Each right will be briefly described and explained, as well as its transposition and practical implementation.

Furthermore, a chapter on good practices will be presented, as well as a chapter identifying gaps, challenges and recommendations. These are very important chapters in this report, since they provide practices which might be good practices to be implemented by other Member States and be maintained in Austria, and they also provide information on what is lacking or failing in the practical implementation and can be improved. This is vital for Austria itself and for other Member States which might present similar less positive aspects. The final chapter will provide a conclusion.

BASIC OVERVIEW OF THE LEGAL FRAMEWORK

The Victims' Directive was adopted on 25 October 2012 by the European Parliament and the Council, and Member States were required to transpose it into national law until 16 November 2015.

In Austria, many victims' rights already found their way into the Austrian code of criminal procedure through the Criminal Procedure reform Act of 2004¹. An amendment of the criminal procedure in 1999 already introduced restorative measures for adults into the Austrian code of criminal procedure. The Criminal Procedure reform Act of 2004, which has been in force since 2008, for the first time made victims a subject in criminal proceedings in Austria and thus improved victims' possibility to actively participate in criminal proceedings.

In order to implement the Victims' Directive, the Criminal Procedure Reform Act 2016 marked a decisive step in Austria. This essentially led to an extension of already existing victims' rights in Austria². There are several ways of involving victims in Austrian criminal proceedings. Firstly, as **witnesses** and thus as objects of the criminal proceedings. Secondly as **subjects** with certain rights to actively participate (i.e. accessing the files, being informed about the status of proceedings, take part in the main trial and ask questions to the accused, witnesses, request a review of a decision not to prosecute, and joining proceedings as a private party. This so-called *Privatbeteiligtenanschluss* (i.e. joining criminal proceedings as civil claimant/private party) of the victim aims at compensation of damage. Thirdly, victims can get involved as **private parties/civil claimants** – i.e. victims asserting claims from the criminal offence in civil proceedings.

Depending on the offence, trials will either be held at the (smaller) county courts or at the responsible county court. Regional courts are, besides civil lawsuits, responsible for criminal trials in case of crimes that do not exceed a penalty of more than one year imprisonment. More severe cases have to be referred to the regional court.

In Austria the vast majority of all crimes is prosecuted by the public prosecutor whereas just very few crimes (like insult) are prosecuted by private persons. In some cases (for example domestic disturbance) the public prosecutor needs the authorization of the beneficiary.

¹ BGBl I 2004/19.

² For details cf. Sautner, L. "Opferrechte im Strafprozess in Österreich", in Sautner & Jesionek [Eds.] (2017). *Viktimologie und Opferrechte 8 – Opferrechte in europäischer, rechtsvergleichender und österreichischer Perspektive*. Innsbruck, Wien, Bozen: StudienVerlag.

The criminal proceedings are divided into the preliminary investigation and the main proceedings. During the **preliminary investigation** the case is led by the public prosecutor, who decides in a certain case to bring charges against someone or to stop the proceedings, for example because there is not enough evidence against the accused. For especially invasive measures during the investigation (like house search or phone tapping) the prosecutor needs the approval of the court. In this stadium the court can also impose pre-trial detention at the request of the prosecutor, if a person is urgently suspected of having committed a punishable act and if one of the reasons for detention stipulated by law (i.e. risk of absconding or risk of collusion) prevails.

Another way to terminate the criminal proceedings during the preliminary investigation is the so-called “diversion” (as a restorative measure): if the facts are sufficiently investigated and the guilt of the accused is not severe, the prosecutor can cancel the proceedings if the accused for instance agrees to carry out community service or to take part in an out-of-court offense resolution.

If termination of the proceedings or diversion is not possible, the prosecutor brings charges against the accused. From that moment, the **main proceedings** begin and the court leads the case.

In Austrian criminal law there are basically two instances: The court of first instance is – depending on the type of offence – either a District Court (basically all offences that are liable to a fine or a prison sentence that does not exceed one year) or a Regional Court (all other offences). The court which decides in second instance depends on the kind of court which decided in first instance: if a District Court decides in first instance, appeals must be made to a Regional Court. Where a Regional Court decided in first instance, appeals must be made to the Higher Regional Court, of which there are four in Austria. Appeals against decisions of the first instance Regional Court consisting of professional and lay judges must be made either to the Supreme Court (in case of a nullity appeal) or to the Higher Regional Court (in case of an appeal against the penalty). The appeal courts always consist of senates with at least three judges.

The **fundamental principles** which guide the Austrian criminal proceedings are particularly the charge principle (every criminal procedure will be triggered and defined by the claims of a prosecutor), the legality principle (it is the duty of the state prosecutor to prosecute the offenses of which he becomes aware whilst in office), the speech principle (the reading of statements from the preliminary proceedings by the examining police is only possible in limited cases), the establishment of the truth principle (the court must do everything in its power to clarify the state of affairs) and the public principle (the public can only be excluded from a hearing on important grounds). Of major importance is also the fair trial principle and the principle of the presumption of innocence (the accused remains innocent until his guilt is proven): the accused must be acquitted if doubts remain about his guilt (principle in *dubio pro reo*).

EVALUATION OF PRACTICAL IMPLEMENTATION

ARTICLE 2 - DEFINITIONS

For the purposes of the Directive a ‘victim’ is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence or a family members (the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim) of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

There are two dispositive laws in the Austrian legal system that define victims: The Code of Criminal Procedure (hereinafter, StPO)³ and the Victim Compensation Act (hereinafter, VOG)⁴. Both definitions do not entirely match each other. A victim as defined by the StPO in principle is every person who might have suffered harm through a criminal offence or else might have been impaired in his/her interests protected by the criminal code⁵. Also legal entities are included⁶. Additionally, in the StPO victims are divided into further groups that are subsequently entitled to special rights⁷. In implementing the Victims’ Directive⁸ these „victim groups” were expanded: now also those persons whose personal dependence might have been exploited by means of

³ Code of Criminal Procedure 1975, BGBl 1975/631, last amendment through BGBl I 2018/32, in short: StPO.

⁴ Federal law from 9th July 1972 on the grant of assistance to victims of crimes (Victim Compensation Act – VOG), BGBl 1972/288 last amendment through BGBl I 2018/32, in short: VOG.

⁵ Generalklausel für Opfer (general clause for victims) in § 65 lit c StPO

⁶ Kier & Zöchbauer, 2010, § 65 Rz 19.

⁷ See Introduction for more details.

⁸ Federal by which the Code of Criminal Procedure 1975, the Penitentiary System Act and the statute on responsibility of legal entities are amended. (Strafprozessrechtsänderungsgesetz I 2016), BGBl I 2016/26, short: StPRÄG I 2016.

an intentionally committed offence are included⁹. The victim status of surviving dependants (§ 65 Z 1 lit b StPO) was extended to persons entitled to maintenance (i.e. spouses, life partners, children, parents, brothers and sisters or other persons who received alimony payments) – namely irrespective of whether the person entitled to maintenance was a victim of the criminal offence¹⁰. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice (hereinafter, BMVRDJ) puts emphasis on a broad interpretation of the term in connection with specific rights for victims of violence¹¹. It is not a matter of course that indirect victims¹² are acknowledged as victims in the criminal procedure as defined in § 65 Z 1 lit c: in 2017, a woman was brutally slain in Vienna. Her colleague, who had accompanied her on the way home from work, had to witness the deed in close proximity. She was not acknowledged as a victim in the criminal procedure – despite a severe traumatising. Child protection institutions experience problems with children, who have to witness violence against one of their parents, often not being acknowledged as victims themselves. The definition of “crime” in the VOG differs from that in § 17 penal code¹³: the term there refers to intentional deeds that are sanctioned with a life-sentence or more than three years of imprisonment¹⁴. These differing uses of terms continuously lead to confusion and insecurity when it comes to guaranteeing the rights of victims.

9 The introductory decree of the Federal Ministry of Justice (BMJ-S578.029/0006-IV 3/2016) points out the neglect and overexertion of minors, younger or helpless persons (§§ 92 Par 2 and 93 StGB) or to human trafficking abusing authority or a predicament; cf. also ErlRV 1058 XXV. GP, p. 11.

10 Divorced partners, for instance, come into question, if there was a maintenance claim at the time of death.

11 BMJ, Decree, 2016, p. 4.

12 Witnesses are considered „direct“ victims by part of legal doctrine, for instance, if the term of damage is equated with “claims under private law possibly gained through the criminal offence”. Such claims can also indirectly arise through the criminal offence. Cf. Kier & Zöchbauer, 2010, § 65 Rz 21. Other opinions from legal experts hypothesise that direct victims are affected by the criminal offence, while concernment of indirect victims only results indirectly from the criminal offence. Cf. Sautner, L. (2014), Viktimologie. Die Lehre von Verbrechensopfern. Wien: Verlag Österreich, p. 17 f.

13 Federal law from 23rd January 1974 on acts sanctionable by a court of law (Penal Code – StGB), BGBl 1974/60 last amendment through BGBl I 2017/117.

14 All other criminal offences are so-called „misdemeanours“.

ARTICLE 3 - RIGHT TO UNDERSTAND AND BE UNDERSTOOD

Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings. Communications with victims should be provided in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim, including (but not limited to) any disability. Victims should, in principle, be allowed to be accompanied by a person of their choice in the first contact.

Efforts are undertaken to communicate clearly with victims. With the executive authorities many officers are eager to inform victims in a comprehensible way. The huge extent of victims' rights makes this, however, often difficult. Sometimes, information about victims' rights and the procedure of the court process is limited to reading an information leaflet. Victims of a criminal offence who find themselves in a decidedly stressful situation during first contact to the law enforcement authority, usually are not capable to understand and comprehend all information. Victims always receive printed legal instructions at the victim interrogation. This is, however, very extensive and linguistically hard to understand.

The police has got information sheets informing about essential rights in easy-to-read language¹⁵. In addition to that there is another form that has been tested and adapted for persons with disabilities. Unfortunately, the form is not yet sufficiently known and not used exhaustively by the police. The number of the free of charge victim-helpline (0800 112 112) is included on the form.¹⁶ For victims entitled to receive victim advocacy, there are additional information brochures about the services of victim advocacy at police stations. Those are available in 15 different languages by now¹⁷ and try as well to convey the basic rights of victims in an easily understandable way. Those folders also refer to the victim emergency number and further victim support institutions that can offer oral and/or personal counselling, and thus individually respond to the victims' needs. As

15 Wimmer, 2016.

16 Cf. section on Article 18.

17 BMVRDJ, 2018a, Informationsfolder Prozessbegleitung

soon as victims have got a legal claim to victim advocacy and make use of it, one can surmise that they will be enabled to understand and be understood. In fact, it is the goal of victim advocacy to support and accompany victims in this regard¹⁸. On a website of the BMVRDJ¹⁹ as well as on the website of the Federal Ministry of Digital and Economic Affairs²⁰ information on the criminal procedure is offered for persons seeking legal information. Sign language is acknowledged in the Austrian Constitution²¹, yet still crucial information in **sign language** is often missing on the internet²². A website (www.schreigegengewalt.at)²³ offers sign language and information on protection for women against partner violence in easy-to-understand language. Information beyond that about other victimisations is unfortunately lacking. In line with the directive decreed on the basis of § 31 Security Police Act (SPG)²⁴, which regulates the principles of the intervention of members of the Public Security Services, **minors** (i.e. persons who have not yet completed their 14th year of age) have to be interrogated by specifically trained officers or other particularly appropriate persons as per § 6 Par 2 Z 3 Guidelines Decree (RLV), unless this seems unnecessary according to the occasion or would jeopardise the task fulfilment. Hence, it is to be hoped that the respective information in such contact situations with the police is delivered in an age appropriate and development-orientated way. Executive authorities in Austria are eager to interact adequately with **elderly people**, and especially with people with dementia: by now, 60 departments have been certified „dementia-orientated“, which means, among other things, that at least 705 of staff members have completed a training on basic principles of communication.²⁵ This training enables officers to cater for the counterpart’s needs in communication. **As regards the judicial system**, victims still face considerable difficulties to understand documents. So far, easily readable supplements could not be successfully established for the whole federal territory. Experiences of victim emergency helpline show that doubts arise frequently, because court decisions are not understood or misunderstood. This is especially valid for decisions according to which criminal proceedings are discontinued or decisions informing about completion of criminal proceedings by means of restorative justice measures. Victims are often overstrained by the information and – at best – seek advice about the meaning and consequences of individual steps of the criminal court at the victim emergency helpline.

Unaccompanied victims, based on feedback from the victim emergency hotline, are also insufficiently informed about their rights in the context of the main trial, and hardly ever about

18 For more details see chapter “Best Practice”

19 BMVRDJ, 2018b, Opfer und Opferrechte.

20 Federal Ministry of Digital and Economic Affairs (Bundesministerium für Digitalisierung und Wirtschaftsstandort), 2018, Rechte und Pflichten im Strafverfahren für Verbrechensopfer.

21 Art 8 Par 3 Federal Constitutional Law (B-VG), BGBl 1930/1, last amendment through BGBl I 2005/81.

22 Statement via mail by Gabriele Stauffer, Austrian Federation for the Deaf (Österreichischer Gehörlosenbund) 14.5.2018

23 Verein Witaf, 2018.

24 Federal Law on the organisation of security management and the exertion of the security police (Security Police Act –SPG), BGBl 1991/566 idFBGBl 1992/662, last amendment through BGBl 2018/29; short: SPG

25 Federal Ministry of the Interior, 20.3.2018.

the outcome of the criminal proceedings. Usually there is also a lack of inquiring and safeguarding that information is received and understood. Only few judges make sure that victims can follow the proceedings and have understood all the information. However, one cannot make clear statements about that. Victims accompanied by victim support institutions during proceedings are informed by their victim supporters. The judiciary relies on victim support institutions taking over these tasks and professionally completing them.

Victims have the right to be accompanied by a trusted person in all procedural steps. A trusted person has to be permitted in every interrogation upon request of a witness as per § 160 Par 2²⁶. A trusted person must be involved in any case for the interrogation of a person who has a disability, or who has not yet completed their 14th year of age. It is hardly possible to gain solid data on whether trusted persons are indeed permitted and whether victims are informed in time that they can involve a trusted person. Psycho-social victim advocates constitute that their presence as trusted persons at police interrogations has by now become a matter of course. Victim advocates for children and adolescents sometimes gain the impression that successful attempts are frequently made at police interrogations to not have trusted persons present. Trusted persons are not officially excluded or rejected, but the victim is rather influenced, so that he or she „deliberately“ waives this right. Trusted persons are mainly permitted in court, except legally envisaged reasons speak against it.

Through the disclosure of the survey, researchers were able to obtain further information regarding the practical implementation of Article 3. For instance, opinions were divided about the question whether there are regular inquiries to ensure that victims have understood the information they are provided with. The information was however felt to be understandable for persons speaking another language. Here the result clearly is positive (accumulated: 84%). Participants felt that victims are generally accompanied by a person of their choice (accumulated: 83%). A majority of the sample stated that refusing the accompaniment of victims due to a contradiction with the interests of the victim was not a common reason in Austria. Interestingly, the language used by authorities in their communication with victims was considered easy to understand by a clear majority of the participants (accumulated: 68%).

26 This right must be pointed out in the summons. Persons who are suspected of having been involved in the criminal offence, who have been or will be interrogated as witnesses, and who are in any other way party to the proceedings or whose presence could influence the free and complete witness statement. Trusted persons are obliged to confidentiality concerning their perceptions in the course of the interrogation (§ 301 Par. 2 StGB).

ARTICLE 4 – RIGHT TO RECEIVE INFORMATION FROM THE FIRST CONTACT WITH THE COMPETENT AUTHORITY

Member States shall ensure that victims are offered, without unnecessary delay, from their first contact with a competent authority, information about the type of support the victims can obtain and from whom; the procedures for making a formal complaint; how and under what conditions they can obtain protection, access legal advice and legal aid; access to compensation; entitlement to interpretation and translation; special measures if they are resident in another Member State; contact details for communications about their case; available restorative justice services; how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

Victims have got the right to information in accordance with the StPO (§ 70 StPO). These general information rights were extended in implementing the Victims' Directive by means of the Criminal Law Amendment Act I 2016²⁷: victims with specific protection needs have to be informed about their rights before their first interrogation; all victims are to be informed about their rights to be notified of the release of the accused from investigative custody, of the escape from investigative custody or from prison, and of his recapture, as well as of the first unguarded leave from prison and of the release from penal sentence. The notification has to be in a language the victim understands and in a comprehensible way taking the victim's personal needs into consideration. The point of reference must be whether the victim can truly understand the information²⁸. Furthermore, there are folders in several languages available on victim support services. Optionally, victims of criminal offences can opt to have their data sent to a victim support institution (WEISSER RING) by the police and also receive the victim emergency hotline number where they can be informed free of charge about the criminal procedure, victims' rights and possible legal and psycho-social aid as well as possible compensation claims, depending on the criminal offence.

Information at the first police interrogation usually is very extensive and hard to understand.

27 BGBl I 2016/26.

28 Decree BMJ-S578.029/0006-IV 3/2016

Even victims who have been verifiably informed – as can be verified through their signature on the respective form –, cannot remember all information after a few days. It is not easy for the law enforcement agency to inform extensively and about all aspects without overtaxing the persons concerned. Specialised law enforcement officials might rather succeed at giving comprehensible information²⁹. It seems helpful in this regard as well to involve a victim support institution that can explain and inform in „smaller portions“ over a longer period of time. Information about victim support institutions that can accompany and support in the long term thus seems primarily helpful.

Information from the police primarily takes on the form of „legal instructions“, which are part of the interrogation form for victims. The instruction is very detailed and formulated in a very sophisticated language. It is usually made verbally, with the instruction being read plus additions for better understanding. In addition to that, brochures and lists of contact points are handed out to victims who are entitled to victim advocacy. The lists are also very extensive and hardly understandable without explanatory notes. By Decree of the BM.³⁰ (now the BMVRD) from June 2016, all victims – except for those of violence in the private sphere – were supposed to be orally informed by the police about the **victim support organisation** WEISSER RING in the course of the interrogation. In case the victim explicitly agreed to a notification of the WEISSER RING, a consent form was to be signed by the victim and sent to WEISSER RING. The WEISSE RING was informed about the consent regarding dissemination of data and contacted the person in question within the following days. The victims were sent a letter, taking care of easy comprehensibility of the information. The persons concerned were – by request – also phoned. After coming into force of the decree, traceably more victims could be reached and informed. In the fourth quarter of 2017, 275 victims could be informed this way all over Austria³¹. Not least because of pressure from other victim support institutions, the decree was revoked. Since then, the victims have to contact a victim support institution of their choice by themselves again, the police merely assist³². Corresponding placing of clients happened in only 152 cases in the first quarter of 2018.³³

Information by the judiciary professionals primarily happens in written form with standardised forms. Information from the judiciary is also mostly complete and legally correct, which inevitably leads to a limitation of comprehensibility. With all submissions the decisive person is named, yet persons concerned rarely enquire. At county courts it is possible to receive advice for free on „Amtstagen“ (office days – i.e. consultation days at one morning per week), at regional courts on-call duties of the prosecution offer corresponding services. Queries can also be made with so-called „service centres“³⁴, however, no legal advice is given there.

29 Amesberger & Haller, 2016, p. 14.

30 Decree BMI-LR1100/0016-II/BK/1.6/2016

31 WEISSER RING (2018a), StatistikZustimmungserklärungen 2012 – 2017. unpublished.

32 Interview 5.

33 WEISSER RING (2018a), unpublished.

34 BMVRD (2018c), Servicecenterv <https://www.justiz.gv.at/web2013/home/buergerservice/die-servicecenter~8ab4a8a422985de30122a90bcabc61da.de.html> (last access: 1.6.2018).

Survey results: the majority of Austrian respondents stated that victims receive the information required upon first contact with the relevant authority. Oral information and leaflets for victims was seen by the majority as the way information is provided during first contact. Video as first information for victims was seen less so. According to most of the survey participants, information is given without request by victims (accumulated: 87%).

ARTICLE 5 - RIGHTS OF VICTIM WHEN MAKING A COMPLAINT

Member States shall ensure that victims receive written acknowledgement of their formal complaint. Where they do not understand or speak the language of the competent authority, they should be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance. The acknowledgement should be translated free of charge where the victim doesn't speak the language.

Every person who gains knowledge of a criminal offence is entitled to report to the criminal police or a prosecutor³⁵. A victim who has reported an offence to the police has to receive a written acknowledgement of their formal complaint³⁶. The acknowledgement always contains a file number, date and place of the reporting, information about the offence, time and place of the offence and information regarding the caused damage.³⁷ It enables the persons concerned to follow the case and specifically enquire about the course of proceedings, and possibly request access to the files. Handing out a protocol of the personal statement to the victims is regionally handled differently by the police. In some regions this is done immediately without victims having to ask, elsewhere a specific request is necessary in order to receive the protocol. In the online survey, most participants agreed that victims receive a written acknowledgement of their formal complaint (accumulated: 92%).

The victim's entitlement was extended to the right to receive a verbal and written translation and adapted to the respective rights of accused persons (§ 56 StPO) by the Criminal Law Amendment Act in implementation of the Victims' Directive. Victims who do not understand or speak the language of proceedings must, upon request, receive a free translation of the acknowledgment of their complaint in a language they understand (§ 66 Par 1 Z 5 and Par 3 StPO)³⁸. According to the police, very few victims demand a written translation of their report of an offence. Victim support institutions experience victims arriving at their offices with a translated acknowledgement of their complaint as a decidedly rare exception.

³⁵ § 80 StPO.

³⁶ § 80 2. Sentence StPO, introduced on implementing the Victims' Directive by means of StPRÄG I 2016.

³⁷ EriRV 1058 XXV. GP, 11.

³⁸ Ibid.

It should be possible everywhere for victims to report an offence in a language they can understand. There are no general guidelines how the police are to assess if the victim's speech comprehension is sufficient. Officers often utilise a third language, such as English or French. Often the police also rely on linguistically competent persons for a first clarification of the facts, who are not verifiably qualified. Especially in rural areas and during the night hours, it is difficult to quickly find certified interpreters for small language populations³⁹.

Most respondents of the online survey felt that victims in Austria are enabled to make a complaint in their own language (accumulated: 75%). The majority stated that victims in Austria receive linguistic assistance (accumulated: 89%).

A test model for the possibility to make use of online services is currently running in prisons. In the detention centre Klagenfurt, for example, the technical equipment for video interpreters was installed⁴⁰. This option could, however, not be used with victims who cannot read properly. A helpful hotline in combination with a video-interpretation service ought to make things a lot easier. The service will probably be extended throughout Austria.

³⁹ Amesberger & Haller, 2016, 13.

⁴⁰ The service is primarily available for basic medical care by the police doctor. Yet it may also be used for other purposes – for instance victim interrogations. Advantages are the fast availability of all languages (with a waiting time of only a few minutes) and the respective quality of translations. A hotline belonging to it is helpful in clarifying the question, which language is needed. So far, display boards and various languages were used in order to find out with sufficient certainty for what language an interpretation was needed.

ARTICLE 6 - RIGHT TO RECEIVE INFORMATION ABOUT THEIR CASE

Member States shall ensure that victims are notified without unnecessary delay of their right to receive information related to criminal proceedings: any decision not to proceed with or to end an investigation or not to prosecute the offender; the time and place of the trial, and the nature of the charges against the offender; of any final judgement in a trial and of information about the state of the criminal proceedings, in accordance with their role in the criminal justice system; about the reason which led to the above mentioned decisions; notification in case the person remanded in custody, prosecuted or sentenced concerning the victim is released from or has escaped detention.

§ 68 Par 2 StPO envisages the right to access the files for all victims, irrespective of whether they join the criminal proceedings as private parties. They only enjoy this right in so far as the victim's interests are concerned. Access to files may only be rejected or limited as far as the purpose of investigations or an uninfluenced statement of a witness might be at risk.

All victims are informed about their right to receive information about their case⁴¹. It is difficult to say how many persons use this right. In victim support institutions, only those victims can be found who succeeded in seeking assistance. The victim-helpline 0800 112 112 frequently receives inquiries referring to the question how victims can gain information about their own case. Many victims assume that they will „automatically“ receive a copy of the files and then are disappointed when this expectation is not fulfilled.

It is basically easy to access the files with the police. Part of the files can be copied, after payment of a small amount for the copies. Victims can, however, create „copies“ themselves, for instance if they photograph parts of the files with their mobile phone. In that case, access to the files is completely free of charge. However, according to the police, victims vary rarely request access to the files.

⁴¹ For details see Article 3 and 4.

Victims can also access the criminal file concerning themselves at court, under the legal conditions. A fee incurs for each copy, also in case the persons concerned make their own copies, for instance by photograph. It is, however, possible to receive parts of the files compiled into one file. In that case, costs of the entire file are equivalent to the costs of one paper side⁴². Even though it is possible, this advantageous form of accessing the files has not been adopted.

The victim's right to access the file was already introduced in Austria by means of the restructuration of investigation proceedings. An evaluation of the new investigation proceedings showed that 3% of all victims request access to the files, and that it was permitted in all of those cases, with access being almost exclusively (96%) done by a legal counsel⁴³. Access to the files took place at court in ca. 44% of the cases, at the public prosecutor's office in ca. 30% and at police stations in ca. 15% of the cases.

Victims are informed in a standardised way if the criminal prosecution is discontinued. This information is not easy to understand for many victims, and a great number of people therefore turn to the victim-helpline. The victim helpline number 0800 112 112 is - even if it is only in small print – visible on the notification about the discontinuance of proceedings, and it is thus at least ensured that the person concerned can seek information and advice again. The decision about discontinuance of proceedings does not give detailed reasons in its first form, but it is possible for persons concerned to claim and also receive a detailed justification within 14 days (§ 194 Par 2 StPO).

Due to the StPRÄG I 2016, victims were given rights to be notified. Victims as defined by § 65 Z 1 lit a and b, as well as victims with specific protection needs ex officio (§ 172 Par 4 StPO) may request information:

- About the release of the accused from preliminary imprisonment (§ 172 Abs 4 StPO);
- About the release of the accused from pretrial detention (§ 177 Par 5 iVm § 172 Par 4 StPO)⁴⁴;
- About the escape of the accused from pretrial detention (§ 181 a StPO).

By request of the victim this is taken into account in so far as, on the one hand, an application is necessary. On the other hand, it is possible for victims to declare at any stage of the proceedings after legal instruction to waive any further notifications and summons (§ 70 Abs 2 StPO). This

⁴² § 32 Gerichtsgebührengesetz (Court Fees Act - GGG), BGBl 1984/501, last amendment through BGBl 2017/130, VII, Comment 6.

⁴³ Birklbauer et al., 2011, pp. 196 f.

⁴⁴ This also closed a legal loophole: now also a release of the accused after release from prison in the time between the first instance judgement and the judgement's legal effect is provided for. Until the amendment, the time of the first instance judgment was envisaged as time limit.

“opting-out”-solution also appertains to victims who must be informed ex officio.

In connection with the criminal offence, all victims need to be informed, upon request:

- About the convict's escape and his recapture (§ 149 Par 5 Code of Criminal Procedure⁴⁵ and § 106 Par 4 StVG);
- About the first unguarded leave from prison;
- About the (impending or completed) release from prison;
- About directives regarding a conditional release.

Information is given by the prison director. For this, it is however necessary that they have been informed about corresponding applications by the victim. Notifications regarding the prison sentence do not always work reliably in practice. Yet there is a corresponding problem awareness, and solutions are currently sought⁴⁶.

There is indeed de facto a great difference concerning the right to information about the case between victims who receive victim support and such victims who cannot fall back on this kind of entitlement. As part of victim support, lawyers are extensively informed about each step if the proceedings and they pass on this information in a comprehensible way to the persons concerned. In order to prevent difficulties in comprehension, psycho-social victim support officers are juristically informed and can offer further support.

Many other victims not entitled to receive victim support are on their own and have to gain the respective information themselves. There is reason to fear that this is not easy for many, since many of those victims also do not find their way to victim support institutions.

General information on time and place of the trial is sent by post to all victims and witnesses. The summons usually also contains what paragraph the accused is charged for. Information on final judgement, however, is not usually sent out. Victims who have a legal victim advocate often have an advantage here, since legal victim supporters can gain access or request the final judgement and also protocols of the trial.

⁴⁵ Penal Procedure Code (StVG), BGBl 1969/144. Last amendment through BGBl I 2018/32.

⁴⁶ By now, a „task force“ on criminal law and criminal procedural law works on the improvement of victim protection.

Survey Results: Participants mostly were of the opinion that victims are informed of their right to receive information about their criminal proceedings (accumulated: 89%). According to 87% of the sample, victims receive information on request. How often information is not provided to victims, based on their role in the criminal justice system was less easy to answer for participants. 51% chose “rarely” or “never”.

64% thought that the reasons provided for any decision was generally sufficient for victims. Victims are generally informed about their right to be notified of the release or escape of an offender (accumulated: 71%).

ARTICLE 7 - RIGHT TO INTERPRETATION AND TRANSLATION

Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings are provided, upon request, with interpretation at least during any interviews or questioning and with translation of information essential to the exercise of their rights in criminal proceedings in accordance with their role. Victims may challenge a decision not to provide interpretation or translation.

It has to be generally assumed that persons are agitated after a victimisation and during interrogations as part of a criminal procedure, and that this makes it even harder for them to communicate in a language that is not their mother tongue⁴⁷.

Every victim not able to speak the language of procedures has got the right to receive a translation aid. The translation aid is at least granted for information about victims' rights and during the trials the victim takes part in. Besides that, every victim has got the right to access the files and – as far as he/she does not sufficiently understand the language of proceedings – the entitlement to a free translation of the crucial parts of the file. This way, it is ensured that the victim also receives those pieces of information that are relevant for his/her participation⁴⁸.

The victim's entitlement was extended to the right to receive a verbal and written translation and adapted to the respective rights of accused persons (§ 56 StPO) by the Criminal Law Amendment Act in implementation of the Directive. The form of a written translation is also possible now. Translations have to be made within an appropriate period that is suitable for safeguarding the victim's rights and interests⁴⁹. Written translations have to be made upon request by the victim (i.e. not ex officio) and they refer to crucial parts of the files, that is parts that should be known in order to safeguard the victim's rights and interests. As per § 66 Abs 3 StPO, the translation of the written acknowledgement of the official complaint, the notification about the discontinuance of proceedings and their justification, as well as the transcript of the judgement and penal order are in any case provided for by the law. Beyond that, the victim can claim the translation of

47 Amesberger& Haller, 2016, p. 13.

48 For details on access to the files, see Article 6.

49 Decree BMJ-S578.029/0006-IV 3/2016, p.4.

further parts of the files that need to be concretely designated, whereat in these cases it needs to be scrutinised whether the translation is necessary for safeguarding the victim's rights and interests. This is handled less restrictive with civil claimants. There is also the possibility of a verbal translation and a verbal summary⁵⁰. The criminal police are responsible for translation costs of the acknowledgement of the report of an offence, the prosecution is responsible for costs of notification of the discontinuance of proceedings and the justification, and finally the court for judgement and penal order⁵¹. Parts of the files are very rarely translated in written form for victims.

It still is a great problem that qualified interpreters are not available for all languages at any time. Executive forces often fall back on other persons to facilitate a first communication. Shortages also occur time and again in urban centres. Especially since the great refugee movements, translations of languages have been needed for which it is hard to find interpreters. This frequently leads to unsatisfactory situations. It happens far too often that victims who want to report an offence are sent away with the order to return with a person who can translate for them.

With smaller language populations it might happen that victims and interpreter know each other, which is also unacceptable for the victim. If non-certified persons are used for interpretations, the quality of the translation can also no longer be guaranteed⁵².

Victim support organisations often have the impression that the police does not use transparent criteria about which language skills of victims are sufficient. One sometimes gets the feeling, however, that even little knowledge of the language is considered sufficient and that the assessment of language skills often is too positive.⁵³

In supporting victims of criminal offences, there are recurring situations of counselling sessions that need to be translated. Information and exercises about this are part of the training for psycho-social victim advocates in order to arrange these sessions as good as possible for the victims. Most victim support institutions have got a team of qualified and experienced translators. Yet even here, languages of minority populations in Austria cause difficulties. Victims without entitlement to victim advocacy often cannot benefit from a qualified translation. As costs for those victims have to be borne by institutions that are not sufficiently funded, persons who could interpret for free are involved out of necessity.

The victim helpline 0800 112 112 only offers counselling in German, English, French and Polish at the moment. Moreover, not all those languages can be offered simultaneously. A thought

50 Ibid.

51 Decree BMJ-S578.029/0006-IV 3/2016.

52 One interviewee gave an example of an interpreter, who voiced his opinion to a female victim of partnership violence that she should not „make such a fuss“ and report such a trifle to the police. The woman indeed abstained from making an official complaint and could only find help from executive forces after a second attempt.

53 Amesberger& Haller, 2016, p. 13.

process about resources is absolutely necessary, in order to be able to inform and counsel all victims. The association NeuStart⁵⁴ is the only victim support organisation in Austria offering interpretation via sound and video transmission. Interpretation services from the entire German-speaking area are available via online services. Interpreters are certified, and it can be ruled out with a high probability that the interpreter and the victim know each other.

Survey Results: Regarding interpreting services, the option chosen most often in the Austrian online survey was “At police interviews” (87%), followed by “During the entire trial” (51%).

According to 80%, interpreting services in Austria are free of charge.

Main problems with ensuring the right to interpreting services were lack of availability of interpreters (66%), risk of interpreter bias (38%), and interpreting services do not address victims' vulnerability (36%). The following documents are considered essential to be translated and made available to the victim in translated form: Information to be provided from first contact (68%), Final judgement (57%), Notification of time and place of trial (55%), Reasons for decision not to prosecute or to end the investigations (50%), Reasons for final judgement (47%), Decisions not to proceed with or end an investigation or not to prosecute (45%), and information on the status of the criminal proceedings (38%).

57% were of the opinion that translation of documents for victims is sufficient. Limitations mentioned were that only the essential parts of the files are translated for victims, and that the court summons and the decisions of the court are not translated. The main problems with respect to translations identified were: lack of availability of translators (55%), and information not being deemed essential for translation (33%).

54 NeuStart offers services revolving around delinquency. Traditionally, these are services for persons who have become delinquent, such as probationary services and assistance to persons released from prison. NeuStart is the only institution in Austria offering out-of-court settlements as restorative justice measure. In addition to that, NeuStart can also accompany victims in the context of victim advocacy as defined by § 65 Z 1 lit a and b.

ARTICLE 8 - RIGHT TO ACCESS VICTIM SUPPORT SERVICES

Member States shall ensure that victims have access to confidential victim support services, free of charge, before, during and for an appropriate time after criminal proceedings. Member States shall facilitate the referral of victims, by the competent authority that received the complaint to victim support services. Member States shall take measures to establish specialist support services in addition to, or as an integrated part of, general victim support services. Member States shall ensure that access to any victim support service is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

There is a single **general victim support** institution in Austria available to all victims of crimes. On the one hand, the WEISSER RING is a general contact point for referral to other, specialised, victim support institutions. On the other hand, the WEISSER RING is an institution offering assistance to all victims of criminal offences who have no specialised victim support institutions for their issues in Austria. In 2017 the WEISSER RING advised 2,213 clients, 1,999 of them in Vienna. 41.84% of those cases were offences against life and limb, 17.45% were offences against personal freedom⁵⁵.

The WEISSER RING has in the meantime been officially recognised in § 14 VOG as victim support institution and offers support services all over Austria. This is only possible through the civic commitment of more than 300 volunteer workers. Nonetheless it is difficult to also instantly offer support services in rural regions. Most of the time consulting is then provided by phone.

The WEISSER RING operates the **victim helpline 0800 112 112**⁵⁶ on behalf of the BMVRDJ. It is a free-of-charge hotline that can be reached 365/7/24. An average of 25 in-depth talks were carried out per day in 2017⁵⁷. The victim helpline constantly tries to increase its publicity, most recently by means of a poster campaign in 2017. In addition to that, the number of direct referrals by executive forces is increased through numerous networking- and cooperation talks with the

55 WEISSER RING [Ed.], 2018b, Jahresbericht 2017.

56 BMVRDJ & WEISSER RING (Eds.), 2018d, <http://www.opfer-notruf.at/> (accessed: 10.07.2018).

57 Most of those calls concerned crimes against physical integrity and life (25%) as well as crimes against property and against liberty (both 18%). The website of the emergency helpline was accessed 37,000 times in 2017; see: BMVRDJ (Ed.), 2018e.

executive authorities.

Apart from the WEISSER RING, there are further victim support institutions specialised in the support of victims of violence and the support of surviving relatives who were bereaved of a loved one through a criminal act. This is mostly linked to the fact that mainly services belonging to victim advocacy are financed by the state. The association NeuStart⁵⁸ works in this area throughout Austria and is also regionally easy to reach. In the Viennese area, also the Men's Counselling Centre offers support for boys and men who have become victims of (sexual) violence⁵⁹.

Institutions supporting victims of violence in close social relationships, victims of human trafficking in women or men, female victims of sexual violence as well as children as victims of violence belong to the specialised victim support institutions.

In the field of violence in close social relationships, Austria has got a decidedly professional close-knit net at its disposal. The centres for protection against violence and the intervention centre of Vienna, women counselling centres as well as women shelters belong to this area. An institutionalised referral of victims by executive forces takes place in the field of violence in close social relationships. After the imposition of a restraining order, executive officers are obligated to inform a specialised victim support institution of the police operation as per § 38a SPG, such as the centres for protection against violence (and, in Vienna, the intervention centre against violence in the family) are acknowledged victim support institutions as per § 25 SPG. There are no concerns in terms of data protection law about them.

The information obligation was extended to charges of violence in close social relationships where no restraining order was imposed, and to charges of stalking. In 2016 the police imposed 8,637 restraining orders throughout Austria.

Victim support institutions actively contact the victims. Due to the referral of the police, 8,637 persons were able to access counselling in Austria in 2016, 18,373 persons were support by the centres for protection against violence /intervention centre Vienna in total. 83.5 % of the counselled victims were female⁶⁰.

Whereas referral after restraining orders works seamlessly according to experts, reports of criminal offences after violent incidents without restraining orders and charges of stalking are not forwarded as reliably. In this regard, institutions are still eager to reach a preferably seamless referral system through trainings for executive forces as well as cooperation and information talks. The model of institutionalised referral as provided for by law has proven successful.

58 Verein NeuStart (Ed.), 2018.

59 Männerberatung (Ed.), 2018.

60 Intervention centre against violence in the family Vienna (Wiener Interventionsstelle gegen Gewalt in der Familie) (Ed.), 2017, pp. 73ff.

Protection against violence centres can be found in every federal state, with additional branch offices in the larger federal states (for instance Lower Austria and Styria) to provide support for persons concerned as fast as possible. Victim support officers come to an area close to the victims, if required, to meet them in a nearby institution.

Also women's advice centres offer support for women who have become victims of violence in intimate relationships. Most victims arrive at women's advice centres via referral by another social institution or the victim emergency helpline mentioned above. In the area of violence in close social relationships there is furthermore a free of charge „women's helpline against violence 0800 222 555“. 7,945 persons were intensively advised by phone in 2017. The women's helpline offers phone counselling in several languages and a „help-chat“. Numerous campaigns try to raise awareness for the fact that there are various offers of assistance against violence in partnerships are available, and that violence in close social relationships is not a "private matter"⁶¹.

With regard to sexual violence, five specialised „emergency numbers“⁶² offer support for victims and their relatives in Austria. Those advice centres offer counselling by phone but most of all perform personal counselling sessions. A nationwide support is difficult and often impossible in rural areas.

There is a single **specialised institution** for women victims of human trafficking (intervention centre for trafficked women⁶³). That organisation is present in the whole of Austria and offers safe accommodation in an emergency apartment as well as counselling and support. Victims of **human trafficking** are usually considered to be in need of specific protection. An outstanding cooperation with the executive authorities ensures that a majority of concerned persons is quickly referred to the specialised institution. The greatest problem in this field is that not all victims of human trafficking are identified as such, especially male trafficking victims. The advice centre "Men Via"⁶⁴ offers corresponding support, an emergency apartment, which also could guarantee a safe accommodation.

Children victims of violent acts in Austria receive support from child protection institutions. Institutions are usually co-financed by the federal states, and their services vary correspondingly. Most child protection centres offer victim advocacy. A majority of the child protection centres is organised by the Federal Association of Austrian Child Protection Centres⁶⁵. There are around 30 of such institutions throughout Austria, which are NGOs. More than 10,000 children and their reference persons are supported every year⁶⁶. Services are also referred by the governmental

61 Womens' help-line (Frauenhelpline), 2018.

62 Association of Autonomous Womens' Counselling Services for Sexual Violence in Austria (Bund autonomer Frauenberatungsstellen bei sexueller Gewalt in Österreich) (Ed.), 2018.

63 LEFÖ-Intervention Centre for Women affected by Trafficking (Interventionsstelle für Betroffene von Frauenhandel) (Ed.), 2018.

64 Men Via (Ed.), 2018.

65 Austrian Child Protection Centres (Österreichische Kinderschutzzentren - Bundesverband) (Ed.), 2018^a.

66 Austrian Child Protection Centres (Österreichische Kinderschutzzentren - Bundesverband) (Ed.), 2018^b.

child and youth welfare institutions. Cooperation with the police is constantly improved.

Survey results: most participants felt that victims are always or often referred to victim support services by the competent authorities (accumulated: 79%). Victim support services meet the needs of victims of crime for the biggest part in Austria (accumulated: 68%).

To improve victim support services in Austria, the following is mentioned: more funding (67%), more professionals (38%), better geographical coverage (37%), and better services for certain groups of victims (36%).

ARTICLE 9 - SUPPORT FROM VICTIM SUPPORT SERVICES

Victim support services shall, as a minimum, provide: a) information, advice and support relevant to the rights of victims; b) information about or direct referral to any relevant specialist support services in place; c) emotional and psychological support; d) advice relating to financial and practical issues arising from the crimes; e) advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation. Specialist support services shall develop and provide: a) shelters or any other appropriate interim accommodation for victims; b) targeted and integrated support for victims with specific needs such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships.

There are merely two services available to all victims of criminal offences in Austria. The **victim helpline 0800 112 112** offers anonymous and extensive support, quick help in emergency situations, relief and guidance as well as competent information about fitting counselling and support institutions in Austria. If required, a direct connection is made to respective counselling centres as well as other institutions of the judicial system. This is the only service to be fully state-funded by the BMVRDJ.

The **WEISSER RING** is the general place for all victims to seek information and first support. Usually, clients get in touch via the victim helpline, by mail request, information from the police or in person at the WEISSER RING offices in Austria during the day-time business hours. 24/7 support is only available on the phone via the victim helpline. The WEISSER RING then offers information about victims' rights and support options by victim support institutions. Beyond that information is also given about the VOG. If required, persons receive assistance with the application process. After victimisation, support is offered in stressful situations, through emotional support, to relief the strain, and crisis intervention by psychologists in case of need. If necessary, practical and financial issues are discussed. The WEISSER RING even is in the fortunate position, supporting victims, who face a financially dire situation after a criminal offence, through donation funds. Most of those services have to be financed through commitment of the civil

society and private donations. The WEISSER RING currently finances itself with individual services that are government-funded. These are the victim emergency helpline and activities that fall under psycho-social victim advocacy. However, basic funding safeguarding the range of services in the future is missing.

Victim advocacy represents an excellent service⁶⁷. Whereas counselling of victims in general falls under the description of (general) victim support in Austria, victim advocacy is a special form of victim support that, by law, is available for clearly defined victims, namely those of acts of violence and sex crimes. Victim advocacy consists of a psycho-social support and a legal support that is free of charge and funded by the Ministry of Justice. This includes being accompanied to court by the psycho-social victim advocate and also receiving a 'victim lawyer' representing the victims' rights in the main trial. Victims of other criminal acts are not entitled to this form of free accompaniment and legal representation, which is why victim advocacy has to be emphasised in the Austrian victim support system⁶⁸. Nonetheless, only a small percentage of rightful claimants actually make use of the service. The evaluation of the new investigation procedure reached the result that only 1.8% of victims made use of legal victim advocacy, and only 1.4% psycho-social victim advocacy⁶⁹.

Very often, first support consists of a short clearing and referral to a specialised support institution. This depends on the nature of the crime and the victim group. In Austria, historically, specialised support institutions exist for women as victims of domestic violence, victims of sex crimes, and minors who become victims of abuse or violence. Offers of specialised institutions against violence in intimate relationships especially focus on the increase of security for the victims. The protection against violence centres primarily support in legal steps to increase security, and what is more, counselling on separation and divorce with all the issues linked to it.

Services of women's advice centres and women shelters are similar. There are 30 women shelters in Austria, which are united in two umbrella organisations⁷⁰. In total, 1,633 women were given shelter and counselling as well as 1,708 children throughout Austria⁷¹. In 1987, the European Parliament Committee for Women's Rights and Gender Equality recommended to establish a place per 10,000 inhabitants. According to the statistics of the Autonomous Austrian Women Shelters, this would amount to 860 women shelter accommodations for the entire federal territory. About 90 places for women and children as victims of violence are still missing then⁷². It is now planned to establish another 100 places in women shelters for victims of violence until

67 For details see "Best Practise"

68 For more details see: http://www.infovictims.at/at_en/005_who/pages/005_006_001.html

69 Birklbauer et al., 2011, 195 f. n= 3727 for legal victim advocacy, n= 3714 for psycho-social victim advocacy.

70 On the one hand the Autonomous Austrian Women Shelters (VereinAutonomeÖsterreichischeFrauenhäuser - AÖF), on the other hand the Association of Austrian Women Shelters (ZusammenschlussÖsterreichischerFrauenhäuser - ZÖF).

71 ZÖF (Ed.), 2018b.

72 AÖF, 2018b.

Survey results: According to the majority of respondents, all victims receive information, advice and support relevant to the rights of victims (accumulated: 97%), as well as emotional and psychological support (accumulated: 87%), and advice relating to financial and practical issues associated with the criminal offence (accumulated: 88%).

⁷³ N.N., 2018.

ARTICLE 10 - RIGHT TO BE HEARD

Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.

There is no explicit right of the victim to be heard in Austrian law. Victims are interrogated as witnesses, if they can give evidence about the circumstances of the crime or about facts extending beyond. As witnesses, they are obligated to give full and true evidence (§ 154 StPO)⁷⁴. The decision about which pieces of evidence are needed in the main trial and before to sufficiently clarify the facts and examine the truth lies on the prosecution during investigation proceedings and the court during the trial phase.

Victims can join the criminal procedure as civil claimants („Privatbeteiligte“)⁷⁵. To do so, a corresponding declaration – if legal conditions apply – and – as far as this is not obvious – a substantiation of their compensation claims and thus of their right to be involved in proceedings (§ 67 Par 2 StPO) is sufficient. Not all victims but only civil claimants have the right to call for the admission of evidence (§ 67 Abs 6 Z 1 iVm § 55 StPO). Such applications for evidence need to be substantiated. Admission is decided by either the prosecution (§ 55 Abs 4 StPO) or the court (§ 222 StPO), depending on the stage of proceedings. Requests to present evidence can also be made with the criminal police. They can take the requested evidence or submit the application for evidence to the prosecution (§ 55 Par 4 StPO). Applications for evidence, in accordance with the justice system, are primarily directed towards the enforcement of claims under civil law. In case of a negative decision regarding an application for evidence and an acquittal as a result with the victim being referred to the civil courts, the civil claimant is entitled to the legal means of a nullity appeal or second instance proceedings, respectively, if the appeal for evidence could also have substantiated the claims under private law (§§ 282 Par 2, 345 Par 4, 465 Par 3 StPO)⁷⁶.

Experts counselling victims of violence in intimate relationships often gain the impression that not the entire facts are registered in the police interrogation. Before victims have the chance to make a more profound statement, the prosecution usually stops proceedings. Counsellors

⁷⁴ Prohibitions to be heard as witness (§ 155 StPO), exemption from making a statement (§ 156 StPO) and the right to refuse to give evidence (§ 157 StPO) mark exceptions of the obligation to testify and tell the truth.

⁷⁵ For details cf. Article 16 Victims' Directive.

⁷⁶ For the files surveyed for the evaluation of the StPO-amendment, applications for evidence were submitted in only 6% of the cases. 27% of applications for evidence were rejected, 93% of those were not substantiated in more detail; see: Birklbauer et al., 2011, pp. 200f.

think that the victims' right to be heard is not granted sufficiently in this context. Police officers obviously do not always question in-depth and completely (at least not in cases of violence in intimate relationships), with the argument that victims could express themselves in court⁷⁷. Incomplete written statements often lead to proceedings being closed by the prosecution, because the prosecution only examines victims in exceptional cases⁷⁸.

There is an abridged execution of criminal proceedings by means of a so-called mandating procedure („Mandatsverfahren“)⁷⁹. Issuing a penal order is however limited to not compromising the victim's rights and justified interests. Execution of the mandating procedure is however not limited to offences without victims (such as drug offences). The introductory decree of the BMVRDJ⁸⁰ refers to the fact that this could also include advantages for the victim⁸¹. No procedural step is provided for that enables to weigh and enquire the victim's interests. This accordingly led to criticism from victim support institutions⁸². The victim can also make a written appeal against the penal order within four weeks from delivery. In the case of a legal appeal, the main trial must be ordered (§§ 455, 488). According to the explanatory remarks to the government bill⁸³, a main trial must however take place in the victim's interests, if it seems necessary to demonstrate the significance and consequences of his/her offence. Violence in family relationships is mentioned as an example in this regard. The mandating procedure has therefore not gained acceptance in county court practice, and by now is considered a “dead letter”.

Survey results: victims are regularly heard and enabled to provide evidence in Austria (accumulated: 79%), and the right of the victim to be heard is not limited by the role of the victim in the proceedings (54%). According to the survey results, measures to assess a child's age and maturity are not necessarily sufficient in Austria (accumulated: 58%).

77 Amesberger& Haller, 2016, p. 16. The great number of discontinued criminal proceedings against violence in close relationships is also criticised by the GREVIO shadow-report. NGO-Coalition (Ed.), 2016, p. 31.

78 Amesberger& Haller, 2016, p. 16.

79 § 491 StPO: The charge sheet may only impose a fine or – only if the accused is represented by a defence lawyer – a suspended sentence of a maximum of one year. Such a course of action (decree of a penal order by the court) is possible by a single judge in proceedings at the county court and at the regional court and must be applied by the prosecution. The charge sheet including the demand for prosecution has to be delivered to the accused person and - where applicable – to his/her representative, but also to the victim and, where applicable, the victim's representative. A sentence can be determined without a preceding main trial by means of a written penal order, if it is about a misdemeanour and the accused was questioned about the offence and explicitly waived the execution of a main trial after information about the consequences, the court does not discontinue proceedings by resolution, i.e. because of the trifling nature of the offence or due to the application of diversion as restorative justice measure, the court has got sufficient information to decide about guilt and sentence, and as long as the victim's rights and justified interests are not compromised. The court, however, has the freedom to examine the accused and the victim.

80 BMJ-S578.029/0006_IV 3/2016

81 For instance because a second hearing is not necessary and the victim does not need to see the accused.

82 Federal Association of the Austrian Protection Against Violence Centres (Ed.), 2014; WEISSER RING (Ed.), 2014.

83 EBRV 181 Blg XXV.GP, 19 Item 10.2.1

ARTICLE 11 – RIGHTS IN THE EVENT OF A DECISION NOT TO PROSECUTE

Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to review of a decision not to prosecute. Where the role of the victim will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. Member States also need to ensure that victims are notified of their right to receive, and that they receive sufficient information to decide whether to request a review.

Every victim has to be informed about the **decision of the prosecution to discontinue the investigation proceedings**. This notification needs to include an indication of the grounds for discontinuance and also inform the victim about the possibility to apply for a written substantiation of the decision not to prosecute within fourteen days of delivery of the notification, and to request a review of the decision not to prosecute within fourteen days, respectively (§ 194 StPO)⁸⁴. Based on the request to continue criminal proceedings (§ 195 StPO), the prosecution either has to continue proceedings or, if the prosecution holds that the request of the review of the decision not to prosecute is unjustified, to submit the files and an official statement to the court.

As long as the punishable offence has not become time-barred, the criminal proceedings need to be continued, if

- The law has been broken or applied incorrectly,
- There are substantial doubts as to the reliability of facts that led to the discontinuance; or
- New facts and evidence are presented that seem suitable to clarify the circumstances insofar as a diversion or an indictment can be initiated.

If the request is rejected by court (because it has been submitted too late or has been made by

84 If the victim was not notified, the deadline is three months.

a person who is not entitled) or dismissed (because the mentioned reasons for continuation do not exist), a sum of 90 Euro needs to be paid. The lump sum for the request to continue criminal proceedings is taken over for victims who receive victim advocacy. If however, the accused is represented by a lawyer (defense) and the request for the review is rejected, the victim might have to pay costs for the process (litigation costs).

The StPRÄG I 2016⁸⁵ brought on changes in the request for reviews of the decision not to prosecute for underage victims: no judicial authorisation by the guardianship court is necessary from now on with minor victims' requests for a review of the decision not to prosecute (§ 195 Paragraph 2 StPO), furthermore, minor victims are exempt from a lump sum payment in case of a rejection or dismissal of the request for a review of the decision not to prosecute (§ 196 Par 2 StPO)⁸⁶.

*Sautner*⁸⁷ merely sees an „abuse control“ in the current regulation. According to her, most of all, however, the legal possibility for the prosecution not to initiate investigation proceedings due to the lack of an „initial suspicion“ contradicts the idea of Art 11 Victims' Rights Directive, because in those cases only a notification of the person who made an official complaint is provided for, yet no option for the victim to have the decision reviewed within the meaning of § 195 f StPO.

In terms of requests for a review of a decision not to prosecute, scientific evaluation of the implementation of the Criminal Procedure Reform Act⁸⁸ refers to a version of the law that has been amended by now. At the time of evaluation, the request for a review was not linked to any cost risk. Altogether 0.4%⁸⁹ of cases led to the request of a review by victims. Nowadays there are 2,000 to 3,000 of such requests per year throughout the nation, with ca. 20% being accepted.⁹⁰ Requests for a review of a decision not to prosecute are thus a rather rare exception.

The victim helpline is frequently called by persons with questions regarding the request for a review of a decision not to prosecute. Requests for a review primarily make sense, if there is evidence hitherto unknown to the prosecuting authority in the investigation proceedings, and which could possibly contribute to gain a clear picture of the circumstances of the crime. Only in very rare cases do psycho-social and legal advocates try to obtain a continuance of proceedings due to other reasons. There is no direct risk of litigation costs with an entitlement to victim advocacy, yet it does not seem productive to deliberately submit futile requests for a review.

What is most beneficial to most victims, according to experiences of victim supporters, is the detailed substantiation underlying the decision to discontinue proceedings.

85 BGBI I 2016/26.

86 Moser&Urban, 2017, p.26. Klein & Prior, 2016, p. 866.

87 Sautner 2017, pp. 98 f.

88 Birkbauer et al., 2011, p. 203.

89 n= 2,184.

90 Singer 2016, p. 23f.

ARTICLE 12 - RIGHT TO SAFEGUARDS IN THE CONTEXT OF RESTORATIVE JUSTICE SERVICES

Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Member States shall facilitate the referral of cases, as appropriate to restorative justice services.

In Austria, it is possible to handle criminal proceedings by the restorative measure of “diversion” (§§ 198 ffStPO). This means that the prosecution withdraws from prosecuting a criminal offence, if circumstances are sufficiently clarified and a discontinuance of proceedings does not come into question, but still a penalization does not seem the right way to prevent the accused or others from committing further offences. In this context the prosecution has got four restorative measures at hand⁹¹. The decision on restorative measures lies with the prosecution in the investigation phase (§ 198 StPO), and with the sentencing court in the trial phase⁹² (§ 209 StPO).

In case of a corresponding course of action, the rights and interests of the victims are to be maintained. Especially the interest in compensation needs to be assessed and supported to the greatest possible extend. The victim may involve a trusted person and immediately has to be informed about his/ her rights, especially the one to victim advocacy and the relevant victim support institutions. As far as this seems necessary for safeguarding victims' rights and interests, especially the one regarding compensation, at least in cases of domestic violence (§ 38 a SPG) and victims as defined by § 65 Z 1 lit a StPO, victims and their legal representatives need to be given sufficient time to make a statement prior to the withdrawal of the prosecution. The victim, in any case, must be notified, if the accused agrees to compensate for the damage resulting from the offence or to contribute in any other way to compensation. The same applies in case that the accused assumes an obligation directly affecting the victim's interests (§ 204 StPO).

If the obligation to inform and notify is not complied with or the victims – even though provided for by law – are not granted the possibility to make a statement, no possibilities arise for the

91 (1) payment of a lump sum (§ 200 StPO), (2) the performance of community services (§ 201 StPO), (3) determination of a probationary period in connection with probationary service and the fulfilment of obligations (§ 203 StPO), (4) victim-offender mediation (§ 204 StPO).

92 After charges have been pressed.

victim to appeal against the decision about restorative measures. In practice this, unfortunately, causes that the obligations to inform are insufficiently attended to and experts report that victims are only granted the possibility to make a statement prior to a decision about restorative measures in exceptional cases.

Only the association NeuStart⁹³ offers criminal judicial conflict settlement in the sense of **victim-offender-mediation**, having years of experience and undisputed expertise concerning services with regard to delinquency at its disposal. Mediation as one possible restorative justice measure was already embodied in the StPO in 2000, and it was adopted into the new investigation proceedings through the StPRefG⁹⁴.

In victim-offender-mediation the victim, is to be involved, as far as he/she is willing to. The objective is the „fair compensation“⁹⁵ between accused and victim. The realisation of a mediation depends on the victim's agreement, unless he/she does not consent due to reasons that are not to be taken into account in criminal proceedings⁹⁶. With restorative measures for criminal offences of adolescent delinquents a consent from the victim is not a condition (§ 8 Abs 3 JGG). The justified interests need to be taken into account in any case (§ 204 Abs 2 und 3 StPO). By means of the victim-offender-mediation, the accused can contribute to the compensation of damages, not only by means of payments, but also, for instance, through a formal apology or symbolic acts⁹⁷.

If victims do not accept the invitation to a victim-offender-mediation, proceedings usually are discontinued without any further involvement. If a probationary period is determined (§ 203 StPO), victims usually are not invited for a statement either, also not in cases of violence in intimate relationships, where this is, however, provided for by law. Sporadically there is an invitation to submit a statement after the probationary period, when proceedings ought to be ultimately stopped.

The prosecution can initiate a clearing with NeuStart for an individual case⁹⁸. Victims receive contact information on partisan victim support institutions in each first interview. Endeavours primarily attempt to make the respective information as comprehensible as possible. NeuStart also offers to actively make contact with a victim support institution, based on the victim's consent. NeuStart especially attaches great importance to the support of victims by partisan victim support institutions in cases of violence in intimate relationships. To not have victims and suspects meet each other, invitations are separated in time and there are separate waiting areas. Should invitations be simultaneous, victims are informed about this. At the same time, they are

93 NeuStart, 2018.

94 As already discussed, this already forestalled a part of the implementation of the Victims' Directive.

95 Gläser&Stangl, 2015, p. 606.

96 For instance, the wish for revenge, cf. Schroll in WK StPO § 204 Rz 8.

97 Sautner, 2017, p. 109.

98 An interviewed expert from NeuStart describes that the victim's interests are key focus of such clearings.

informed that they can make another appointment, if requested, in case the victim does not want to encounter the accused person under any circumstances.

Victim-offender-mediation as a restorative measure in cases of violence in intimate relationships is discussed controversially in Austria.⁹⁹ The GREVIO-Report is actually "concerned that the Austrian system of alternative dispute resolution in criminal law replaces criminal court proceedings...This may mask the full extent of domestic violence".¹⁰⁰ However, it¹⁰¹ also takes into account measures offered by Neustart. All cases are assessed in terms of whether they are really suitable for a victim-offender-mediation¹⁰².

Survey Results: 64.5% of the participants in the online survey had the opinion that restorative justice services are available in Austria.

99 Pelikan, 2009, 7ff. AÖF, http://www.aof.at/images/06_infoshop/6-2_infomaterial_zum_downloaden/Infoblaetter_zu_gewalt/Diversionele%20Maßnahmen%20im%20Bereich%20Gewalt%20in%20der%20Familie.pdf (accessed: 10.07.2018).

100 See GREVIO-Report, p. 44.

101 Federal Ministry for Women and Health (Ed.), 2016, Grevio-Report 2016, Rz 166.

102 Ca. 50 cases are rejected per year, because the responsible members of staff from NeuStart had the impression that consent to the victim-offender-mediation was not given voluntarily but under pressure from the partner, and that neither the violence in intimate relationships was over, nor the victim safe. Ibid., p. 44.

ARTICLE 13 - RIGHT TO LEGAL AID

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings.

All victims as well as civil claimants can be legally represented (§ 73 StPO). A lawyer, a victim support institution acknowledged by § 25 SPG or any other suitable person can be authorised as representatives (§ 73 StPO).

Victims of violent crimes (§ 65 Z 1 lit a StPO) as well as surviving relatives who have been bereaved of a loved one as the result of an intentional or involuntary criminal offence, as well as remote relatives who have become witnesses of such an offence (§ 65 Z 1 lit b StPO), are, by request, entitled to victim advocacy, as far as this is necessary due to their personal concernment and the safeguarding of the victim's procedural rights (§ 66 Abs 2 StPO)¹⁰³. The limitation to individual victim groups based on inappropriate reasons is viewed critically by experts from victim support organisations¹⁰⁴. No costs incur for the persons concerned through legal victim advocacy, in case of a sentence, the convict is obligated to reimbursement of expenses to the Republic¹⁰⁵. Legal advocacy is granted irrespective of the victim's income¹⁰⁶ if the legal conditions for an entitlement to victim advocacy apply. The victim support institution contacted by the victim and concerned with the case is responsible for assessing whether the legal conditions¹⁰⁷ for an entitlement apply.¹⁰⁸ In 2017, the BMVRDJ financed victim advocacy with a sum of € 7,012,126.- (in 2016: € 6,259,963) and could thus safeguard victim advocacy for 8,444 victims (2016: 7,976 victims).

Amesberger & Haller found in an analysis of diaries of the Viennese office of the Viennese department of public prosecution that only 10% of the victims received victim advocacy support¹⁰⁹. The percentage still seems relatively high, in the evaluation of the new investigation proceedings 2011¹¹⁰ results which showed that only 1.8% of victims had used legal victim advocacy. The difference can be ascribed to the fact that a restraining order had been issued in nearly all cases

103 For more details see Nachbaur, 2010; cf. BMJ, 2007.

104 Gappmayer 2017, p. 239.

105 Costs are turned into a lump sum of up to € 1,000 (§ 381 Abs 1 Z 9 StPO).

106 Haumer&Prasthofer-Wagner, 2016, p. 335.

107 Victims of certain offences (namely of crimes involving violence or a sexual nature) are entitled to victim advocacy. It must also be clarified first, whether they were somehow involved or are clearly treated as victims in proceedings. Offences not entitling victims to victim advocacy are, for example, theft, fraud or damage to property.

108 Sautner, 2017, p. 110.

109 Amesberger & Haller, 2016, p. 17.

110 Birkbauer et al., 2011. N= 3,727

analysed by *Amesberger & Haller*, and persons concerned thus had been in contact with a victim support institution¹¹¹.

Legal victim advocacy is taken over by experienced lawyers specialised in victims' rights. Their commissioning is made by the victim support institution. The victim's choice of presentation therefore can sometimes be limited¹¹².

Victims without entitlement to victim advocacy can be provided with a free-of-charge lawyer. The preconditions for it are the victim joining proceedings as a civil claimant/private party, necessity of victim advocacy in the interest of the administration of justice, especially in the interest of an appropriate enforcement of claims to avoid a subsequent civil proceeding, and the victim not being able to meet the expenses for a legal representation without affecting the necessary livelihood costs¹¹³.

Application forms for free legal aid („Verfahrenshilfe“) are phrased in a complicated way. They are only available in the administrative languages of German, (Burgenland-) Croatian, Slovenian and Hungarian. It is theoretically possible to receive support from a judge or a prosecutor at the office day („Amtstag“) or service centre of the prosecution department for filling in the forms. Victim support institutions also support with applications. Hardly any cases exist, however, where legal aid is indeed applied for and is also approved for the victim in criminal proceedings¹¹⁴.

111 Amesberger & Haller, 2016, p. 18.

112 Haumer & Prasthofer-Wagner, 2016, p. 337.

113 The necessary livelihood in this case is that which the person and his/her family that the victim has to maintain needs for a living (§ 67 Par 7 StPO).

114 The evaluation by Birkbauer et al. only found a representation of the victim by legal aid in only 7% of the analysed cases; cf. Birkbauer et al., 2011, p. 195.

ARTICLE 14 - RIGHT TO REIMBURSEMENT OF EXPENSES

Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system.

Victims having themselves explicitly represented by a lawyer without being entitled to legal victim advocacy, have to bear the expenses for legal representation themselves. If civil claimants are referred to the civil court to pursue their claims, they can claim the respective costs incurred due to legal representation in criminal proceedings in civil proceedings (§ 393 Abs 5 StPO). In case of a verdict of acquittal, the victims have to bear the costs themselves. In case of a sentence, expenses for the legal representation of the victim need to be reimbursed by the convict (§ 389 StPO).

ARTICLE 15 - RIGHT TO THE RETURN OF PROPERTY

Member States shall ensure that recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings.

If property from the victim is seized (§ 110 StPO), the prosecution has to order the return of those items to the victim, in case a seizure is no longer necessary for the purpose of proof, and third-party rights are not affected (§ 69 Par 3 StPO).

If an item, which the court could confirm as belonging to the victim, is found among the possessions of the accused, the court orders its return after the verdict has obtained legal force. The item can also be issued immediately with the explicit consent of the accused (§ 367 StPO)¹¹⁵. If the possession seized from the victim cannot be returned, the sentence has to include the adjudgment of indemnity or compensation, as far as the value as well as the person entitled to it can be reliably identified (§ 369 StPO).

¹¹⁵ An item belonging to the victim can also be returned at an earlier stage: by application of the victim after the formal hearing of the accused, if the item is not (or no longer) needed for providing evidence and the victim's rights to claim the item does not seem doubtful (§ 367 StPO).

ARTICLE 16 - RIGHT TO DECISION ON COMPENSATION FROM THE OFFENDER IN THE COURSE OF CRIMINAL PROCEEDINGS

Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

An essential interest of victims concerns the enforcement of civil-law claims in criminal proceedings – without cost risk¹¹⁶. The victim can participate in the criminal proceedings to claim compensation of (material) damage or impairments (of non-material interests) (§ 67 StPO). This „Privatbeteiligungsanschluss“ (i.e. joining criminal proceedings as civil claimant/private party) of the victim aims at compensation of damage¹¹⁷.

The court has to determine the extent of damage or impairment, as far as this is possible based on the results of criminal proceedings or further simple inquiries. Depending on the results of criminal proceedings the court has to (partly or entirely) adjudicate the claimed compensation sum in the sentence or to refer the victim with its remaining claims to the civil court. In the latter case, the victim has to assert the (remaining) damage claims at the civil court. Apart from the other victims' rights, civil claimants/private parties enjoy additional rights¹¹⁸.

Unfortunately, there is no reliable data on how often damage claims are already granted in criminal proceedings. Experts do however agree that award of damages directly in criminal proceedings has increased in the last ten years. Compensation for pain in Austria is calculated according to „periods of pain“, which means that an expert report is used to identify how long certain pains affected the victim's quality of living. If an expert opinion on the extent and amount of a bodily injury is asked for, the formal request to identify those periods of pain is submitted to

116 Sautner, 2014, p. 359.

117 The „Privatbeteiligungsanschluss“ happens by means of a declaration of the victim, in which – as far as it is not obvious – one needs to briefly substantiate the entitlement to join proceedings as a victim. Such a declaration must be submitted to the criminal police or the prosecution, after bringing in an accusation. It can be submitted until the end of the proceedings for taking the evidence. Until then, also the amount of the requested compensation has to be quantified. The declaration can be withdrawn at any time.

118 For instance, the right to request the taking of evidence as defined by § 55 StPO or to appeal because of their claims under private law as per § 366 StPO.

the expert. Those expert reports form a good basis for an award of compensation in the criminal proceedings.

In the area of restorative measures, the court can protocol settlement agreements on compensation and summon to settlement attempts (§ 690 StPO). Other ways of seeking compensation can be insurances, and, in case of severe bodily harm, a compensation sum provided by the state based on the VOG.

ARTICLE 17 – RIGHTS OF VICTIMS RESIDENT IN ANOTHER MEMBER STATE

Member States shall ensure that authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed. The authorities of the Member State where the criminal offence was committed shall be in a position: a) to take a statement immediately after the complaint is made to the competent authority; b) to have recourse to video conferencing and telephone conference calls for the purpose of hearing victims who are resident abroad.

Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.

Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.

In case of a crime committed in another Member State against an Austrian citizen, as per § 25 Par 7 StPO, the prosecution in Austria must immediately forward an official complaint received from the victim to the authority in charge in the other Member State, as far as the criminal offence is not subject to the national jurisdiction.

One can abstain from transmission, if the offence and the circumstances essential to its prosecution are known to the responsible foreign authority, or the victim would have been able to report the offence abroad, unless it is an offence with serious consequences. Hereby minimum standards of the Directive are met according to the legislator, since it should be an „aid in view of the victim's personal concernment“.¹¹⁹

In case of a crime with serious consequences¹²⁰, the victim accordingly has the choice as to where it wants to make an official complaint.

In case of an offence without serious consequences, a transmission of the complaint can also be abstained from, if the victim would have been able to report the crime abroad. It follows from the formulation „would have been able“ that it does not depend on a subsequently still possible – for instance in written form – report of the incident in the victim's resident state. Based on the law materials one can assume that the victim has not been able to report, if he/she could not identify the responsible authority due to a lack of knowledge of the language or if the victim could not express himself/herself due to missing interpreter services at the authorities at the place of the crime. According to prevailing opinion, it is acceptable to the victim to call on any police station in the state where the offence happened. The victim can however not be expected to face additional costs, if itineraries need to be changed to make the complaint to the police.¹²¹

If a complaint is made to the criminal police, they do not have to transmit it to the foreign authorities, but report this to the public prosecution department.¹²² The prosecution examines the prerequisites and exclusion criteria, for example the (non-) existence of a national jurisdiction and forwards the official complaint as appropriate. In case of a corresponding state of affairs and during the protocol of the complaint, the criminal police is obligated to collect all details needed for a decision as per § 25 Abs 7 StPO by means of an according posing of questions. With the aid of the atlas of the European Judicial Network¹²³ the responsible foreign authority is identified.¹²⁴ If this does not lead to a clear result, the complaint has to be forwarded to the central department responsible for the prosecuting authorities of the Member State in question.¹²⁵

119 ErläutRV 1058 BlgNr 25.GP 12, p. 8.

120 The legal text does not state whether the „serious consequences“ are to be judged according to Austrian law or the jurisdiction of the respective member state where the crime happened. Since the Directive refers to the law of the country where the crime took place and national regulations therefore need to be interpreted in line with Union law, the foreign jurisdiction is the criterion.

121 Nordmeyer in Fuchs/Ratz, WK StPO § 25 Rz 17/4 (Status: 1.2.2017, rdb.at)

122 ErläutRV 1058 BlgNr 25.GP 12, p. 8.

123 www.ejn-crimjust.europa.eu/ejn (last accessed: 10.07.2018).

124 § 91 Par 2 third sentence on the utilisation of generally accessible sources that are not an investigation.

125 ErläutRV 1058 BlgNr 25.GP 12, p. 8; Decree of the BMJ from 30.5.2016, p. 3.

According to the prevailing school of thought, a translation of the official complaint before transmission does not need to be induced by the prosecution.¹²⁶ The Victims' Directive did not envisage anything in this regard.

Non-Austrian citizens are also entitled to receive victim support from Austrian victim support services. However, communication with the authorities is not always easy due to lack of interpreters or lack of information. It becomes especially difficult, if the victims return to their home-countries and only then try to receive victim support in Austria.

Survey Results: 62% were of the opinion that competent authorities are rather often in a position to take a statement immediately after a victim resident in another Member State makes a complaint. The participants mainly agreed, however, that competent authorities did not have all the necessary available means.

ARTICLE 18 - RIGHT TO PROTECTION

Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

In Austria, a great variety of protection measures exists, in order to increase safety of (potential) victims. The **Police** is entitled to evict persons posing a danger from lodgings, and to formally prohibit that such a person returns to that residence, establishing a safe area (Z 1)¹²⁷. Accessing school or childcare facilities can be prohibited, if the person at risk is under age, including a circuit of 50 metres¹²⁸. Beyond that, the police is obligated to inform the responsible child and youth services so that they can thoroughly clarify the extent of risk and take protective measures to protect the child. Such a restraining order can be imposed independently from ownership situation of the flat. It is valid for a period of 14 days. Violation of a restraining order can be dealt with by police forces with immediate authority and coercive power. If the offender repeatedly violates the restraining order, he/she can also be arrested¹²⁹. A violation of the restraining order is, however, not criminally relevant¹³⁰.

Within the validity period of the restraining order, one can apply for an injunction as per § 382 b EO¹³¹ at the **civil court of the District Court** in charge of the judicial district where the resident in question is situated. If the application follows within 14 days after the restraining order, that restraining order automatically is prolonged until the decision of the court, yet at the longest up to 4 weeks. The court can accelerate procedures. The essential preconditions for an injunction as per § 382 b EO merely need to be substantiated and not be proved. Protection can also be extended to other members of the family, especially children living with the family and also

¹²⁷ Sicherheitspolizeigesetz (SPG), BGBl 1991/566 idF BGBl 1992/662.

¹²⁸ The enhancement of protection for minors is in place since August 2013, BGBl I 2016/61.

¹²⁹ The police have to inform a specialised victim support institution (i.e. Violence Protection Centre or Intervention Centre against Violence in the Family) about an issued restraining order. The victim support organisation actively contacts the persons at risk, informs them about their rights and supports them in decision making processes as well as applications regarding further reaching protective orders by civil law. Cf. Article 8 Victims' Directive.

¹³⁰ i.e. it does not constitute a criminal offence to be taken to a penal court.

¹³¹ Execution Act (EO), RGBl 1896/79, last revision through BGBl I 2018/32.

¹²⁶ Nordmeyer in Fuchs/Ratz, WK StPO § 25 Rz 17/3 (Status: 1.2.2017, rdb.at)

experiencing or witnessing violence.

Moreover, there are protective orders by civil law, for instance protection against stalking (§ 382 g EO)¹³². The term of protection of such an injunction is six months, in case of a violation against it, it is extended to one year.

The **Code of criminal procedure** also includes protection options. In exceptional cases, it offers the possibility of an anonymous statement (§ 162 StPO). The precondition for that is that this protection is necessary to protect the person at risk from a serious danger against his/her life, health, physical integrity or freedom. Furthermore, Article 18 also addresses the issue of **support and stabilisation as protection from secondary victimisation and from the risk of emotional or psychological harm**. This support service is part of psycho-social victim advocacy in Austria. However, not all victims of any criminal offence are entitled to receive such victim advocacy. As a consequence, other victims (e.g. fraud, burglary) are usually not accompanied and protected from the emotional strains of criminal proceedings and trials.

Reliable protection is also offered through custody of a dangerous person. In Austria, **investigative custody** according § 173 Abs 2 Z 3 StPO is possible, for instance when, due to certain facts, there is a high risk that an offender is going to commit a criminal offence with serious consequences or a threatened criminal act, irrespective of the criminal procedure already taking place against him, which is punishable with a term of more than six months¹³³. For the decision on investigative custody, sometimes also the assessment of dangerousness by victim support organisations is taken into account. It is however criticised that a coordinated security planning is still deployed too little in Austria¹³⁴.

In connection with a release from investigative custody or a (suspended) sentence, the order of probationary service can also follow¹³⁵. In this regard, NeuStart offers anti-violence-programs. These are groups which offer special programs (usually for men) who used violence and who want to change their behaviour, receiving support for this. Individual modules are offered for men who have become violent in intimate relationships. Here, protection of (potential) victims is taken into account¹³⁶. The shadow-report GREVIO¹³⁷ points out that these or similar measures oriented towards victim support are far too seldom imposed by criminal justice. The federal association of protection against violence centres/intervention centres in Austria¹³⁸ suggests that directives

132 This means victims can apply for an official order prohibiting the offender from contacting or following the victim in any way (personally, by phone calls etc.). The offender furthermore can be banned from staying in certain places where the victim has to be frequently (as long as it's not a public area), and also from using third parties to get into contact with the victim.

133 This is a stunted description. For more, see § 173 StPO.

134 NGO-Coalition (Ed.), 2016, p. 111f.

135 The task of probationary service is to make all possible efforts to help a convict to reach a conduct of life and an attitude that will restrain her or him in the future from committing punishable acts. Probationary services in Austria are offered by NEUSTART.

136 27 of such groups are offered in Austria. Interview 3

137 NGO-Coalition (Ed.), 2016, Shadow-report-GREVIO.

138 Federal association of protection against violence centres/intervention centres in Austria (BundesverbandGewaltsschutzstellenInterventionsstellenÖsterreich), 2017, p. 14.

should be imposed in connection with a sentence regarding the participation in a „*victim support-oriented anti-violence training*“, namely also without consent of the convict, as it neither concerns therapy nor a medical treatment.

Survey Results: 59% hold the opinion that victims and their family members receive adequate protection from intimidation and from retaliation. 55% also stated that victims and their family members receive adequate protection against the risk of emotional or psychological harm.

Practically all participants thought that treatment of victims at questioning by the investigating authorities was respectful. Questioning by the prosecuting authorities was felt to be positive by 79% of the sample. According to 95% treatment is also positive when testifying.

ARTICLE 19 - RIGHT TO AVOID CONTACT BETWEEN VICTIM AND OFFENDER

(1) Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.

(2) Member States shall ensure that new court premises have separate waiting areas for victims.

In cases of violence in intimate relationships and with offences that violate the sexual integrity and self-determination, executive authorities generally take care to protect the victim from unnecessary meetings with the accused. Suspects and victims are generally not simultaneously summoned for interrogations by the police, and there are often police stations with different entrances. If the construction conditions allow, it is taken care that the victim can use another entrance and exit and is safe from an encounter in the waiting area. Appropriate sensibility exists especially in the area of violence in intimate relationships and sexual crimes¹³⁹.

In cases of other violent crimes (e.g. hate crimes) a line-up may be necessary in some circumstances for investigations to have the victim identify an offender. It is attempted to avoid a personal encounter in this context as well, for instance by using technical aids like a two-way mirror. These options are at least in place in all federal states, but not at every single police station. Photos can also be used to identify suspects and they are accepted by the court – given appropriate execution and documentation¹⁴⁰.

The code of criminal procedure only regulates that an encounter between victim and accused should be avoided in the context of the adversary examination. The fewest courts have got separate entrances and waiting areas for victims¹⁴¹. The construction conditions and security checks at the main entrance rather lead to the necessity of actively avoiding an encounter. With new court buildings, separated areas for victims are taken into account.

139 Interviews 10 and 11

140 § 163 Abs 2 StPO. A confrontation between accused and victim is not excluded in § 163 StPO for the purpose of a line-up. Par. 3 only speaks of „witnesses“, yet there is no corresponding exclusion of „victim witnesses“.

141 Bruckmüller, K. & Friedrich, 2008.

Personal commitment from judges or victim supporters is always necessary to prevent an encounter. In one of the interviews, a judge¹⁴² described the possibility to interview victims in a different court building. Meanwhile there is technical equipment to transmit conversations and interrogations via video conferences. This possibility is unfortunately only rarely used, even though it proves successful. Apart from that, judges manage with not summoning the victim directly to the court room, but to another, remote room, in order to prevent an encounter. All those measures however need the initiative of committed individuals, there is no legal protection. If victims receive support in the form of victim advocacy, it is a core task of victim advocacy to minimise the probability of an encounter.

The possibility of a progressive summons (i.e. victims receive written summons for a later time than the actual beginning of the court trial) is rarely used. This means often, everyone involved, the offender, witnesses and victims are to appear in the court building at the same time. The advantage of progressive summons, according to victim support organisations, would be that an encounter with the accused person (who already has to appear in court thirty minutes earlier than the victim) and also a long waiting period for the victim could be avoided. In order to better plan the course of events of the main trial, most judges abstain from such a possibility.

Survey Results: Separate waiting areas for victims and offenders are mainly present in court buildings (31.5%) and at the police (24%). Separate entrances within the premises do not exist a lot. Appointments at different times are possible at the police for 71%, and in court buildings for 33%.

142 Interview 8.

ARTICLE 20 – RIGHT TO PROTECTION OF VICTIMS DURING CRIMINAL INVESTIGATIONS

Member States shall ensure that during criminal investigations: a) interviews of victims are conducted without unjustified delay; b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation; c) victims may be accompanied by their legal representative and a person of their choice; d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.

Law enforcement agencies are in general coerced to carry out proceedings without unnecessary delay (§ 90 StPO). This is not only in the interest of victims, but also in the interest of accused persons¹⁴³. Still, there are proceedings which are outstandingly long and are therefore decidedly burdening for victims. Time-consuming investigation proceedings, yet above all the necessity of expert reports lead to longer proceeding lengths. That is mostly because for many areas of expertise there are not enough experts, and the few available are therefore permanently fully occupied.

In principle, it is attempted to keep the number of interrogations to a minimum. As soon as there is a legal right to an adversary and considerate witness examination (§ 165 StPO)¹⁴⁴, the victim is usually only questioned once by the executive authority and a second time in the adversary examination. After an adversary examination, all victims with specific protection needs are exempt from making a witness statement (§ 156 Par 2 StPO). Should, however, new aspects occur after the police interrogation, the victim often is not spared another witness questioning. Such questionings are usually felt by the victims to be especially burdening, not only because it is another interrogation, but also because the questions that need to be posed give the impression that the victims are not believed.

Medical examinations are usually reduced to a minimum. Victim support organisations see the

¹⁴³ The average length of a court proceeding in case of jurisdiction of the county court is 0.6 months, and with jurisdiction of the regional court 1.1 months. Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice (BMVRD) (Ed.), 2018.

¹⁴⁴ Cf. Article 23 Victim's Directive.

fact as problematic that documentation of injuries during first care often does not comply with the requirements that a criminal procedure imposes on pieces of evidence. Not only does this mean that persons concerned need to be examined a further time, but also that pieces of evidence are lost, if injuries can no longer be assessed with certainty after some time. Regarding this aspect curricula of medical occupations should be complemented¹⁴⁵. The installation of child-protection-groups already is a step in the right direction, yet according to experts is not sufficient¹⁴⁶.

If demanded, every witness has got the right to have a trusted person present during the interrogation. This right already has to be pointed out in the summons. Only persons who have been or shall be questioned as witnesses themselves, who are suspects or who are in any other way partaking in the proceeding can be excluded as trusted persons. In addition, persons can be rejected as trusted persons, if it has to be apprehended that their presence could influence a free and complete statement. In any case, a trusted person must be involved with interrogations of a person who has a disability or who has not yet completed the 14th year of age (§ 160 Par 2 and 3 StPO).

Executive authorities usually wait for a certain amount of time to facilitate the presence of a trusted person by request of the witness. Moreover, this request of victims is however viewed critically, if minors are to be included as trusted persons, especially in cases of violence in intimate relationships¹⁴⁷.

The presence of psycho-social or legal victim advocates during interrogations is meanwhile regarded as natural by the executive authorities and the court. Still this possibility is seldom used, possibly, because victims are not informed thoroughly and comprehensibly about this right.

As per § 87 StPO, victims have the possibility of an appeal against court rulings outside the main trial: it is granted, if rights are directly denied through a court ruling (for instance by prohibiting the presence of a trusted person) or if obligations arise (for example regarding a physical examination). The appeal period is 14 days and begins from the time of the notification. The court of review decides itself, taking into account circumstances that were stated after the fact or were already known. Appeals as per § 87 StPO do not have a suspensive effect. Delays of the proceeding should be prohibited this way.¹⁴⁸

It is usually no problem in the main trial – which, as a rule, is public –, if victims are accompanied by trusted persons. Even in proceedings closed to the public, victims can demand that up to three

¹⁴⁵ NGO-Colation (Ed.), 2016, Shadow-Report GREVIO, p.51.

¹⁴⁶ There are occasionally problems that medical (and especially gynaecological) examinations are conducted on children at a time when it can almost be excluded that useful traces can still be preserved. It is however the aim of child protection institutions to counteract this by means of directed cooperation talks and informing of persons in charge.

¹⁴⁷ Child protection institutions report that the presence of a trusted person during an interrogation of minors by the executive authority sometimes is also circumvented, for instance when the courage or independence of the child, who didn't "need" a trusted person, is called on.

¹⁴⁸ Eder-Rieder, 2017, p. 259.

trusted persons are given access (§§ 228, 230 Par 2 StPO).

Survey Results: interviews with victims of violent crimes are conducted without unjustified delay (accumulated: 84%). Most participants also felt that interviews with victims of non-violent crimes are basically conducted without unjustified delay (accumulated: 80%). Reasons for a delay mentioned were either due to the victim not appearing, or lack of resources with the police, but also a lack of communication among the police (for instance if the investigating officer is on holiday). The most common reasons given for an unjustified delay in Austria were “Police have work overload” (59%), “Priority is given to other cases or more serious crimes” (50%), and “Delay in collaboration between authorities” (33%).

The number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation (accumulated: 54%). Victims are able to be accompanied by a person of their choice (accumulated: 88%).

ARTICLE 21 - RIGHT TO PROTECTION OF PRIVACY

Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy of the victim. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.

All authorities involved in the criminal proceedings have to take heed of the victims' interests concerning the preservation of their very personal sphere of life (§ 10 Par 3 StPO). Information, which is not gained in public trials or in the course of a private hearing or inspection of files, is especially protected. Lawyers (§ 54 StPO) as well as victims and other persons (§ 68 StPO) must not publish it in any media or in any other way making the information known to a wider public, if interests in confidentiality worthy of protection of other persons outweighing the common interest in information would thus be breached. Trusted persons are obliged to confidentiality about their perceptions regarding the questioning as per § 160 Par 2 final sentence.

Recordings of adversary examinations of victims who could have been violated in their sexual integrity and autonomy due to a criminal offence, have to be kept safe by the court. As opposed to § 52 Par 1 StPO, in this case there is no right for the parties to the proceedings – also including the accused – to obtain a copy. (§ 265 Par 5a)¹⁴⁹.

In principle, main trials are open to the public, yet TV- and radio broadcasts as well as filming and photos are illicit. At most courts, filming and photographing is banned in the entire building. This ban is, however, hardly enforceable due to the omnipresence of mobile phones¹⁵⁰. The public can be excluded for three reasons, namely *ex officio*, at the request of a party to the proceeding or at request of a victim. One reason for excluding the public is, among others, the discussion of the victim's personal details and private matters or in order to protect a witness' identity or that of a third party for the reasons given in § 162 StPO¹⁵¹. In practice, the public is usually excluded in cases of domestic violence¹⁵², and also in trials on offences about possible violation of the sexual

149 BGBl I 2017/19. A written protocol of the interrogation is transcribed, which can be copied in the course of access to records.

150 The private sphere is generally protected by media and copyright law in Austria.

151 Cf. Article 23 Victims' Directive.

152 Interviews 8 and 9.

integrity and personal autonomy.

A witness needs to be asked about personal data in hearings. In case of other persons being present, it needs to be taken care, though, that this information is not made public (§ 161 StPO). In court, attention is reliably paid to this as of now.

Victims can state another alternative address to the prosecuting authority suitable for receiving a summons. Victims are hardly informed about this right. Instead, it happens frequently that the central resident register is consulted as a routine in police interrogations, and this address then is stored in the files. The first time an accused has access to the files, this address becomes known. Often the impression is created that efforts by the police to protect personal data lose their efficiency, as soon as data are transferred to the court. Excluding personally identifiable information from access to files is bound to the strict requirements of § 162 StPO (§ 51 Par 2 StPO) and therefore only rarely possible.

Survey Results: Competent authorities take all necessary, appropriate and lawful measures to ensure protection of victim's privacy, according to the majority of the sample (accumulated: 87%). The Majority felt that competent authorities usually take legally permissible measures to prevent the public dissemination of any information that could lead to the identification of a child victim (acc.: 75%).

ARTICLE 22 - INDIVIDUAL ASSESSMENT OF VICTIMS TO IDENTIFY SPECIFIC PROTECTION NEEDS

Member States shall ensure that victims receive a timely and individual assessment to identify specific protection needs due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

In implementing the Directive, § 66 a StPO was introduced to Austrian criminal law. It determines how victims are to be treated *ex lege* as victims with specific protection needs, how victims are to be assessed in terms of their specific protection needs (Par 1) as well as which rights appertain to victims with specific need of protection (Par 2).

Legally, victims are „at all events“ considered to be in specific need of protection in the following circumstances:

- (1) When there has been a violation of their sexual integrity and personal autonomy;
- (2) When the victim might have been subject to violence in the home¹⁵³;
- (3) When victims are minors ¹⁵⁴.

Acknowledging victims of hate crimes, human trafficking and terrorism explicitly as victims with specific protection needs was not successful in the course of implementing the Directive¹⁵⁵. The Victims' Rights directive only calls for special attention for these groups of victims in the context of the individual assessment. Nevertheless, single victim support institutions wished for a legal embedding¹⁵⁶.

¹⁵³ Here, reference is made to § 38a SPG, cf. The explanations about Section 18. This is problematic in so far that violence in close social relationships is not generally registered this way, since such violent incidents do not necessarily take place in the home. Apart from that cases of domestic violence are – randomly – registered, where there is no relationship crime as the basis. In this regard, an unjustified unequal treatment of victims takes place. Cf. Nachbaur&Unterlerchner, 2016.

¹⁵⁴ With reference to § 74 Par1 Z 3: who has not yet completed the 18th year of age.

¹⁵⁵ WEISSER RING, 2015.

¹⁵⁶ Most recently for victims of terrorism: WEISSER RING, 2018.

In case of domestic violence, apparently really only those cases are meant where the perpetrator and the victim live together under one roof¹⁵⁷. Violence in intimate relationships is mentioned as an example of a necessary individual assessment, and where the type of criminal offence could militate for specific protection needs¹⁵⁸.

In general, regarding the implementation of specific protection needs it has to be remarked that there are unsystematic¹⁵⁹ overlaps with § 65 lit a (narrowly defined) and lit c (more broadly defined).¹⁶⁰ Thus, an opportunity was missed to admit victims comprehensive protection rights in a preferably uncomplicated way and without an individual assessment.

Besides those victims who have to be regarded as in specific need of protection based on the law, an individual assessment of all (other) victims is envisaged. The law takes the victim's age, the emotional and health condition as well as the type and concrete circumstances of the criminal act as criteria. The assessment is to be carried out as soon as possible. Wishes and ideas of the victim are not considered, law enforcement authorities are rather constrained to proceed in each individual case according to the criteria mentioned in § 66 a StPO¹⁶¹. This is not entirely in line with Article 22(6) Victims' Directive, which allows for victims' wishes to be taken "into account".

As a rule, the first observation of specific protection needs is thus conferred to the police. It is furthermore requested in the explanatory remarks that this first observation has to be assessed and documented in a „formalised form“.

The executive forces find themselves now confronted with the situation that they must carry out an individual assessment in a wealth of cases. There is no specific guideline and no regulation for the assessment of specific protection needs. The executive officers orient themselves directly by the law text. A memory aid for this is the **electronic documentation system (PAD)**, which also foresees „mandatory fields“ in terms of corresponding assessments of specific protection needs. The assessment by the police is not binding for the prosecution or the court. In doubt and with new knowledge, the need of protection can be examined again and a different decision can be reached.

It seems particularly problematic that assessments on specific protection needs are documented and thus become part of the criminal file. Accused persons thus gain access to sensitive data when inspecting the files (e.g. health condition, sexual orientation, values or religion – for instance in case of hate crime based on corresponding prejudice).

157 BMJ, BMJ-S578.029/0006-IV 3/2016, p. 5.

158 BMJ, BMJ-S578.029/0006-IV 3/2016, p. 6. This does not seem comprehensible, since the experiences of victim support organisations show that especially times of separation are dangerous for victims of violence by partners. Hence, it is inconsistent, if specific protection needs, ex lege within the meaning of § 66 a Par 1 Z 2 StPO, would require that victim and offender live together.

159 Bundesverband Gewaltschutzzentren Interventionsstellen Österreich (Ed.), p. 27.

160 Bruckmüller & Unterlerchner 2017, p. 203; Nachbaur & Unterlerchner 2016, p. 149.

161 ErläutRV 1058 BlgNr 25.GP 12; BMJ-S578.029/0006-IV 3/2016, p. 6.

If a victim is not conferred the rights deduced from § 66a Par 2, the reasons for this have to be communicated to the victim. The assessment of specific protection needs is not about a decision, against which to lodge an appeal. If the victim, however, asserts a right as per § 66 a Par 2 StPO, and if this right is not granted, the victim can make a breach of law plea through the prosecution because of the violation of subjective rights (§ 106 StPO), breaches of law by the court can be pleaded against as per § 87 Abs 2 StPO¹⁶².

Survey Results: 62% stated that victims are basically provided with an individual assessment of their protection needs. The majority held the opinion that the wishes of victims (including whether or not they wish to be granted special measures of protection) are taken into account in that process (acc.: 74%). Most participants also stated that a risk and threat assessment is also conducted (acc.: 80%). Regarding the possibility to adapt the assessment later on, yes votes were in the majority with 60.5%.

162 Klein & Prior, 2016, p. 865.

ARTICLE 23 - RIGHT TO PROTECTION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS DURING CRIMINAL PROCEEDINGS

(1) Member States shall ensure that victims with specific protection needs may benefit from the measures. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

(2) During criminal investigations, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment, may benefit from the following measures: a) interviews with the victim being carried out in premises designed or adapted for that purpose; b) interviews with the victim being carried out by or through professionals trained for that purpose; c) all interviews with the victim being conducted by the same persons; d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships being conducted by a person of the same sex as the victim, if the victim so wishes.

(3) During court proceedings, victims with special protection needs shall also have the following measures available: a) measures to avoid visual contact between victims and offenders; b) measures to ensure that the victim may be heard in the courtroom without being present; c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; d) measures allowing a hearing to take place without the presence of the public.

§ 66 a Par 2 StPO lists the special protection rights entitled to victims with specific protection needs. This is a summary of rights that were already entitled¹⁶³ to certain victim groups before the criminal law amendment act I 2016¹⁶⁴.

First, the right to claim getting preferably interrogated by a person of the same sex in the investigation proceedings. This is possible with executive forces in urban areas, yet not always in rural areas. Due to the strict assignment of procedures, one cannot have consideration for such a claim at court. If necessary, it is however possible to have an interrogation by an authorised expert who has the same sex as the victim.

Second, the right to refuse to give evidence concerning details that you find unacceptable to describe or circumstances regarding your very personal sphere of life (§ 158 Par 1 Z 2 and 3, Par 2). Executive forces and the court usually take into consideration that only questions are asked that are necessary for the criminal procedure. It is, however, provided for by law that the interrogated persons are obliged, despite the refusal to give evidence, if this is indispensable for the subject of the proceedings due to the special significance of their testimony. The involved persons and the court have got the option to ask questions in the main trial. The conduct of the trial, however, resides with the chief judge, and illegitimate questions can be rejected.

Third, the right to claim a considerate interrogation in the investigation proceedings and the main trial (§§ 165, 250 Par 3 StPO). A considerate separate interrogation during investigation proceedings is possible by means of the adversary examination (indirect interrogation). Victims are questioned by the investigating judge or an authorised expert in a specially arranged room. The trusted person can be present. The interrogation is transmitted to another room via transmission of sound and images. The accused person and his/her defending lawyer thus can directly witness the interrogation and pose questions there (§ 6 StPO). The victim that has been questioned indirectly in the investigation proceedings can make use of the exemption from making a statement (§ 156 Abs 1 Z 2 StPO) in the following main trial.

The right to an adversary examination, upon request of the victim or the prosecution, appertains to victims with specific protection needs as well as persons who ought to testify against a relative in the proceedings (§ 72 StGB). Under-aged witnesses, who might have been violated in their sexual autonomy, have to be necessarily interrogated in this way by the court. Victims cannot always be interrogated in rooms that are suitable for this purpose. With young children, the interrogation by executive forces takes place in child-oriented rooms¹⁶⁵, if possible, yet no such option is available for adults. If feasible, rooms at court, in which victims are indirectly interrogated (adversary examination) are arranged according to the needs of the victims.

¹⁶³ Nachbaur & Unterlerchner, 2016, p. 147.

¹⁶⁴ BGBl I 26/2016

¹⁶⁵ i.e. rooms with colourful furniture for children, toys and posters.

With general violent crimes, the victim is hardly ever conceded an adversary examination in investigative proceedings. In practice, these are rights that are almost exclusively granted to victims of violence in intimate relationships and of violations of sexual integrity and personal autonomy.

In the main trial, the right to a considerate separate interrogation as per § 250 Par 3 StPO appertains to all victims who might have become victims of violence, dangerous threat or a violation of their sexual integrity (§ 65 Z 1 lit a StPO). The legal regulation refers to the adversary examination: by means of the transmission of sound and images, the interrogation of the victim is broadcasted to the court room. The victim can be interrogated safely from a distant, separate room and is protected from an encounter with the accused. This legal option is hardly used in practice. Rather, the possibility is used to, as an exception, have the accused person exit the court room during the hearing of the victim. He/she must be subsequently informed what has happened during his/ her absence (§ 250 StPO). The disadvantages of this are that the accused person's rights cannot be retained to the same extent as during directly watching a sound and video transmission. The verdict can possibly be appealed against more easily by means of a nullity appeal/ an appeal due to grounds for invalidity.

Forth, the right to claim exclusion of the public during the main trial (§ 229 Par 1 StPO)¹⁶⁶

Fifth, the right to be immediately informed *ex officio* about the release of the accused from investigative custody stating the crucial reasons for that and the more moderate means connected with it (§§ 172 Par 4, 177 Par 5 StPO) as well as about escape from investigative custody (§ 181 a StPO).

Survey Results: Most participants share the opinion that victims with specific protection needs are able to benefit from interviews with the victim carried out in premises designed or adapted for that purpose (acc.: 84%), measures to avoid visual contact between victims and offenders (acc.: 75%), measures to ensure that the victim may be heard in the courtroom without being present (use of communication technology) (79%), and measures to avoid unnecessary questioning concerning the victim's private life not related to the offence (79%). All interviews with victims of sexual violence, gender-based violence, etc. are conducted by a person of the same sex as the victim (acc.: 95%).

¹⁶⁶ Cf. Article 21 Victims' Directive.

ARTICLE 24 - RIGHT TO PROTECTION OF CHILD VICTIMS DURING CRIMINAL PROCEEDINGS

Member States shall ensure that where the victim is a child: a) in criminal investigations, all interviews with the child victim may be audio visually recorded; b) in criminal investigations, and proceedings, competent authorities appoint a special representative for child victims where the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family; c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.

In line with § 66a Abs 1 Z 3 StPO minors¹⁶⁷ are *ex lege* victims with specific protection needs. Opposed to what is envisaged in the Victims' Directive, certain rights are only granted to children younger than 14, for instance the mandatory attendance of a trusted person during the interrogation (§ 160 Par 3 StPO). A general problem is that children only have got a legal claim to victim advocacy under the premises of § 65 iVm § 66 Par 2 stop. Victim advocacy has to be granted in any case to minor victims who have not yet completed their 14th year of age and might have been violated in their sexual integrity, nonetheless there is a portion of underage victims who do not have access to victim advocacy. This is also valid for children, who „witness“ violence in intimate relationships and thus are indirectly victimised¹⁶⁸.

Children are in principle interrogated in criminal proceedings. Normally, there are two interrogations, one with the police and one adversary examination in the investigation proceedings. Hence, children do not have to testify another time in the trial phase¹⁶⁹. The first interrogation usually takes place with the police. In most cases there are special rooms for this at State Offices of Criminal Investigations. The interrogation is recorded audio visually, but subsequently a transcript

¹⁶⁷ Someone is a minor, who has not yet completed the 18th year of age (§ 74 Par 1 Z 3 StGB).

¹⁶⁸ Nachbaur, 2012, p. 229.

¹⁶⁹ Cf. Article 22.

of the interrogation is written, since the audio-visual recording by the police cannot be used in the further criminal proceedings¹⁷⁰.

The interrogation at State Offices of Criminal Investigations is carried out by specially trained officers. Most of the time they are female, therefore it can also happen that male victims are interrogated by women. The offer is foremost open to very young victims. For victims from ca. 14 years it is no matter of course that they are interrogated in this way. This is primarily due to a lack of resources/specially trained police officers.

There are mobile offers of the State Office of Criminal Investigations in Upper Austria, which means that specially trained officers also come to remote police stations, in order to carry out interrogations there. In principle, every interrogation of a person who has not yet completed the 14th year of age has to be attended by a trusted person (otherwise by request of the victim). Nevertheless, children are often „convinced“ by the interrogating persons that they will be able to handle the interrogation on their own. It would be desirable to already bring in a victim advocate during the police interrogation (as far as there is a right to it). Since victim advocacy organisations do not offer 24/7/365 services, a police interrogation may have to be postponed. This is rarely the case.

In the course of investigation proceedings, children are subject to adversary witness examinations. Minor victims who might have been violated in their sexual autonomy must be interrogated this way.

In the course of investigation proceedings, courts frequently order expert reports. This is apparently handled differently country-wide. Medical reports are rather seldom in that case, often it is about psychological assessments. Moreover, psychiatric reports on the victim's credibility and consequences of the act are commissioned. Throughout the entire federal territory, not enough authorised experts are available in every region. Through the employment of authorised experts, the trials in question often take long, and it has to be reckoned with a length of more than six months.

¹⁷⁰ § 13 StPO. Sometimes repeat interrogations happen at this stage, for example if the first police questioning took place at a smaller police station and not at a State Office of Criminal Investigations and the law enforcement officers there do not have the necessary experience, so that a complementary interrogation seems necessary.

The prosecution or criminal court are now obliged to initiate the appointment of a trustee at the guardianship court, if

- The legal guardian of the underage victim is himself suspect of the criminal offence;
- There is a risk of a conflict of interests of the victim and his/her legal representative (e.g. the accused is the mother's life partner);
- Or if there is no legal representative for the minor victim in the criminal process (for instance with minor unaccompanied refugees)¹⁷¹.

This does not work without gaps and fluently in practice. It should in any case be avoided that another interrogation of the child takes place because of the guardianship court process of appointing a trustee.

The police/competent authorities inform about victim advocacy and corresponding counselling centres during interrogations in cases where children have become victims. Information leaflets primarily address adolescent victims and parents. The police often refer those affected to child protection institutions, others find their way to the counselling centre via youth welfare services. Occasionally, child protection institutions are also involved by the criminal court.

Still, child protection institutions find that many processes are already dismissed during investigation proceedings. It cannot be said for sure what the reason for that might be. However, it creates the impression that children are not really „heard“ in the criminal procedure.

Survey results: Most participants stated that interviews with child victims are usually recorded audio-visually (acc.: 79%), that, where there may be a conflict of interest and/or the holders of parental responsibility are precluded from representing a child victim, the child is often appointed a special representative by the competent authorities (acc.: 68%), and also that child victims are usually granted the right to legal advice and representation, where there is or could be a conflict of interest between the child victim and the holders of parental responsibility (acc.: 63%).

¹⁷¹ BMJ.S578.029/0006-IV 3/2016.

ARTICLE 25 - TRAINING OF PRACTITIONERS

Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to enable them to deal with victims in an impartial, respectful and professional manner.

Member States shall request that those responsible for the training of lawyers, judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase awareness of the needs of victims.

Member States shall encourage initiatives enabling those providing victim support and restorative justice to receive adequate training and observe quality standards to ensure such services are provided in an impartial, respectful, and non-discriminatory manner.

Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

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Regarding the **training of psycho-social victim advocates**, in October 2015, for the first time, a mandatory standardised training for victim advocates was offered in Austria. The curriculum was worked out under the lead of the justice department including external experts. The training was divided into a general and three specific parts. A maximum of 27 participants was permitted for the general training, and for the specific ones a maximum of 12. An administrative agreement between the responsible ministries (i.e. justice department, family and women department) regulates the content and extent of the training, as well as the framework conditions and sharing of costs. Costs of one training course amount to ca. 46,000 Euro.¹⁷² By now, 5 training courses could be offered, and 114 participants completed the training successfully¹⁷³.

As for **advanced training for legal victim advocates**, legal victim advocacy in Austria can only

¹⁷² Federal Ministry for Women and Health (Ed.), 2016, Grevio-Report, p. 22.

¹⁷³ Information by Management Centre Victim Support (Management-Zentrum Opferhilfe) via mail from 11.6.2018.

be offered by lawyers. A two-days training was conceived for interested lawyers, also under the lead of the justice department and with inclusion of external experts. The training is offered in cooperation with the bar association. In June 2018, 28 participants completed this training¹⁷⁴.

Regarding **justice officers**, as the Grevio-report registers, advanced trainings belong to the general official duties of the Judges and Prosecutors' Service Law (RStDG)¹⁷⁵, but no mandatory training exists¹⁷⁶. The training service takes four years and can also be done to an extent of two weeks in a victim support institution. This possibility contributes essentially that future judges and prosecutors can gain at least a small glimpse into victim support institutions and their work. What needs to be criticised in this context is only that it indeed is a very short glimpse, and that the internship can also be absolved with other institutions¹⁷⁷.

As for **executive professionals**, trainings for police forces on the subject of „violence in the private sphere“ are offered since the 1990s. By now corresponding modules are a part of the basic training for the executive forces. This is a two to three days interdisciplinary seminar, in which prospective executive officers discuss reasons, forms and patterns of domestic violence with experts from centres for protection against violence. Trainings differ between federal states in terms of content and lecturers¹⁷⁸. The focus, however, is on the subject matter of violence in close social relationships.

Advanced trainings on diverse topics of victimology enable a continuous training and sensitisation of the law enforcement officers. Extent, contents and frequency of these trainings differ, however, extremely on a regional level. Also, not all trainings are mandatory¹⁷⁹.

As for **health care professions**, well-founded knowledge about violence and a corresponding sensitivity in the interaction with those concerned is of crucial importance for persons working in health care. They are often the first ones who are called upon to help after violent crimes, often it is their task to interpret and document traces of injuries. Since 2011, by means of legally mandatory installation of victim protection groups¹⁸⁰ in hospitals, more and more medical professionals are sensitised to the subject matter. Throughout the entire federal territory the implementation did not happen as quickly as necessary¹⁸¹. Whereas child protection groups have been a standard for years in most hospitals, there are still not enough victim protection groups¹⁸².

¹⁷⁴ Information by Management Centre Victim Support (Management-Zentrum Opferhilfe) via mail from 11.6.2018.

¹⁷⁵ BGBl 1961/305, last amendment through BGBl I 2018/32.

¹⁷⁶ Federal Ministry for Women and Health (Ed.), 2016, Grevio-Report, p. 20.

¹⁷⁷ For instance, with a lawyer or a notary or with the Federal Financial Agency as well as with a care and custody institution. Shadow-report-GREVIO, 2016, p. 50f. For details see also The RichteramtswärterInnen Ausbildungsverordnung.

¹⁷⁸ NGO-Coalition (Ed.), 2016, Shadow-report-GREVIO, 2016, p. 48f. Whereas experts from women shelters, intervention centre against violence in the family and children and youth welfare institutions carry out the trainings together in Vienna, in the federal states it can occur that centres for protection against violence lecture without any other institutions in the basic training.

¹⁷⁹ NGO-Coalition (Ed.), 2016, Shadow-report-GREVIO, 2016, p. 49.

¹⁸⁰ § 8 e Krankenanstalten- und Kuranstaltengesetz, BGBl 1957/1, last amendment through BGBl I 2011/69.

¹⁸¹ N.N., (2014, March 03).

¹⁸² NGO-Coalition (Ed.), 2016, Shadow-report-GREVIO, 2016, p. 51.

Survey Results: Police officers basically do not receive sufficient training regarding the needs of victims (acc.: 63%), nor do prosecutors (acc.: 76%). Training for judges (acc.: 79%), and for lawyers (acc.: 80%) were also deemed rather insufficient. Regarding victim support workers 68% gave positive answers.

ARTICLE 26 - COOPERATION AND COORDINATION OF SERVICES

Member States shall take appropriate action to facilitate cooperation between Member States to improve victims' access to the rights set in the Directive and such cooperation shall at least aim at: a) exchange of best practices; b) consultation in individual cases; c) assistance to European networks working on matters directly relevant to victims' rights.

Member States shall take appropriate action aimed at raising awareness of the rights set out in the directive, reducing the risk of victimisation, and minimizing the negative impact of crime and the risk of secondary and repeat victimisation, of intimidation and retaliation, in particular targeting groups at risk such as children, victims of gender-based violence and violence in close relationships.

Austria is party to a number of international conventions related to victims' rights and joined for instance: - The Council of Europe Convention on Action against Trafficking in Human Beings (CETS No.197), - The Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No.210), - The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No.201), - The European Convention on the Compensation of Victims of Violent Crimes (CETS No.116), - The Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (CETS No.189: signed in 2003, but not yet ratified), - The International Convention on the Elimination of All Forms of Racial Discrimination (UNTS Volume Number 660), - The Convention on the Elimination of All Forms of Discrimination against Women (UNTS Volume Number 1249) and - The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (UNTS Volume Number 2237).

In addition, there are bilateral agreements which deal with victim protection¹⁸³.

Furthermore, in a number of bilateral agreements there are regulations concerning the collaboration in victim protection, e.g. in the contract concerning the police collaboration with Italy (Art 16 Federal Law Gazette III no. 47/2017), in the contract concerning the cross-border police collaboration with Switzerland and Liechtenstein (Art 18 Federal Law Gazette III no. 78/2017) or in the contract concerning the collaboration in the field of combating crime with Moldova (Art 3 Federal Law Gazette III 99/2011).

Regarding **European Networks**, Austria participates in:

- Victim Support Europe¹⁸⁴

Since its foundation in 1990, the WEISSER RING has been a member of the leading European umbrella organisation Victim Support Europe, which advocates for the reinforcement of rights and support of crime. Victim Support Europe represents 44-member organisations and advocates the improvement of European and international laws, namely through research on topics relevant to victims, knowledge transfer and through building capacities of national structures.

- Wave¹⁸⁵

The European network Women Against Violence Europe was founded in 1994 and has been established in the association AÖF for more than 20 years.. It is a Europe-wide, influential network of NGOs that support women and their rights, especially the right to a life without violence. In 2015, the network comprised more than 112 members in 46 European states, in total, 4,000 women organisations are connected throughout Europe.

183 E.g. the Agreement between the Austrian Federal Government and the Government of the United States of America on the Settlement of Questions concerning Compensation and Restitution for Victims of National Socialism (Federal Law Gazette III no. 121/2001).

184 <https://victimsupport.eu/>

185 <https://wave-network.org/>

Awareness and Sensitisation Campaign

- KampagneGewaltFREI LEBEN¹⁸⁶

The campaign Living FREE of Violence intensively raised awareness for the topic of violence against women and children between 2014 and 2017. Numerous projects were realised in this context and valuable prevention work was accomplished. The objective was to make the women's helpline 0800 222 555 wider known and to intensify the cooperation between networking partners.

New Media/Internet

- Info-Victim¹⁸⁷

Acting on the initiative of the victim support organisation APAV, the WEISSE RING Austria worked together with other EU-states on materials that are meant to make information about victims' rights easily understandable and available for affected persons. A website was designed and brochures issued. Within the scope of the project „Info Victim“, also posters were developed and a discussion meeting was organised in Vienna.

- fem:HELP-App¹⁸⁸

The fem:HELP-App for android phones and iPhone is a mobile service for women. It is supposed to help women affected by violence in close social relationships to quickly and uncomplicatedly contact a victim support institution. There is direct access to the police emergency number, the emergency call for deaf people by the police, and the women's helpline. Furthermore, the app can be used to document experiences with violence. The service is available in German, English, Turkish, Bosnian, and Serbo-Croatian.

- BanHate-App

The BanHate-App is a possibility to display moral courage against hate comments and violence on the net. Hate speech on the net can be reported quickly and safely via smartphones or tablets. It is possible to upload the documentation of hate speech postings. Per app one can follow what has happened in connection with the reported postings.

186 <http://www.gewaltfreileben.at/de/>

187 http://www.infovictims.at/at/001_home/001_infovictms.html

188 https://www.bmgf.gv.at/home/femHelp_App/

GOOD PRACTICES

Good practices have been identified with regard to the practical implementation of the Victims' Directive in Austria. First, an intense support through criminal proceedings for particular victim groups could successfully be established in Austria. There are brochures at police stations for victims entitled to victim advocacy (in 15 different languages) to facilitate access to victim advocacy. Furthermore, victims have a low-threshold contact point in the free 24-hour emergency hotline, where they can call anonymously and receive information about their rights as victims and possibilities for support. This is the only fully state-funded service in the context of victim protection in Austria. In principle, victims are entitled to victim advocacy¹⁸⁹. If victims are „personally affected“¹⁹⁰ by the offence, they have a legal claim to victim advocacy, irrespective of their income¹⁹¹. Victims without entitlement to victim advocacy can be provided with a free-of-charge lawyer.

The WEISSER RING is a general contact point for all victims of criminal offences, which also offers support to victims who do not have a specialised victim support institution for their needs. The WEISSE RING furthermore operates the victim helpline on behalf of the BMVRDJ. This helpline is free of charge and available anytime. Other important specialised victim support institutions are NeuStart, the anti-violence protection centres, women shelters, child protection centres and the intervention centre for women as victims of trafficking.

Victim advocacy is split into two services that support and complement each other: **psycho-social support**, in which victim support professionals inform the victims in a comprehensible way and repeatedly about the procedures and they try to minimise the strains of criminal proceedings as far as possible. This includes, for instance, accompanying the victim to court and to prohibit an encounter with the accused. The objective is always the empowerment of the persons concerned, their needs dictate direction and goals.

The second service is the **legal victim advocacy, which** can only be offered by trained lawyers. It is about the legal representation of the victim's interests. What makes victim advocacy a special service is the legal entitlement as well as the fact that victim support institutions make the decision whether victim advocacy is necessary or not. This makes it possible to expound those facts that constitute „personal concernment“, for instance severe mental consequences after the incident or pre-existing illness, that make victims especially vulnerable in a protected setting in a confidential talk.

189 Cf. Introduction
190 Nachbaur, 2012.
191 Haumer&Prasthofer-Wagner, 2016.

Psycho-social victim advocates are exempt from making a statement (§ 157 Par 1 Z 3 StPO). That means that they cannot be forced in criminal proceedings to give testimony about the talks within the context of victim advocacy. This circumstance makes it possible in the first place to warrant **confidentiality**¹⁹². The service has proven successful and is appreciated by victims.

Also worth mentioning are the **quality standards of victim advocacy**. In order to safeguard these, corresponding standards were passed by an inter-ministerial task group. Work on the quality standards is continuous. By now the quality standards are a component of the subsidy contracts with the BMVRDJ, and the victim support institutions commit themselves to compliance with them.

Yet the secret of success is not only the configuration of victim advocacy, but also the (by now) **high acceptance by executive authorities and the court**. „Round-Tables“ at the regional criminal courts also contributed in this regard. The presidents of the regional courts were invited to those Round Tables in the past years, and nowadays the cooperation meetings take place every two years. They are an institutionalised opportunity for exchange and mutual reflection about the respective roles and understanding of each others' roles.

As regards „best practice“, the **legal protection measures against violence in intimate relationships** in Austria needs to be mentioned, e.g. that executive authorities generally take care to protect the victim from unnecessary meetings with the accused. Also, the **referral of victims to victim support services** (in the case of restraining orders to protection against violence centres or the Viennese intervention centre against violence in the family) works in an exemplary manner¹⁹³. Children are in principle interrogated themselves in a criminal procedure. Normally, there are two interrogations, one with the police and one adversary examination in the investigation proceedings. Hence, children do not have to testify another time in the main trial. Where possible, special interrogation rooms are used that are designed more like children's rooms (with cuddly toys, colourful furniture etc.) to make the situation more comfortable for children.

In principle, main trials are open to the public (§ 228 StPO), yet TV- and radio broadcasts as well as filming and photos are illicit. The public can be excluded under certain circumstances. In practice, the public is usually excluded in cases of violence in the family, and also in trials on offences about possible violation of the sexual integrity and personal autonomy.

Finally, for the purpose of coordination and better enforcement of victims' interests there are bilateral agreements and European networks and also national initiatives for certain subdomains of victim support.

192 For the more complex legal situation in psychosocial victim advocacy for children and adolescents, cf. Nachbaur, 2017, p. 232.
193 For details see Article 8 Victims' Directive.

GAPS, CHALLENGES, AND RECOMMENDATIONS

Even though Austria has moved forward and achieved a lot in implementing the Victim's Directive, there is still a lot to do in order to fulfil all requirements.

First, **not all victims of an offence are entitled to support services** tailored to their needs. This is mostly valid for children who had to witness domestic violence, but also victims of hate crime, burglary, cyber-crimes or of torts of negligence¹⁹⁴. The majority of victims can only resort to advice by phone via the victim emergency helpline 0800 112 112¹⁹⁵.

Second, **information on victims' rights** is not easy to understand. Information obligations are mostly adhered to by reading out, handing out or mailing information leaflets. In many cases, however, an oral explanation is urgently necessary. In order to fulfil this, it is necessary to pointedly indicate services able to offer this.

Third, **referral** of victims by law enforcement agencies to victim support services only works in the field of violence in intimate relationships after a restraining order. Even with severe violent crimes in the public space, referral creates great difficulties and often leads to victims not knowing their rights and thus not exercising them.

Fourth, **victim support services are not sufficiently known**. In this regard it still is necessary to invest in respective public relations work¹⁹⁶.

Fifth, there are still many regions with too little qualified interpreters. This primarily concerns the situations of the first police interrogation and making of complaints with the police.

Sixth, victims' rights that are not established by law are taken into consideration far too seldom in practice. This is, among others, valid for the right of particular victim groups to submit a statement about one's own needs and ideas about a compensation in case of restorative justice decisions regarding criminal proceedings. In the area of **restorative justice** measures (diversion) services of NeuStart should be utilised more frequently. Moreover, **victims are not always questioned in a gentle manner** in main trials, even if they are legally entitled to such a treatment. Finally,

¹⁹⁴ The Victims Directive envisages that the focus of victim support services should be placed on the specific needs of victims, who have been severely affected in the wake of a criminal offence. Yet the Directive's objective is that all victims of offences gain access to rights in criminal proceedings and to support services.

¹⁹⁵ Funded by the BMVRDJ, run by the WEISSE RING. For details, see Article 8.

¹⁹⁶ In line with the results of FRA, 2014, in Austria, for example, only every 5th woman knows where to receive help and support after a violent incidence.

the **encounter of victim and accused at court** is only prevented by efforts from victim support organisations or committed court personnel. Hardly any structural and institutionalised efforts are made to avoid such encounters.

Seventh, in the context of **protection and safety of women and children as victims of violence in intimate relationships**, there are still too many cases of repeated severe injuries and (attempted) homicides. It is regarded as imperative to optimise a coordinated security planning oriented towards victims.

Eighth, the **assessment of specific protection needs** by executive forces needs, on the one hand, more handling security and training for the executives in charge. On the other hand, an alternative option should be offered, for instance the assessment of specific protection needs by victim support organisations, if victims are not able and willing to disclose very personal life circumstances to the law enforcement agencies. Protection of the victims' privacy should also be considered in this context. Victims of hate crimes and of trafficking should be regarded *ex lege* as having specific protection needs.

Ninth, the address and other personal data of victims are not sufficiently protected in criminal proceedings.

Finally, it is generally desirable that topics from victimology become a part of basic training of police forces, the judiciary and health professions.

CONCLUSION

Throughout the years, Austria managed to establish an intense support during criminal proceedings for certain victim groups. The two pillars of victim advocacy, psycho-social and legal support, complement each other, in order to make participations for those concerned as easy as possible. The instrument of victim advocacy is extremely important, because it is established by law and the decision about necessity of victim support lies with victim support institutions after a confidential talk with the victim.

Over the last years, certain quality standards have been established for the work of victim advocates, which meanwhile have become a component of the subsidy contracts between the BMVRDJ and victim support institutions. Finances for victim advocacy by the BMVRDJ increase on a yearly basis.

The legal protection means against violence in intimate relationships work equally well in Austria, especially the referral of victims to victim support services.

There is a backlog demand in terms of extension of victim advocacy for certain victim groups who hardly benefit from it due to the current legal framework, such as victims of hate crimes, burglary, fraud or cyber-mobbing. Moreover, the poor comprehensibility of information about victims' rights often poses problems, and there are great difficulties in finding appropriate interpreters for certain languages. Furthermore, victim support services are still utilised seldom because of a lack of public awareness.

Likewise, there are deficits regarding the training of executive officials in terms of sensitisation for victims' needs and the abilities to assess specific protection needs.

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5	Lepuschitz, Michael	andespolizeidirektionWien	Michael.Lepuschitz@polizei.gv.at	
6	Loacker, Brigitte	Lawyer	office@anwalt-loacker.at	
7	Neudecker, Barbara	FachstelleProzessbegleitungfür Kinder und Jugendliche (Victim advocacy for children and adolescents)	Barbara.neudecker@oe-kinderschutzzentren.at	
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10	Tilli, Markus	LandespolizeidirektionKärnten	Markus.Tilli@polizei.gv.at	
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12	Weber, Brigitte	WEISSER RING – VictimSupport	b.weber@weisser-ring.at	



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