

# VOCIARE

BELGIUM

## NATIONAL REPORT



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



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

promotor



**Victim Support  
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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 Given its scope and ambition, authors are aware that some elements may be inaccurate or out of date.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

Belgium has a rich history in Victims' Rights. Some confronting cases at the end of the 20th century motivated policymakers and the general public to pay attention to victim rights. A lot of literature has been published and Belgian initiatives formed the cradle of European legislation or organisations (e.g. Victim Support Europe). The Victims' Rights Directive seemed easy to transpose since a lot of the rights mentioned in it were already in place in Belgium. However can we still stand firm on these thesis? Will this claim stand after a critical look on the field nowadays? The Brussels attacks of 2016 proved that there remains a lot to be done in what concerns the effective implementation of victims' rights which is demonstrated by individual cases that come across in the media and show that the victim's rights were not respected.

In terms of legislation, the fact is that even after the entry into force of the Victims' Rights Directive, in 2012, very few laws made a direct reference to the Directive in order to transpose the articles into Belgian legislation.

This report focuses on the way the organic structures have grown or faded away during the last years and on the **practical implementation of the Directive in Flanders**. The report focusses on Flanders because however the field of justice is a Belgian matter, victim support is not. There are different practices over the Belgian regions and the expertise field of the author only stretches to practices in Flanders.

Here, since 2012 there is an ongoing reorganisation of the welfare field in Flanders which also implies the victim support services of different kind.

The analysis has proven that a lot of services are in place in Flanders and some evolution was, indeed, made between 2012 and 2018, but there is some worrisome issues.

### Information

A proper provision of information to victims about his/her case was, in the past, only to be found when resorting to a victim support service. These services delivered practical, emotional, administrative and judicial information when asked for or when needed. However, victims who are never in contact with such services had no comprehensive provision of information and add to use their own resources to get the information they needed. Since 2017, two websites were created in Belgium, one for the French speaking part (which is not the scope of this paper)<sup>1</sup> and one for the Flemish speaking part. Both websites contain information for victims that is checked and valid.

<sup>1</sup> [www.victimtimes.be](http://www.victimtimes.be) and [www.slachtofferzorg.be](http://www.slachtofferzorg.be)

## Gender related violence

A lot of attention was given in Belgium by the Ministry of Equal Opportunities to gender related violence, resulting in a rise of awareness on this topic and, more recently, in three pilot projects. Three sexual assault centres were created in Gent, Brussels and Liège). These are places in hospitals where victims of sexual assault can go to and where all services are available in one place (doctors, policeperson, psychologist, ...).

## The structure of Belgium

As is often the case, the Belgian structure is not in favour of a clear and transparent landscape for victims. The largest part of the justice structure (court houses and procedures) is a federal matter but the services available for victims are, since 1 January 2016, a regional matter. The victims address of the police (slachtofferbejegening) is a service that resides under the Home Affairs office. On the contrary, the different Belgian regions are responsible for the general victim support. Besides this division of jurisdiction, some particular cases are very difficult to harmonize, for example, cases of gender issues where some issues are of the regions' responsibility while others are taken up by the Ministry of Equal Opportunities.

There are, indeed, various and different structures and initiatives which work in favor of victims but there is no general victim policy that coordinates the cooperation between them.

Recent restructuring of the justice houses and the CAW (the non-governmental organisations that provide victim support in Flanders) paid attention primarily to organisational issues and less to training and common quality processes. The survey conducted in the scope of this research although not representative enough, indicates there is a need for investment in information and training for all professionals involved with victims of crime.

A remark is to be made on how justice deals with specific target groups in need of adapted information and safety measures. There is no general instrument to assess the needs for safety measures when victims file a complaint or enter the judicial processes. When these needs are obvious there are measures in place that can be taken, however when the needs are less obvious it is left to the discretion of individual professionals to decide what is needed and what is not which is a very subjective manner of addressing vulnerability.

Of these specific target groups this report makes a formal statement on the situation of undocumented migrants and fugitives. Their access to justice is conditional and depends on their immigration status. Going to the police and making a complaint can have the consequence of being expelled or demanded to leave the country since the police has the obligation to contact the Immigration services immediately. Furthermore the police services do not distinguish between human trafficker and transmigrant. Each and every transmigrant is seen as a potential trafficker so when they are victims they are criminalised.

# INTRODUCTION

The present report aims at analysing the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Victims' Directive) in Belgium and more specifically in Flanders in the context of project VOCIARE - Victims of Crime Implementation Analysis of Rights in Europe.

This report is the result of a condensed process of work in the period between June and October 2018.

Through personnel movements the first researcher assigned to complete the research and draft the report for Belgium in the context of project VOCIARE could not start the research. Therefore, in June 2018 Steunpunt en Samenleving, Sam vzw, was asked to fill in the gap and produce the report.

Kurt De Backer was assigned to complete the research and draft the present report. Kurt is a staff member for 'Sam', an expertise centre based in Brussels and Antwerp and supporting Non-Governmental Organisations (NGOs) all over the Flanders region. Sam is targeting first line help, support and community building. In the past three years, Kurt has been assigned to the topic of victim support and he has a comprehensive view over the existent services and the way they function in Flanders. Additionally, Kurt coordinated the referral of victims of the Brussels terrorist attacks from the crisis intervention phase to the long term support. Through his work he built up experience on how the NGOs which provide victim support services work and established a substantial network which allows him to get information on these and other topics relevant for the production of this report.

While lots of legislation is a federal matter, the report only focusses on Flanders. This is mainly due to the governmental structure of Belgium. Victim Support is a regional matter so every region has its own policy on this regard. There are no organisations like Sam available in the other regions. Because Sam was funded by the Flemish government, the organisation limits its scope of activity and, therefore, builds up expertise on the situation in Flanders. The narrow time frame for the production of this report precluded the opportunity to extend the research to the other regions of Belgium. Even though the legislation is applicable in all regions, the daily practice varies requires deeply. To analyse the practical implementation of victims' rights in the entire Belgian territory would require a research effort which is out of the scope of the present research. However, it is hoped that this report focusing in the Flemish region will provide a comprehensive overview of how victims' rights are implemented or enjoyed in practice and shed some light on problems, as

well as provide recommendations, that can be transposed and applied in all regions.

The desk research was straightforward and ideally to perform during the holiday period. This period proved more problematic for the survey since many of the stakeholders who were asked to complete the survey were out of office. Therefore, it was only possible to gather a total of 21 usable answers to the survey. Because the deadline was entirely within the judicial leave period no judges or prosecutors were found present to fill in the survey. Hence the survey results focus mainly on the experiences and views of victim support workers (police, justice assistants and NGOs workers).

One of the main findings of the Desk Research was that there is already a lot of information on the implementation available. A 2014 report of the Centre of European Constitutional Law<sup>2</sup> already gives a lot of information on this topic, the current report confronts this information with information from the Survey, desk research and own experiences, based on formal and informal talks and meetings with victim support workers and their coordinators, over the past three years. The reading of the above mentioned report is recommended as a background for this report. Phone Interviews were conducted in order to gather further information which is not readily available in other reports, articles and studies, and which was not possible to collect from the analysis of the VOCIARE surveys.

The report starts with a basic overview of the legal framework containing a basic introduction of the justice system and how the victims support systems fits into the justice system.

Secondly we will evaluate the implementation of each article in the Victims' Rights Directive. This is the main body of this report

A third part is an overview of best practices that might be inspiring for others, this is followed by an overview of gaps and recommendations where the main points of attention are being summarised.

<sup>2</sup> De Bondt, W. (2014). Protecting victims rights in the EU: The theory and practice of diversity of treatment during the criminal trial. National Report: Belgium. Centre for European Constitutional Law.

## BASIC OVERVIEW OF THE LEGAL FRAMEWORK

The Belgium legal framework concerning victims' rights can also be found in the EU Justice Department online database. (*EU justice portal*)<sup>3</sup>. Next to that intensive legal analysis can be found in the 2014 project funded by Directorate General for Justice of the European Commission: 'Protecting Victims' Rights in the EU: the theory and practice of diversity of treatment during the criminal trial', coordinated by the Centre for European Constitutional Law (CECL) and published at the end of 2014.<sup>4</sup>

According to Dr W. De Bondt in the CECL Report: persons who are victims of crime in Belgium have a strong position in the criminal procedure, enjoying a position which goes beyond the minimum standards established by EU legislation. However, no specific legislation was adopted after the entry into force of the Victims' Directive, except for a law concerning interpretation and translation which refers explicitly to the Directive.

In 2016 the terrorist attacks in Brussels also stretched the limit of the system and the consequences are still testing the possibilities of our structures and legislation.

### Justice System

As a crime victim one has certain individual legal rights before, during and after the criminal proceedings.

Criminal proceedings in Belgium are divided into **investigation and trial stages**. In most cases the investigation is directed by the public prosecutor or – in certain cases that are more complex – by an investigating judge.<sup>5</sup> During the investigation, evidence is gathered to establish whether a crime has been committed and by whom.

Once the investigation has finished, the case is either closed or referred to a court for trial. During the trial, the court will examine the body of evidence and determine whether the accused is guilty or not. If the accused is found guilty, a sentence may be imposed. However, the court can also find the person not guilty and acquit them.

Victims have a number of rights at all stages of the criminal proceedings. If victims wish to take a

<sup>3</sup> [https://e-justice.europa.eu/content\\_rights\\_of\\_victims\\_of\\_crime\\_in\\_criminal\\_proceedings-171-be-en.do?member=1](https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-be-en.do?member=1)

<sup>4</sup> De Bondt, W. (2014). Protecting victims rights in the EU: The theory and practice of diversity of treatment during the criminal trial. National Report: Belgium. Centre for European Constitutional Law.

<sup>5</sup> Eg. When special inquiry methods have to be used an investigative judge is necessary. (phonetap, observation,...)

more active part in the proceedings, there is the possibility to ask to be registered as an **injured party**, or to bring a claim as a **civil party** to the criminal proceedings. Under certain circumstances victims can initiate criminal proceedings themselves by directly summoning the perpetrator or by lodging a complaint with the investigating judge and, at the same time, applying to be treated as a civil party. As a civil party, victims can claim compensation from the offender.

Next to these, victims have some rights during the execution of the sentence (e.g., being informed of when the perpetrator is released). This, however, also depends on the victims' status and their role in the proceedings.<sup>6</sup>

### Victim Care in Belgium

The main legal instrument installing a coordinated care for victims in Belgium is the **law of April 7th 1998 on the cooperation of services**. This law establishes structures of cooperation between the police, the justice department and the NGO's. One of these cooperation structures created after the entry into force of law of April 7th 1998 was the National Forum on Victims Policy under which all departments and structures that come into contact with victims came together. This National Forum established the Rights of Victims as worked out by Victim Support Europe for all services. Next to the six Rights of Victims they added a 7th one; the right for help. This is the framework for all services who are delivering victim support (in Flanders it is called victim care as a general term).

The Forum also worked out practical materials like information leaflets or administrative documents for victims or those who come in contact with them. It made a great effort in coordinating the victims care initiatives over the federal state of Belgium.

<sup>6</sup> More detail information including fact sheets can be found on: [https://e-justice.europa.eu/content\\_rights\\_of\\_victims\\_of\\_crime\\_in\\_criminal\\_proceedings-171-be-en.do?member=1](https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-be-en.do?member=1)

# 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.*

### Diversity in the types of victims

One of the main characteristics of the Belgian victim policy is the distinction between three types of victims. First, there are victims who do not have any connection with the criminal procedure as such. Second, there are victims who have issued a declaration and are formally registered as victims. Third there are victims who wish to be involved in the procedure and become a civil party. All three types are consolidated in Belgian law.

The distinction between those types of victims is important in light of the rights that accrue to them.

1. Mere victims (first type) can be called upon as witnesses or can be interrogated by the investigating officers or judges, but are not informed of the decisions that are taken with respect to their case.



2. The idea behind registering as a victim (second type) is precisely to have the right to be informed about the proceedings. The right to be informed about decisions has been extended with the right to gain access to the case file. The status of being a registered victim is criticised for being too easy to attain (i.e. that there is insufficient control over who registers as a victim) and for not being comprehensive (i.e. the fact that victims in general have to reregister as victims in the context of the execution of sentences involving deprivation of liberty and the fact that they do not do so prevents them from receiving information at this later stage of the criminal proceedings).

3. Once victims register and become civil party (third type) to the proceedings, a number of rights accrue to them. As mentioned above, amongst others the victims have the right to ask to be granted access to the case files during the criminal investigation with a view to asking additional investigative measures to be taken. This system too is criticised. On the one hand it is argued that not only granting access to case files during the investigative stage is contrary to the principle that criminal investigations are confidential. On the other hand the denial of access requests results in victims (but also accused persons) who cannot actively participate in the investigation.

### Qualifying as a victim

One of the difficulties highlighted in the De Bondt report is the lack of a common definition of who qualifies as a victim. While the guidelines are fully in line with the requirements of the Directive, there are still differences between what is found in the legislation and what is found in case law.

An example thereof is the reference to legal persons as potential victims of crime. "Though it is recognised that legal persons can be victims, it is not possible to register and make sure that the legal person as such is kept informed about the discussions on provisional release in the execution stage."<sup>7</sup>

For natural persons a definition of victim was given in a legislative from the college of the general prosecutor to the Prosecutors in 2007:

"The natural person and his/her relatives who, as a direct consequence of an act or negligence that is not in line with the law, has suffered damage, including physical or mental harm, psychological suffering or an economic loss."

Relatives are defined as "the lawful inheritants and every person that has a particular affective relationship with the victim."

This definition can be interpreted in a broad sense. It states in fact who can apply for one out of the three victim roles in the procedures. The definition was put to the test after the terrorist attacks in Brussels in 2016 where a lot of people were involved and victimised. The fact that in

<sup>7</sup> See footnote 3

Belgian law there is no clear definition of victim raised interpretation issues: how to prove you are a victim? Who has the right for compensation and who does not? Additionally, this may lead different entities to adopt different definitions of victim, for example, an insurance company can endorse its own definition of a victim different from that of the government.

The part that states 'a particular affective relationship' leaves some room for interpretation. The relationship has to be proved. This is a good example of being non-discriminatory to new forms of living together, relationships, etc.

## 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.*

Once a criminal proceeding has started the victim has some tools (access to files, guidance by justice assistants, guidance by victim support) in place to access information on and understand the criminal proceedings, as well as the information that is relevant for his/her situation.

According to the online survey results, the opinions are divided whether victim support workers have the necessary tools to establish the needs of victims in understanding the information and proceedings given. Only some of the respondents think there are regular inquiries whether the victim understands the messages or not.

There is reason for concern when we look at the different groups of victims. Minors are always a specific group for whom measures and tools are in place. When children have to be interrogated this always happens by trained persons. Information and how to explain things are part of the training.

The situation deteriorates for other target groups ranging from people who speak a different language from that of the proceedings, people who have hearing impairment or an intellectual disability, who are illiterates, blind or partially blind. There are not sufficient measures taken to ensure that they understand the proceedings and what is going on.

One of the reasons for this could be that the justice institution is based on a principle of equity. Everybody has to be treated equally. Issuing special measures for target groups, in the eyes of the

justice system, does not promote equity. It seems that there is some work to be done to explain that to reach equality of rights specific measures are certainly desirable – positive discrimination.

The Belgian language law is very complex given the federal structure. It so happens that general information is not available in other languages but French or Dutch. An example is the recent Flanders website "Slachtofferzorg.be". According to a language law that dictates the use of language by the administration in Flanders a sentence in French on this Flemish website that points French speaking people to the website "victimes.be" run by the Federation Wallonie-Bruxelles is not allowed. The same goes for translation in English of this kind of general information. This type of general translation is always postponed to an indefinite moment because there is never any money for it.

### **Accompaniment by a person of the victim's choice**

Under Belgian law, victims can be accompanied by a person of their choice. As indicated by survey results this is, however, not always the case.

When there is a refusal of the accompaniment it seems that most of the time victim support workers believe this is because the proceedings might be prejudiced. Sometimes they believe it is because it is contrary to the interests of the victim.

The use of language by authorities that is easy to understand is a big concern for victim support workers. 80% of them believe that authorities do not use language that is easy to understand. The problem is that most communications start from the needs and habits of the service. This results in administrative and procedural language that is not easy to comprehend. Often professional help is needed just to understand the letters from the justice department/courts of law.



## 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.*

When someone is victim of a crime and reports it, the first professional with whom the victim contacts with is often a police officer. In Flanders, every police officer can decide individually what information is going to be given to the victim. Often their decision is based on the information they get about the crime and the personal (informal) evaluation they make of the victim. How the victims' complaint are transferred to a prosecutor or not and an explanation of the services they are entitled to is often the information that is passed as a standard.

In each arrondissement (administrative area) in Flanders, a justice house<sup>8</sup> is responsible for receiving the victims in case of a trial, ensuring the right to access their files, the retrieval of personal belongings, and guiding them through the justice system. From their first contact with the justice house, victims get all necessary information regarding their rights. Once in the system, the justice assistants<sup>9</sup> working in those houses are the main providers of information and support during procedures. They also provide referral to victim support services when the victim agrees with this referral. Both services often work well coordinated together on a case level.

<sup>8</sup> Justice houses are places that intend to make the access to justice for the large public easier. This means that whenever there is going to be a trial the victim can go to this justice house where he/she is provided information, access to the case files, his/her personal belongings when they can be returned. The justice houses second responsibility is the follow up of alternative punishments for perpetrators (community service, restorative sentence, etc.) both divisions (victims and perpetrators) are separate entities.

<sup>9</sup> These are the people working in justice houses.

When in contact with an NGO, victims receive information according to their needs. Standard information is available (how to children respond to incidents, how to cope after a serious incident). Usually the first contact is by phone and the victim is given every information he/she asks for or needs. When during this phone call it is clear that a personal contact is necessary the victim is given an appointment. After the phone call often information is send by letter or email. Depending on the situation more information is given. In case of people doubting whether to file a complaint, neutral information is given in order to let people decide if they want to make a complaint or not.

According to the online survey results victims receive information from the first contact. According to the majority of respondents this information is partial because it is tailor made. Victim support workers consider that information is given partially depending on what the workers perceive the needs of that moment are. Usually full information is only given later or in the course of a support process. Professionals justify the provision of partial information during the first contact also by the fact that when contacting for the first time with the authorities, victims are usually in a very emotional and/or crisis situation.

Recently the Flemish government started up a website for victims in order to give victims access to information. This site ([www.slachtofferzorg.be](http://www.slachtofferzorg.be)) aims to be clear and comprehensive for all kinds of victims. This is a promising advancement that might help many victims in the future, however, since this is a recent development, it was not possible to access the impact of the use of internet as a mean of passing information to victims.

The problem for this website is that there is no funding available for exhaustive and broad communication on its existence. A few measures have been taken, but the team writing the site has no marketing or communication budget.

Basically the police(wo)man receiving the complaint is the starting point of information giving. When they think it is appropriate they refer to NGO victim support. The victim support workers, then, provide standard psycho-educational information to each referred victim. The justice assistant in the justice houses provides information about proceedings, return of property etc.

When the referral to the NGO is accepted by the victims, they usually do not face problems to get or ask for information. It is a more difficult situation when the victim refuses the referral and he/she returns home. Often their questions arise after a few days/weeks and they forgot that victim support is available or they do not believe their questions are serious enough to bother a support worker with. The new websites tries to fill that gap by providing victims a platform where they can find the answers to some of their questions and complete information.

In the 'Agreement on cooperation' between the federal state and the communities regarding victims care of 1998' several statements on how to cooperate between services are made. A structure for coordination with regular meetings on the local, regional and national levels is established. Based on the cooperation agreement of 1998 the tasks of the victim care chain (police, justice house, NGO support) are quite clear.

But these practices started twenty years ago. In the meantime the structures have faded away (some are still working and others are not) and the national Forum that was installed as a coordination point stopped its work. For the moment there is no institute supervising this agreement, so things are getting more blurry and are not seen as standard by every person starting on the job.

In addition to the general framework of the right to information and the scope thereof, in practice there are comments with respect to the availability of information in languages other than the three official languages: Dutch, French and German. Some of the information leaflets and documentation available on the website of the Ministry of Justice or in the decentralised victim support centres are also available in other languages, but the vast majority of information is limited to those three languages. Despite the fact that victims have the right to be assisted by an interpreter and actors that come into contact with victims should call upon an interpreter when providing victims with information, this is still subject to critique.

## 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.*

In Belgium, there are no specific limitations to reporting a crime in relation to who can report a crime - anyone who is the victim or witness of a crime can report the crime to the police. There are also no time limits that need to be taken into account. Belgian citizens and residents can report some types of crime<sup>10</sup> via online tools. Victims can always visit a police station to file their complaint. Should the victim want to make sure that a criminal investigation lead by an investigative judge is immediately started and they are party to the proceedings, victims can also decide to file their complaint at the office of an investigative judge.

With regards to the right to receive a written acknowledgement of the complaint, the vast majority of the victims receive it, according to the experience of victim support workers:

A vast majority (87%) of the victim support workers who responded the online survey state that victims receive a written acknowledgement. 61% have the experience that people can do this in their own language.

57% experienced that victims were enabled to make a complaint through receiving linguistic assistance however it is not clear whether this is always possible in their own language. Police officers tend to try and find a way to understand people, whether it is through help of a bystander or family member or because there is a native speaker in the police force. There are no interpreters available at all time in the police station.

<sup>10</sup> Bike theft, shoplifting, graffiti, as long as there are no persons injured, the perpetrator is unknown, no violence or threats were made, ...

Everybody reporting a complaint to the police receives a document from the police with file numbers, the procedure that is going to be followed, ways to get more information, legal support and victim support.

The situation is more alarming for the specific group of undocumented migrants. Their rights to make a complaint seem to be consequently violated in day to day practice (cfr. article 22).

## 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.*

The victims' right to receive information about the case is quite extended in the Belgian criminal justice system. Some aspects are limited to victims that have the capacity of a civil party (e.g. appeal the decision not to be granted access to the case files in the course of the criminal investigation), this is not in contradiction with the Directive which consistently stipulates that national procedural requirements may be attached to being granted a certain right.

Nevertheless, the right to information is subject to debate. Discussions are ongoing with respect to (1) finding the right balance between the confidentiality of the proceedings and the right to access case files with a view to for example request that additional investigative measures are taken, (2) the brief motivation for decisions not to prosecute a case, (3) the need to reregister as a victim to be kept informed about the execution of sentences involving deprivation of liberty.

Victims' right to receive information about their files is not always communicated to them. Sometimes if they don't engage a lawyer and if they don't visit victim services, this information is missing. The prosecutors or investigating officers sometimes do not inform victims either,

For example, when a case is still actively being investigated and there is sensitive information in the files. This is shown in the survey data. 61% of the respondents' experience that the information on the right to receive information is being given always or often, while one third of them believes this is sometimes the case. 30% answers often or always on the question how often

is information not provided. Given the fact that people always get a receipt of their complaint and that some information is standard present on this receipt, it is recommended that the right to receive information is also standard on this document. The reason not to do so is that this right is depending on the person status as a victim. Not all complaints are that serious that they result in a prosecution or a case where it might be interesting to come forward as a civil party. So this is not information that is necessary from the beginning.

## 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.*

Since 2016 a specific law<sup>11</sup> with direct referral to the Directive has been adopted. This law states that every person has the right for interpretation or translation in judicial procedures

This law makes the situation quite clear for all involved; people have the right to ask for a translation or interpretation of the main parts of their files or the procedures they are in. However there are some problems within the law and in the practical implementation of it.

The law itself states that victims 'civil party' can ask for a translation of procedural pieces or for interpretation. There always has to be a request for the translation. This is not in compliance with the Directive. In the case of a preliminary discussion taking place before the case goes to trial the interpreter is only foreseen in case the victims' lawyer does not speak the language of the victim. This is an extra responsibility then for the lawyer, without guarantee of quality of the translation.

This law is not quite clear about when a judicial procedure starts. The question is what is exactly the moment of the proceedings where the law can be applied and what kind of proceedings are meant, e.g. in case of juvenile delinquency or minor misdemeanour also procedures without judges can have consequences.

The practical implementation of this right, is problematic as well. Two problems have been covered by the media.

<sup>11</sup> Law from 28/10/2016 regarding the implementation of Directive 2010/64/EU and 2012/29/ EU.

The first is the official register of interpreters/translators. There is a demand for those people to register themselves in a database of the justice department. The aim was to create a database of trustworthy translators or interpreters. They can be called upon whenever necessary in the course of a file/complaint. There is an ongoing discussion between the minister and the organisation of sworn translators/interpreters (Beroepsvereniging beëdigd vertalers en tolken, BBVT) whether this in fact is a quality instrument or not. The organisation states that if people are registering themselves there is no control or scrutiny of the antecedents or the truth of the statements the person makes, so, in principle, everybody can register themselves in this database. This might jeopardize the quality of translations provided to victims which hinders their rights.

A second discussion is about the wages and the fees granted to interpreters/translators. Mostly the payments by the justice department are far too delayed. The payment is being executed by local court administration and not centrally for everybody. This means that the payment's execution is depending upon the budget that the federal government gives to the local courts and that the registration of the invoices has to pass a lot of administrative procedures before being paid.

Both of these issues have been discussed in the media. However, there is still a widespread lack of knowledge about this right which leads to some uncertainty, visible in our results of the questionnaire. Support workers know that there is a right for translation/interpretation but they do not know whether it is possible to realise it nor do they know in what stage of the investigation or court progress it is possible. Only 1/3 of the respondents of our survey know that interpretation services are available while another 1/3 also thinks they are not available. The majority believes rightfully that if translation is possible this is for free.

The government made some attempts to disseminate information to all the courthouses. After the 2016 law passed the federal justice department made a quality handbook<sup>12</sup> for all services on how to work with translators and interpreters. However, the handbook does not mention when to work with these professionals, but in general it clears out a lot of practical issues for the courts and sets a standard.

<sup>12</sup> [https://justitie.belgium.be/sites/default/files/kwaliteitshandboek\\_vertalers\\_tolken.pdf](https://justitie.belgium.be/sites/default/files/kwaliteitshandboek_vertalers_tolken.pdf)

## 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.*

### General services

All victims have free access to two types of general victim support in Belgium. This is the exact situation for Flanders. Except for the phone line, the French speaking part is structured similarly.

Before contacting a service, victims can call the phoneline 1712, a helpline for people who experienced or witnessed violence. When people call this service, trained helpline workers listen to their questions and give advice or referral. In 2017, 4812 calls or emails were made to this number.<sup>13</sup>

Besides the helpline, victims can seek help in two kinds of services:

The first is called '**slachtofferonthaal**' and is located in justice houses (services aimed at making the justice department and proceedings accessible for everyone). These services provide legal and psychological support for all victims that are in the proceedings. The support in legal and judicial matters is obvious but they also provide emotional assistance. This support however is not provided for people that do not have a case running or a judicial file. When those persons come in the justice houses, they are referred to the NGO victim support. Slachtofferonthaal in the justice houses received about 5500 victim's requests for support in 2016.<sup>14</sup>

<sup>13</sup> <https://dwvg.be/jaarverslag17/cijfers-1712>

<sup>14</sup> <https://www.departementwvg.be/cijfers-justitiehuisen-2016>



A second service is **victim support provided by NGOs** in Flanders. There are 11 NGOs which are independent and are called CAW (Centre for general wellbeing, *Centrum algemeen Welzijnswerk*). They often have a specific victim support team which provides the service. They are the most easily accessible organisations for victims and they give legal, administrative and emotional support, including long term support. Generally speaking, they offer first line support but they do not offer long term therapeutic services. In 2017, these 11 services registered 6600 requests for victim support.

Victims are, as mentioned above, being referred to these services by the police. The Police also has specific victim address officers, but every police officer is obliged to refer victims to victim support when they want help. The role of the victim address officers is twofold, they offer crisis and first moment assistance and do death notifications, and secondly, they have the task to stimulate victim sensitiveness in their police stations.

There is an official referral agreement between all services (see the agreement on cooperation above). When a victim files a complaint at the police office they are asked if they want to be referred to a victim support service. When they answer positively their phone number and address is passed on to the victim support service nearest to their home. The victim support service calls them within 5 working days, (*de facto* it is max 3 days.) and they initiate the support process.

40% of all victims in 2017 came into the CAW's this way. 16% came in on their own initiative and 12% were referred by a third party. For 32% of them this is unknown.<sup>15</sup>

Both types of support services try to work together as coordinated as possible on a case level. This means that when a person enters the victim support and it is clear that the victim is already known at the justice house, the support worker will ask permission to contact the justice assistant and they make arrangements and divide the work to be done. In the reverse case the justice assistant contacts the victim supporter.

As mentioned above, this year the Flemish government launched an information website for victims. The website, [www.slachtofferzorg.be](http://www.slachtofferzorg.be), addresses many issues relevant for victims and their families/supporters. The website is still being developed and soon thematic (eg. robbery, terrorism, ...) subpages will be added. This is an important information tool for victims who do not want to resort to victim support services or want to get info themselves before turning to specialist help.

<sup>15</sup> CAW. (2018); In Beeld: Jaarverslag CAW 2017.

<https://www.caw.be/voor-professionals/downloads/jaarverslag/caw-in-beeld-2017/>

In Wallonia, the system is quite alike but the NGO's take on slightly different tasks and they are less coordinated than in Flanders. They get their funding from the Justice House Department of the the Fédération Wallonie-Bruxelles. This government also hosts the website [www.victim.be](http://www.victim.be), in order to reach out to victims.

### Specialist services.

#### *Psychological*

Long term/intensive therapeutic support is available for victims, in some cases free of charge but those have, however, long waiting lists. Private therapists do not offer their services for free. This means that, in general, there is a cost for victims when accessing psychological support services, sometimes this can be recuperated from the perpetrator through compensation (cfr.infra), but this procedure can take time and is only available for those who are civil party in the proceedings.

Shelter houses for women as a victim of domestic violence are available in Flanders. There are about 16 of these shelters and two of them have a completely secret address. Services (police, general welfare organisations, ...) know how to deal with women and children looking for a shelter. There is also one shelter for men who are at risk. Single women usually face no obstacles to find places in the shelters, however, sometimes it is difficult to find an adequate place for women with children.

There is an assessment procedure in order to define the need for a shelter and the need for a shelter with a secret address. The requirements are usually quite strict: having no other place to turn too and being in need of a safe place. When there is imminent danger for violence or revenge people can get into the secret shelter.

A new Belgian project is the 'sexual assault centres'. In three cities, a pilot project is being started for victims of sexual assaults. All necessary services (police, medical services, and justice system and victim support entities) are working together in one location where people can file a complaint, get all necessary information and a consultation with a doctor or specialist. These centres have a webpage available in three languages: [www.seksueelgeweld.be](http://www.seksueelgeweld.be).

There are some centres specialised in therapeutic help for refugees but they are scarce. Refugees are more treated as criminals than as victims. This is a large societal problem. Some humanitarian organisations have support to offer, but this is not quite sufficient to meet the needs of the refugees a part of whom are traumatised children in need for specialised services.

Generalist and specialist services do whatever possible to work coordinated on a case level in order to ensure the continuity of the support process. But this is designed on an individual level and there are few structural guaranties for this.



Contrary to what happens with the slachtofferonthaal and the different CAWs in Flanders, which coordinate their work on a case level, the different generalist and specialist services are not coordinated. This results in a dispersed field of organisations. These organisations all have their goals, structure and mission. There is no initiative to create a mutual mission for the support of victims. There are no guidelines on how to work together and there are no mutual learning opportunities. Some specialist services are NGOs, others are governmental, some are federal others are regional or even local. For victims, finding their way in this patchwork is not that easy and once they enter the system through one type of support or one entity, there is no guarantee of continuity due to the lack of coordination between them. This scenario is even worse for foreign victims, because not every information is made available in other languages. Often information can be translated in French or English by support workers themselves but if somebody does not understand these languages it becomes more difficult to respect victim's right. There is a way to get to a translating phone service but they mainly work on appointment and seldomly on the moment itself.

Most victims are being referred to victim support organisations, but not all of them. There is a standard receipt ticket of the complaint where addresses are mentioned but sometimes victims don't want to be referred but change their minds after some time. Sometimes the police officer underestimates the need for help of a victim and doesn't make the referral in person.

With regards to what is found necessary to improve the support services provided in Flanders, the online survey results indicate that more money, more professionals and more training are the most pressing needs. Victim Support in Flanders had a strong tradition in working with volunteers, this seems to have shifted now to a more professional paradigm of thinking. Also the question for more government involvement is surprisingly well ticked. And however there is a question for more policies this is not a request for more quality standards. Given the fact that the government is leaving things partly to the market of NGOs and the request for more standardisation and coordination, people don't seem to think that the answers lie in the use of quality standards guidance.

## 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.*

In Flanders, once the victims resort to the support system, all these kinds of support are provided in most cases. The victim services in the justice houses and the victim support services in the CAW have a legal framework stating their tasks and obligations.

We talked about three central players in victim care: Victim address in the police force (slachtofferbejegenaars), victim reception in justice houses and victim support in NGO's. Sometimes it is not clear who takes on which function mentioned in article 9. It is quite clear for victim support and victim reception. It is not always clear how far the engagement of the victim address goes. The agreement of cooperation limits the tasks of the victim address to first contact on crime scene and death notification and they should refer to other services to guarantee the other rights but in some cases they tend not to refer because the victim does not want to see a new social worker and wants to stay with the first person on scene.

The image of victim support through media is also a general one, linked to the police. So people think when they have met victim address persons from the police that they are in the hands of 'victim support' They often refuse referral to actual victim support and ask the first police person for a longer help process. Sometimes the victim addressers are able to deliver this support, sometimes they are not because it is not in their task description to follow up on victims over a longer period of time.

The online survey results indicate that information and advice is always given to victims, even so emotional, psychological, financial and practical advices when considered appropriate or needed. The prevention of risks and secondary victimisation are included. More difficult are the referrals. There seems to be an inherent doubt in some cases whether referral is needed or not. It is not quite clear whether the instigator of this doubt is the victim support worker or the victim him/herself.

The existence and use of shelters is well known within the victim support services. The special centres for sexual assaults are also well known in the region where they exist (these are pilot projects for the moment).

## 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.*

The victims' right to be heard during the investigation and during the court sessions is broader than the minimum requirements set out in the Directive. Victims have the right - in various stages of the proceedings - to provide whatever information they consider relevant and want to add to the case file. This is the case for victims who act as injured party and victims as civil party. The easiest way to do this is to contact the justice assistants of the victim reception service in the justice house. Victims can add their information directly to the prosecutor or the court.

When a victim is a civil party, he/she has the right to request to be heard in person at least once during the investigation. Because victims have the possibility to become party to the criminal proceedings by becoming a civil party, the right to be heard can be interpreted as the right to participate as a full party to the criminal proceedings.

The fact that being a full party implies that victims can request that certain investigative measures are taken. The prosecutor has the obligation to motivate his/her decision if he/she does not act following the request. The fact that victims have the possibility to challenge such denial is subject to debate. This national discussion should be looked at in the context of the broader discussion on the involvement of the parties in the investigation, the accountability of the parties to the criminal procedure and the role of the investigative and trial judges. It links in with discussions on the future confidential character of the investigation and the balance between a more inquisitorial or accusatory criminal justice systems.

Child victims are taken into account by the system. They are being interviewed just once (audio-visual interview) by trained interviewers. If they are less than 12 years old they can request to be heard. If they are over 12 there is an obligation to hear them (e.g. In case of domestic violence, neglect, etc.) (cfr. article 23).

## 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.*

When victims merely file a complaint (plaintiffs) they will not be informed about whether the defendant will be prosecuted or not. Only when they are officially registered as victim (injured party or civil party) that they will be informed about the decision not to prosecute.

The decision not to prosecute will be accompanied by a basic motivation. In practice, it is sometimes criticised that the motivation is too brief and not detailed. Often, the motivation is a general, standard formulation that there is insufficient proof, that there is no priority to prosecute that kind of offence or that the investigation could not identify the offender. Unless provided with significant detail about the grounds for the decision, the information is said to be useless. However, this position is not followed by all practitioners. Most practitioners tend to argue that a very brief and even general clarification is sufficient given the possibility for the victim to have access to the case file and review the investigation and the grounds for the decision more in depth.

In literature, it is added that it should also be mandatory to inform the victim of discontinuing the criminal procedure because of a financial settlement that has been made with the suspect. It is the experience of some practitioners that victims who just want to know what happened to the case are satisfied with the general motivation and victims that want to know every single detail about the case will make use of the right to access the case file anyhow, even when a more substantial motivation is provided.

### Challenging the discussion

A distinction needs to be made, based on the 'status' of the victim and the type of the criminal investigation.

#### *Criminal investigation led by a prosecutor*

When an investigation is led by the prosecutor, it is the prosecutor who makes a decision on either or not to prosecute the defendant. When a criminal investigation is led by a prosecutor, there are two possible types of victims. Victims can be a 'mere' victim or a 'registered' victim. Neither of them can challenge the decision as such. However, within the current system victims can decide to file a formal complaint at the office of an investigative judge as a result of which the investigative judge will open a new criminal procedure and the decision on the further prosecution will be taken by the deliberation chamber.

#### *Criminal investigation led by an investigative judge*

When an investigation is led by an investigative judge, the decision to not prosecute the defendant is taken by the deliberation chamber. This is a chamber that is a part of the Court of First Instance. In these situations, when the deliberation chamber decides not to prosecute only victims who are a civil party can appeal the decision and bring the case in front of the arraignment chamber.

## 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 Belgium, restorative justice services are available for victims.

They can be resorted to whether the offender is prosecuted within a criminal proceeding or not. When a decision not to prosecute the case is issued in the criminal proceedings, the victim is still not prevented from turning to a restorative justice procedure.

As mentioned above, a restorative justice procedure essentially rest upon the voluntary participation of both the victim and the offender (who has acknowledged the facts). Even though it is required that the offender acknowledges the facts, it is still compatible with a decision not to prosecute. The Belgian criminal justice system is not based on a legality principle that requires prosecution of all cases: the prosecutorial services have the possibility to decide not to prosecute the case if the facts underlying the case are not listed as a priority.

Restorative justice is only possible through restorative justice services. These services and their mediators are the safeguards of the victims and offenders rights.

The organization overlooking the restorative justice organisations is called Moderator. In 2017<sup>16</sup> they received 1865 request for a restorative justice procedure for adults. 772 cases were started and 714 cases were terminated.

The services have a quality framework that guarantees the safeguards mentioned in the Directive. Restorative justice processes are always moderated by a trained volunteer or staff person, the moderator attitude is described as a multidirected partiality towards all parties involved. People have the option to start an indirect process where the moderator commutes between parties and they do not see nor speak each other. Or they can start a direct process (with a possible

<sup>16</sup> <http://moderator.be/wp-content/uploads/2018/04/poster-jaarverslag-def.pdf>

face to face contact under supervision). Most of the processes started are indirect while some of them become direct afterwards.

Consent and confidentiality are conditions to start up a process of any kind.

## 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.*

Every victim has the right to legal aid in each stage of the criminal procedure. A two-level legal aid system is in place.<sup>17</sup> Every victim has the right to have initial first-level legal advice completely free of charge. Within the courts of the lower level, a service is housed where victims can seek information and consult a lawyer about their case. Simple questions about the criminal procedure, the rights and position of victims as well as simple questions about an individual case can be answered. In addition thereto, legal aid services are provided by a number of non-profit organisation and NGOs. Typical for this kind of legal aid is that the victim visits a lawyer during a consultation hour and the lawyers do not accompany the victim during court sessions.

As a second level, victims can also ask to be assisted by a lawyer for the entire course of the procedure, formally representing them during the investigation and court sessions. Depending on the financial situation<sup>18</sup> of the victim (and the extent to which they have a right to free legal aid as part of an insurance contract) this legal aid can be completely free of charge. Other criteria involved are the possibility that the victim lives in a social renting house, or has a guaranteed minimum income (social security measures). In case someone earns slightly more than the maximum numbers indicated, the fees are not free but reduced.

The right to be assisted by a lawyer continues during the execution phase. Victims can seek the assistance of a lawyer at the event of e.g. the conditional release of the convicted offender.

<sup>17</sup> Wet van 6 juli 2016 tot wijziging van het Gerechtelijk wetboek met betrekking tot de juridische bijstand

<sup>18</sup> for a person who lives on his/her own the norm is a net income of maximum 1011 € per year, for people living together its 1298 € per year + 188,22€ for each person at charge (Numbers for 1/09/2018.)

## 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.*

Throughout the procedure, various mechanisms are put in place to ensure that victims can benefit from support free of charge. Reference can be made to the right to have a medical physician present during a medical investigation. To ensure that no financial considerations influence the use of this right, the costs of this intervention is born by the State. The same is true for first-level legal aid, described above.

Pursuant to Art. 1022 of the Judicial Code, the expenses made by the victims (e.g. costs for second level legal aid) can be (partially) reimbursed if the offender is convicted. The reimbursement is decided based on a fixed scheme and can range from € 150 up to €15.000.

Should the accused be acquitted and thus the claim of the victim not recognised, the expenses made by the victim are not reimbursed. There is only one exception to this rule. Should the victim benefit from legal assistance free of charge, the judge will nevertheless award a minimum amount of € 75 to cover part the extra costs of the procedure, provided that the procedure was not clearly a misuse of power and clearly unfounded.

## 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.*

Return of property is essentially a civil mechanism. If the ownership is established, the property needs to be returned.

In addition to the civil mechanism, there are criminal law provisions that refer to the return of property. A judge will order the confiscation of all property that was used in the context of the crime. Should the ownership of the confiscated property be with the victim, the property is duly returned to him/her. Art. 44 Civil code allows a judge to 'convict' a person not only to the sanctions that are explicitly listed in the criminal code in light of the specific offences that were committed, but beyond that also to the return of property (regardless or independent of confiscation) and reimbursement of the victim.

Property that was confiscated is returned in the presence of a judicial assistant working for the justice houses and thus a trained victim support worker. Sensitivity is a main concern for them. If necessary property is cleaned unless the victim does not agree.

It is not possible to predict the timing in which property is returned. This depends entirely on the proceedings.

## 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.*

Victims that have incurred an economic loss or emotional damage can seek compensation for these damages in a civil proceeding that can be joint with the criminal procedure or dealt with separately in front of a judge in a civil court.

Because the procedure is relatively complex, victims are always advised to seek the assistance of a lawyer if they seek compensation for the damage. The claim for the commission of financial assistance can be done by a lawyer or the NGOs that offer victim support (the CAW). However, in the aftermath of the terrorist attacks, the procedure to make claims for financial help was simplified in order to let people make their claims themselves.

### **Criminal courts**

#### *Joining an existing procedure*

Only victims who have the status of a civil party can seek damages. This means that victims (be it or not registered) have to draw up a declaration detailing the economic loss or emotional damage.

#### *Starting a procedure*

If the decision was made not to prosecute or no investigation was started yet, victims can decide to file a complaint at the office of an investigative judge who will start up a criminal investigation and take note of the claim of the civil party.



Alternatively, a victim can also decide to bring the case immediately to a trial judge who will rule on the merits of the case. This possibility is limited to the least severe offences.

#### *Ex officio*

In the Belgian criminal justice system a number of so-called 'fast-forward procedures' have been introduced with a view to bringing an offender to a trial judge as soon as possible. Because it is possible that victims have not had the time to consult a lawyer and decide on the civil claim, a trial judge may consider the civil situation ex officio. The judge will not rule on the civil part of the procedure until the victim has had the opportunity to look into the case and decide on its position.

#### *Civil courts*

Because, in what concerns action for damages, the relation between the victim and the offender is essentially civil in nature, the claim of the victim can also be ruled on by civil courts. However, when the two procedures coincide, the principle '*le criminal tient le civil en etat*' applies, which means that the criminal procedure will 'pause' the civil procedure. The civil judge is required to wait until the criminal judge has ruled on the case and is required to take account of the decision the criminal judge has taken with respect to the involvement and guilt of the accused. Though it may seem logical that a victim files its claim with criminal courts because of that rule, there are several reasons why a victim would opt for a civil court, not in the least financial ones. If a victim files a complaint at the office of the investigative judge and the procedure is dropped based on a lack of evidence for example, the victim will have to bear the costs of the procedure. This is not the case when the victim has decided to start a civil procedure against the accused person.

#### *Execution*

When a victim is granted a compensation, there is no specific follow up with respect to the actual payment of the compensation on behalf of the convicted offender. Information is provided to victims about the possibility to use a bailiff to collect the compensation. Where necessary, a victim can still seek legal aid of a lawyer to assist in the execution of the judicial decision.

## 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.*

A declaration to be registered as a victim, a declaration to become a civil party or a declaration detailing the civil complaint can be done via registered mail. In doing so, these declarations can also be made if victims who reside in another member state. In addition thereto, foreign authorities can pass on a declaration made by their residents with respect to cross-border offences largely committed/prosecuted in Belgium.

If a Belgian victim of a cross-border offence that is largely committed / prosecuted in another EU Member State wishes to file a complaint, the victim is referred to the Commission for the financial aid to victims of serious crimes. When implementing the Directive, that Commission was appointed as the competent authority to receive and pass on complaints from Belgian victims or victims residing in Belgium.

Art. 40 of the Law on fiscal and other provisions – which holds the provisions governing the work of the Commission for financial aid to victims of serious crimes – stipulates that the Commission is tasked to:

- Provide the victim with essential information with respect to the possibility to seek compensation in the member state where the offence was committed. It will provide the victim with the necessary forms based on the guidelines set out by the European Commission.
- Provide the victim – upon its request – with general advice and information about how to fill out the form
- Send the forms and where applicable the supporting documents as soon as possible to the competent authority of the other member state.
- Provide the victim – where necessary – with advice on the additional information that is requested by the decision making authority of the other Member State and pass the additional information on as soon as possible
- Take the necessary measures to make sure that - should the decision making authority of the other member state decide to hear the applicant as a witness or hear a expert – all persons involved are heard in conformity with the national laws with respect to video and or telephone conferencing and all persons involved receive an official report drawn up of the hearing by the competent authority of the decision making member state.

The central role for the commission on financial compensation in this matter explains why most (50% and more) victim support workers answered 'no answer' on all questions regarding this aspect. They have no experience with victims resident of other states and don't know what rights apply to them.

The other half of the respondents feel that victims who are residents in another state are being treated differently from 'national' victims. Only 15% of them do not think this is the case. According to all these people these differences affect the access to rights at least moderately.

## 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.*

### Questioning

In the Belgian criminal justice system, there is no direct cross-examination as is known in the common law systems. Even though the defence has the right to question witnesses (including victim witnesses and their relatives), such questioning is indirect. It will be either the investigating officers or the judge that will ask the questions. In doing so, the system avoids secondary or repeat victimisation.

Minor victims or victims of a listed number of offences (such as violent crime, trafficking in human beings, sexual offences) have the right to seek the assistance of a counsellor. This is a person of the victims choosing (in case of minors the counsellor is not necessarily one of the parents and can be a relative or a legal guardian).

The prosecutor or investigative judge can however, following a motivated decision, formulate an objection thereto.

The prosecutor or the investigative judge can also order that an audio-visual recording is made in order to avoid that victims repeat their testimony several times. It should be noted though that the audio-visual recording does not exclude an additional questioning at a later stage in the criminal procedure. Minors up until the age of 12 have to be informed of the fact that the questioning session is recorded. Once a minor has reached the age of 12 years, an explicit consent thereto is necessary.

### Physical protection

#### Safehouses

If women have nowhere to go after the crime, temporary residence can be provided in a number of safehouses. Typically, residence in these safehouses (which is not free of charge) is used by victims of domestic violence. Where necessary, victims can seek the financial support of the Public Centres for Social Welfare.

Specifically for victims of trafficking in human beings, Payoke, Pag-asa and Sürya are the non-profit organisations that provide assistance to victims, including temporary residence in safehouses if needed for the protection of victims. Specifically for children, the Confidential Centres on Child Abuse and Neglect are the gateway to direct victims to find the protection needed.

#### Anonymous witnesses

Especially in the fight against organised crime, the use of anonymous victims is a way to ensure the physical safety of the victims who testify. The general rule is that anonymous testimonies are no longer per se inadmissible. The fact that the investigative judge – who's task it is to look into evidence both à acharge and à decharge – has information on the identity of the testifying victim and the validity of the testimony can be reviewed by a judge, is considered to be sufficient counterbalancing against the limitation for the defence. This mechanism can only be used when victims feel threatened and because of that will only testify anonymously and there are serious indications that the safety of the victims requires anonymity.

#### Witness protection committee

The witness protection committee grants or lifts protection measures and financial support measures for vulnerable witnesses in need of protection.

The protection from intimidation and retaliation is, according to victim supporters, a shortcoming. They see this happening only sometimes or rarely. The same goes for emotional or physical harm.

They do feel that victims are often treated with respect and dignity by investigating and prosecuting authorities and when testifying. They however occasionally experience exemptions.

Restricting measures can be taken and are often taken in the case of domestic or sexual violence. The police can't take them, they only can be taken by a judge.

In the case of domestic violence there is one law that allows judges quite fast to get the perpetrator out of the house on the prosecutors order but this is rarely being put into practice. There is ongoing research to find out why this is seldomly practiced.

## 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.*

During the criminal procedure, a number of procedural measures are in place to avoid unnecessary contact between victims and offenders. Examples of these measures are the above mentioned audio-visual recordings of questionings, the possibility to have an anonymous witness testimony, the system where a judge as opposed to the offender or the defence council directly questions the victim. Besides the procedural measures, practical measures are put in place. At police stations and courts, there are either separate waiting areas or practical guidelines to avoid unexpected confrontation between victims and offenders.

Field workers contradict these conclusions, at least the practical things are not well taken care of according to them. These professionals frequently report victims experiences that in police stations and courthouses there seems to be little to none separation - separate waiting areas are rare, separate entrances are *quasi* non-existent.

Appointments on separate times exist according to some with the police, not in the courts however.

## 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.*

Upon filing of a complaint, victims are questioned by the police officer of the investigating judge. Similar to other European criminal justice systems, the Belgian criminal justice system suffers from a judicial backlog and investigations (be it general investigations led by the prosecutor or investigations led by the investigating judge) can take considerable time to complete. Legislators, practitioners and academics are aware of this problem.

Legislators and practitioners are well aware of the possibility of secondary victimisation as a result of repeated questioning by the authorities. One of the measures put in place is the audio-visual recording of questioning sessions in order to avoid that victims have to repeat the same statement multiple times. Audio-visual recording is most commonly used with respect to minor victims, but also with respect to specifically vulnerable victims based on the nature of the offences (i.e. sexual offences, extremely violent offences, and victims of trafficking in human beings).

### **Counsellors**

Minor victims or victims of a listed number of offences (such as violent crime, trafficking in human beings, sexual offences) have the right to seek the assistance of a counsellor. This is a person of the victims choosing (in case of minors the counsellor is not necessarily one of the parents). The prosecutor or investigative judge can however, following a motivated decision, formulate an objection thereto.

## Medical examinations

Medical examinations can be particularly disturbing for victims. Art. 90bis CPC (penal code) elaborates on the rights of victims during a medical examination. The rules apply to any physical examination that can be perceived as sexually disturbing for the victim.

Victims have the right to be assisted by a medical physician of their own choosing. To make sure that financial concerns are of no influence to the victim's decision to use this right, the costs are included in the general procedural costs and must not be paid by the victim.

In theory, it is possible for a magistrate to order a medical examination, also against the will of the victim, should such an examination be crucial for the criminal investigation. However, in practice, this possibility is never used, since it will not be possible for a medical physician to actually carry out the examination when the victim is not cooperating.

Recently three sexual assault centres started up in Gent, Brussels and Liege. These are a sort of one stop shop for victims of sexual assaults. They don't have to go to different places in order to get examined, get psychological and legal assistance and have the possibility to file a complaint (see also the section on good practices).<sup>19</sup>

In the aftermath of the Brussels attacks physically injured victims stated that they had to visit too many doctors to establish the consequence of their injury. The Federal Government Department of Health worked out new procedures in order to avoid this.

Survey results shows that delays are well known. Often it seems justification is given, most workers believe that interviews of violent crime cases are conducted often (33%) or sometimes (38%) without unjustified delay

This worsens a little for victims of non-violent crimes but it stays comparable. (28% often and 47% sometimes).

The reasons mentioned are work overload, delay in collaboration between authorities, procedural requirements and priority is given to more serious crimes.

The number of interviews are always or often limited to the least necessary.

Victims are often (38%) or sometimes (38%) accompanied by someone else. The obstacles for accompaniment that are mostly heard of are: Privacy reasons or the secret of the inquiry. Sometimes the law fears that the third person is influencing the victim. In some cases however support workers feel that the investigators prefer not to have a third person present. Victims feel being waved of or pressured to go in alone.

<sup>19</sup> <https://www.seksueelgeweld.be/zorgcentra-na-seksueel-geweld-wat-voor-wie-waar>.

## 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.*

### Anonymous witnesses

Especially in the fight against organised crime, the use of anonymous victims is a way to ensure the physical safety of the victims that testify. The general rule is that anonymous testimonies are no longer per se inadmissible.

### Closed sessions

As a general principle, court hearings are public and thus publically accessible for whoever wants to be informed of the procedure. However, exceptions are allowed, to protect amongst others the identity of witnesses or the general privacy of the victims. When the case relates to minors or offences described in Art. 371 to 378<sup>20</sup> of the CPC, the court can decide that proceedings will take place in a closed session, upon either the request of one of the parties (including the victim that has obtained the status of civil party) as well as any victim with a view to protecting their privacy.

### Media coverage

The relation between the judicial system and the media has been subject to a lot of debate. As a general rule, the criminal investigation is confidential and the trial itself is public, as a result of which journalists can sit-it on the trial. The National Forum for Victim Policy has clustered a number of policy documents, guidelines and handbooks for journalists to make sure that the right to privacy of victims is duly respected. Furthermore a code of conduct has been drafted by the General Society for Professional Journalists with a view to self-regulating and finding the right balance between media coverage of criminal cases and respect for the privacy of the victims. Despite the efforts taken in the past, there have been and continue to be journalists that do publish inappropriate personal details or pictures of victims.

<sup>20</sup> Sexual assault, rape,...



Since the National Forum has now ceased to exist, there is no authority anymore which is tasked with closely monitoring the media activity in what concerns the coverage of criminal cases. Every day the result can be found in the media. This accumulating to journalist who show up next to the hospital beds of victims (eg. After the Brussels attacks).

Support workers feel that competent authorities take measures to ensure protection of victim's privacy. However people don't feel that these measures are efficient.

The last initiatives towards the media (a campaign resulting in guidelines) dates from around 2008. It is possible to see that there is an ongoing vaguing of boundaries in this regard. Sad highlight in Belgium were the Brussels attacks where some of the journalists acted without any consideration and printed photos of victims and families in distress without even asking for permission.

## 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.*

Where the needs of the victim require so, a justice assistant is appointed to follow up on the case and the needs of the victims. Justice assistants provide victims with general information on the procedure, on the specificities of the case and the ongoing investigation, and more importantly in this context, the judicial assistances provide victims with information on the different possibilities with respect to victim assistance and support. The needs of the victims may vary throughout the procedure which justifies close follow up by the judicial assistance and the recalling of victim support options already pointed to in an earlier phase. Justice assistants usually deal with cases of severe violence, domestic violence and sexual offences. However, whenever the needs of a victim require it (taking account of the personality of the victim, the personal background, including disabilities, the circumstances in which the offence was committed), judicial assistances will assist the victim throughout the procedure, from the early investigative stage until the execution of the sentence has been completed.

At the moment there is no instrument that systematically measures the needs of victims questions of victims. There is, however, a telephonic guideline for victim support workers in NGO's. It was implemented some years ago, but now the use of it has vanished, there are however plans to reinstate this again.

Secondly there is an assessment of women in domestic violence situation in order to assess if a safehouse is needed. This is not a comprehensive survey of their needs and questions, but it focusses on safety.

Victim support workers do not have the impression that a lot of assessing is being done in a structural way. Sometimes it is and sometimes it isn't.

The ongoing practice for victim supporters of all kind seems to be that protocols are in place but the people on the field judge whether they apply them or not. Often this depends on the



judgement of the victim supporter. They do not feel the use of risk assessment or safety protocols is appropriate in every situation. When appropriate they will execute them, if they do not feel it is useful, they do not. This seems like a good approach if the victim supporter is properly trained in detecting signals. There is a possible discrepancy between working with standardised instruments and tailoring the approach to the victims' needs. While standardisation is a central method in preserving rights and giving everybody the same support, tailoring the support is only possible when support workers have enough discretionary space to make their own decisions.

However with regard to the DG Justice Guidance Document <sup>21</sup> and the suggested two step approach, in Belgium there is no systematic screening of victims with regard to the protection measures. In case of child protection and in the case of children as a victim of abuse there is a risk assessment conducted by the services (trusted centers for child abuse or the child protection services). This is not the case for other target groups or children as victims of other crimes.

The Directive gives specific attention to people victims of trafficking of human beings (THB). For the purpose of this report, a lawyer from a law firm that specialises on this matter was interviewed. <sup>22</sup>

In this interview two major problems are addressed. The first is the non-existent confusion of victims and perpetrators. Every transmigrant is seen as a possible trafficker. This results in people being revictimized again. One special example is the case of Mawda. Mawda is a two year old that was shot in May 2018 by the police while sitting on the lap of her mother in the van of a trafficker. The parents of Mawda<sup>23</sup> were both arrested under the suspicion of being human traffickers and not treated as possible victims of trafficking. It is clear that this results in secondary victimisation and repeated trauma. This mixing up is to be seen on documents of the police where every time a transmigrant is taken into custody this is under the heading of trafficking. This is a structural problem.

When going to court without papers migrants cannot apply for free legal aid. Their defense is now payed by an NGO.

A second problem related to this issues is that when transmigrants or undocumented migrants are filing a complaint to the police, even for cases that are committed on the Belgian territory, the police is obliged to report them to the Dienst Vreemdelingenzaken (Immigration office). This is an obvious setback for reporting crimes and protecting these vulnerable victims.

<sup>21</sup> <https://victimsupport.eu/news/dg-justice-guidance-document-related-to-victims-directive/>

<sup>22</sup> Progress Lawyers Network in Brussels.

<sup>23</sup> <https://www.theguardian.com/global-development/2018/may/25/belgian-authorities-accused-of-botching-inquiry-into-death-of-mawda-shawri-two-year-old-shot-by-police>

In October 2018 the Ngo 'Dokters van de Wereld/Médecins du monde' published a report stating that 1 out of 4 of the transmigrants are confronted with harassment by the Belgian Police. <sup>24</sup> Given the vulnerability of this group and given the fact that the police is the first information point for having access to victim support this is highly problematic.

<sup>24</sup> <https://www.doktersvandewereld.be/politiegeweld-tegen-vluchtelingen-en-migranten-onderweg-belgi%C3%AB>

## 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.*

The Belgian law foresees five protection measures for victims

### *Victim interviews during investigation*

In Belgium, victim interviews during the investigation are most commonly carried out by police officers but can also be conducted by the prosecutor or the investigative judge. During the training of the officers, specific attention is paid to ways of dealing with vulnerable victims.

Following some tendencies in place in other Member States, there is a recent good practice in the Brussels region where in interviews of children and vulnerable adults, a specially trained police dog is present to calm and comfort people.<sup>25</sup>

### *Questioning by the judge*

As mentioned above, in the Belgian criminal justice system, there is no direct cross-examination as is known in the common law systems. Even though the defense has the right to question witnesses (including victim witnesses and their relatives), such questioning is indirect. It is being done by the judge.

### *Video hearing*

Developing technologies allow for an interrogation, even though the interrogated person and the interrogator are not in the same room. The Belgian criminal justice system has regulated interrogations via video link in 2002 and has been widely discussed among practitioners and academics in literature.

### *Closed sessions*

As a general principle, court hearings are public and thus publicly accessible for whoever wants to be informed of the procedure.

However, exceptions are allowed, to protect amongst others the identity of witnesses or the general privacy of the victims.

### *Judicial assistance or volunteers*

Victims in general can seek the help of justice assistants who provide help for the victims throughout the procedure. Where necessary, the justice assistants can accompany the victims to court not only as a sort of moral support but also to be able to clarify technical and procedural aspects of the court session. The lawyer of the victim may not always have sufficient time to reply to all the victim's questions during a court session.

<sup>25</sup> <https://www.hln.be/de-krant/switch-de-liefste-politiehond-van-het-land-troost-slachtoffers-tijdens-verhoor~a5fc0403/>

Furthermore, there are a large number of victim support organisations that specifically aim to provide victims with the necessary support throughout the proceedings. Most of the support organisations work with volunteers who can accompany a victim to a court session to be able to provide moral support and where possible clarify technicalities and procedural aspects.

These measures are in place for all victims when asked for or presumed needed by the interviewer. They seem not to be applied after a specific assessment.

Though there is no binding rule that the interrogation is conducted by a person of the same sex as the victim, it is a good practice followed in many investigations.

We refer to the example of the sexual assault centres.

How and when measures are applied is the decision of the local officer, prosecutor or judge. The practices are quite scattered, depending on individual preferences. (except for the child audio-visual interviews).

This relates to the fact that there is no individual assessment instrument to make out if victims are vulnerable and if they need special protection measures.

## 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.*

Child victims are about the only vulnerable victims group recognised by the law and with specific measures in place for them.

### *Automatic referral*

If police officers are confronted with a minor that is the victim of an offence, the

minor will automatically be referred to the Confidential Centres on Child abuse and neglect. This referral should be explicitly included in the official report.

### *Audio-visual recordings*

Chapter VIII bis of the criminal procedural code deals with the hearing of minors that are the victim of a limited number of offences. Audio-visual recordings of the hearing of minors are ordered by the prosecutor in case the minor is the victim of any of the following offences: violent offences, sexual offences, offences relating to the integrity of the persons involved, failure to provide children with the care they need and trafficking and smuggling offences.

This kind of question sessions are conducted by appointed interrogators in a room that is specifically designed for that purpose.

Though there is no binding rule that the interrogation is conducted by a person of the same sex as the victim, it is a good practice followed in many investigations. The interviews are conducted usually between 24 to 72 hours after the complaint was made. Usually they are performed in a room specially equipped for recording. In 2016 there were 95 rooms spread out over Belgium. There is also one mobile toolkit with audio-visual recording materials.

#### *Special representative*

Depending on the type of offence involved (conflict of interest) or the criminal history of the parents (disqualifying sanction), it is possible that the parents are precluded from representing the child. In those cases, a special representative will be appointed. Additionally, the minor has the right to have individual legal advice, i.e. separate from its parents.

The clear regulation on the audio-visual recordings and the attention that was given to it makes it so that this practice is the standard practice for interviewing children victims of those crimes.

The survey results indicate that a special representative is being appointed always or often according to 60% of the respondents in cases where there might be a conflict of interest with the parents. And almost half of the people (47%) experienced a legal representation in name of the child is being applied.

An interview with a focal point 'children' in victim support makes it clear that this is not always the case (legal representation specific for the children), the interviewee has no clue about the reasons for deciding either way... So there seems to be no guiding principle to decide when this happens, and it is left to the discretion of the judges.

## 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.*

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

The different types of professionals that come into contact with victims all have general and specialist training that should enable them to deal with victims in an impartial, respectful and professional matter.

The groups that come directly and most into contact with victims are: Police officers (victim address), justice assistants (victim reception in justice houses) and victim helpers of the CAW.

Most police persons on the field are called police inspectors. They are trained in a general matter during their training as a police officer. Since the reform of the police academy in 2015 a total of 72 hours of the basic police course is reserved for their function as civic address and the reception of people, including the victims. The main point of attention is the bringing of bad news. This is trained as a central aspect of the victims addressers work. In most schools all victims address issues are connected to this part of the job. It depends from school to school how much theory

and how much practice is being given. After the basic training they can follow more specialist course (48 hrs) provided by the police schools. This special school is needed when you want to be assigned to the victims' permanence service which is a service that is active in each police zone and it is staffed by police officers that can be called in case victims address is a major concern after a police intervention. Mostly it is used in situations where children are involved and in cases of Intra Familial Violence.

In a master thesis (Demildt, K. 2016) the interviewer asked some police officers whether they feel they are sufficiently trained to guarantee the rights of victims, especially children. They all pointed out the new training in the police academy and find this being enough to do their job in general.

The justice assistants in the justice houses get a three day training program when starting their positions. This program is the basic training for all assistants in Flanders. Next to that, systems of in-service training (coaching by experienced colleagues) are in place. More specialist training days are sometimes available once on the job which comprise trauma knowledge, grieve, or more judicial technical matters.

Victim Support Workers in the NGOs are generally trained within their NGO when they start working. They get training on the job by more experienced colleagues. In the past, the Steunpunt Algemeen Welzijnswerk (now Sam, vzw) provided a strong course content for all services over Flanders, however, during the course of the last 10 years, this has diminished. The reasons were that mainly from 2012 onwards the services were caught in a continuing restructuring and reorganisation of the CAW. At the same time there was a personnel problem within the steunpunt. The staff member who was responsible for victim support became ill and was replaced several times. The CAW's are organising themselves more and more and have made the coordination of their victim support over Flanders a priority for 2018-2019. One of the goals is to put up a new training program by the end of 2019. More specialist courses are regularly available from a multitude of suppliers but there is no obligation to attend.

In each CAW the victim support team works with focal points for legal matters, for children and for traffic victims. These focal points have the task to keep up the knowledge and actions of the team members regarding these issues up to date. Each focal point gather with the other focal points of other institutions on his/hers theme several times a year as a kind of intervision learning groups. There is some doubt for people working on the field about their training: 'When are we sufficiently trained?' might be a first question. Victim Support workers always feel the need for more training. They seem to have a moderate view on the training of their partners. Some feel that they are sufficiently trained, others not. Perhaps this depends on the person or even the case they are dealing with.

There seems to be a need for more training activities and opportunities for all those coming into contact with victims. Since not everybody is trained in the police and justice department, encountering a professional that is victim sensitive is kind of a gamble. The dedicated victim care services have training for their professionals in place. But it seems that on each level there are problems: for the police officers the insight in why victims' rights are important seems missing, they seem not to be convinced of the necessity for this. In the support organisations the overview and coordination is missing so they entirely depend on the experience and knowledge of colleagues.



## 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.*

In 2016 the justice houses that organise the victim reception service in the justice department went over from Federal discretion to Flemish discretion. A few years before (around 2014, 2015) the National Forum that served as a coordination body for all those working for victims stopped convening. Again in 2014 a lot of CAW's that housed the NGO victim Support service merged with each other (from 23 units to 11).

The actual victim support is left without coordination in Flanders, there is no more Forum where all partners meet and coordinate. This is visible in the results of this inquiry. Luckily there are a lot of experienced and well-trained victim supporters on the field who continue to pursue coordination amongst themselves.

Good and specific measures are taken for targeting groups: children who encounter violence are being followed by specialist centres and there are a lot of helplines in place.

The Instituut voor Gelijkheid van Mannen en Vrouwen (institute for equality of women and men) have made gender-based violence a priority and is developing a lot of new practices and instruments.

The road traffic victims have a support point (called Rond punt) that also puts up a lot of good initiatives.

Violence in close relationships is also a topic which is pretty much kept under the attention by specialist organisations.

So we gather that the specific themes are taken care of very well, but this seems less the case for the more general oriented victim support services.

The Flemish government however is planning to take initiatives in this direction and would like to see more coordination between all involved.

Coordination between the different Belgian regions is non-existent. This has proven to be a problem when the Brussels attacks happened.

Cross border cooperation is almost non-existent because it is difficult to assess who is responsible for this is it the federal office for foreign affairs or it the Flemish office for welfare? These kind of questions seldomly seem to get resolved because they are not on the policy priority agenda.

Where it exists, it is because of European reglementation (eg the cooperation of the financial commissions for victims). Efforts to improve this are scarce.

# GOOD PRACTICES

Throughout this research a number of good practices were identified in relation to victims' rights.

## Right to information

A lot has been done to build up a website for all victims with good information on how to cope, what to do and who can help you. This is done in a general way but crime specific elements are being added. The website ([www.slachtofferzorg.be](http://www.slachtofferzorg.be)) is hosted by the government. Its driving force is a redactional team with people from the welfare administration (including their communication specialists) and representation from the work field (justice houses and CAW (NGO), there is also a staff person of the support point for first line help initiatives (SAM, Steunpunt Mens en Samenleving and author of this report).

Police and Victim Care workers are already almost systematically referring to this website. The website is accessible for the general public so the access does not depend on your status as a victim.

## Right to access services and general victim sensitivity

We would like to recapitulate two good practices here.

First the justice houses. These are centres where people that come into contact with the criminal justice system can go to. These centres are located in or near the courthouse and are well distributed over Belgian territory. Their task is to make the justice department more accessible. They take care of victim reception in the justice department and assist on every step people have to take in this department. Their second obligation is towards perpetrators. The justice assistants (people that work in the justice house) also take care of the follow up of alternative sanctions.

Secondly, it is worth highlighting a new Belgian project which focuses on the creation of 'sexual assault centres'. In three cities, the pilot project is being implemented for victims of sexual assaults. All necessary services (police, medical services, justice system and victim support entities) are working together in these centres - mostly situated in hospitals - where people can file a complaint, get all necessary information and a consultation with a doctor or specialist. These centres have a webpage available in three languages: [www.seksueelgeweld.be](http://www.seksueelgeweld.be).

Part of the pilot phase of the project is to implement a research program in order to assess the need for these kind of centres over the entire territory.

Another recent and good example relating with the rights during investigation is the use of a dog to comfort victims and make them feel at ease during questioning or filing a complaint. It is primarily directed towards children but also adults can benefit from it. The dogs are trained for this purpose.

# GAPS, CHALLENGES, AND RECOMMENDATIONS

Belgium always had a strong position when it comes to victims' rights and how they are present in legislation. Until 2014 there was a strong follow up structure, coordinating the different services and exploring practices. This structure now collapsed. Thanks to the legislation and the strong experience in different services, the victim address and referrals as well as the victim support keeps on going. But the structure falls behind.

The online survey results suggest that even professionals who work with victims and within the criminal justice system on a daily basis have a significant lack of knowledge on whether some mechanisms are in place and, if so, how do they work. This indicates that there is a lack of clarity and transparency in law and in practice in relation to how the support and protection system of victims works which can, in turn, result in disparities in the treatment of different victims and hindrance of their rights.

The main decisions of applying victims' rights and transferring them into practice lie in the discretion of a judge or the administrator in charge of. While this may guarantee a tailor-made approach towards the victim this is not always the case. Personnel of the justice department work out of different values than the mere perspective of the victim. Their attitude is formed by beliefs about righteousness and equity, transparency, looking for the truth and the role of society in crime. These values are of course unquestioned but they do not always reflect the interests of the victim, or the respect and sensitivity they are entitled to. Sometimes more down to earth arguments can hinder the decider in these situations: lack of time, a bad day, difficult cases just prior to the one at hand, etc. With no established and transparent procedures and guidelines to be followed by all professionals and with no coordinated structure to back their work, it happens that not all professionals having contact with victims will treat each of them in a respectful, effective and adjusted to their needs manner.

Lots of support services are in place in Flanders from general to really specialist but they fall under different regimes: some are provided by NGOs while others are government run and others are private. There is no standardization nor guarantee that people are qualified, however they mostly are. There is also no general policy on victim support in a broad and general way.

Coordination on a larger level is needed but very difficult given Belgium's federal structure where justice is a federal matter but the way justice addresses victims is a regional discretion.

The Directive focusses strongly on victims that get into the judicial system. Inside the system there are different services available, but they do not all start from the victims' perspective. Most law-oriented services are looking for the truth or societal justice and believe in the equity of everybody (the blindness of Lady Justitia). Therefore, in practice, some gaps can be detected.

One gap can be defined as the segregation between offender and victim. The justice department is not sensitive as to this regard. In the police department there is some consideration but when it comes to trial the situation aggravates and it is possible that a victim has to wait in the same waiting room or hallway as the offender.

A second gap is the consideration for target groups. Be it foreign people, people with disabilities and others, it is not always clear if they get an adapted service. An especially poignant case is that of undocumented migrants whose access to justice is often denied due to their migration status and, if they are victims of Trafficking Human Beings (THB), of being mistaken with perpetrators.

## Recommendations.

1. A comprehensive coordination structure

Most challenges we face today (coordination, training, addressing specific target groups) can be tackled by installing a comprehensive coordination structure. This structure has to be focussed on the realisation of the victims' rights for all victims.

The structure has to bring together all involved (including administration and certainly policy makers) and should develop a communal plan with overarching targets. The structure can be supported by two executive organisations (one in each of the two communities).

2. Two executional organisations

In order to execute the strategy, to monitor evolutions and to guarantee the quality of the victim's services we might set up or mandate two organisations.

The organisations can organise a quality instrument (based on standards) for governmental and non-governmental bodies that encounter victims with the possibility to research developments and define gaps.

They can execute concrete measures to target specific groups and themes, all in a basic idea of bringing together all concerned.

They can define topics for research and have the means to pay for research and to spread the results.

They can make sure different levels of training and learning activities take place.

3. The installation of a coordinating minister/state secretary and or and ombudsperson.

The strategy and the execution can be overviewed by a state secretary and/or community ministers. They might bear the responsibility for a Belgian and community strategy.

Another option might be the installation of an ombudsperson for victims (following the example of children's rights ombudsperson). This ombudsperson could be one of the organisations mentioned above or it could be a parliamentary organisation, handling in independency.

The organisational execution should not be led by any of the players on the field but needs a good overview over the entire field (police, justice, NGOs) and can take an important expertise role in case of disaster or mass casualty.

The overall goal would be to make a comprehensive strategy for victim policy and to execute it well for all victims. Guaranteeing quality and victim's sensitivity on all levels and for all victims.

4. Urgent: transmigrants/undocumented persons...

Next to that (all be it integrated or parallel), we advise to start an urgent project where all actors figure out how to deal with transmigrants and fugitives in order not to victimise them again.

## CONCLUSION

This report is part of the VOCIARE project led by Victim Support Europe and APAV. It intends to evaluate the implementation of the Victims Rights Directive in Belgium and more specific in Flanders. A broader Belgian perspective was not realistic given personnel problems in the course of the project and because the authors expertise only stretches as far as Flanders. Due to the Belgian state structure an expert for the entire country could not be found within the time frame.

The report starts with an overview of legislation, but very few Belgian legislation refers directly to the Victims Directive. The reason might be that in Belgium a lot of rights mentioned in the Directive are already in place.

In the main body part of this report we check whether this thesis stands for every article in the report. We confront the way things should be working or are claimed to be working by the government with the practice. This is being checked also by conducting a small and nor representative survey amongst practitioners.

This gives us some grounds to debate the implementation of the Directive. We might conclude that there was a strong historical base for the implementation of the Victims rights because in the past there were structures for coordination in the Belgian administration and on a regional level. Through different reorganisations of the state this structure has vanished and stopped working. We can now conclude that the victims' rights policy is dispersed and there is no coordinating organism on a large policy level.

On the level of the organisations working in victim support this lack of coordination starts to be felt. There is lack of training and education, research is absent. It can be seen as a surprise that in most cases the people that deliver the support are still doing this in a qualitative manner. But for how long? Who will guarantee the quality in five years? Who will train those coming into contact with victims, who will make the training programs?

Next to this structural and long-term problem some specific issues popped up. Translation as well as the care for foreign victims that are going to court is problematic. Translation is foreseen but there is a lot of discussion from what point in the procedures qualitative translation is available.

Secondly the implementation of the individual assessment did not happen in Belgium. This can easily be addressed.

A third specific problem are the more vulnerable victims (specific target groups). Information is not always adapted to their situation or level of comprehension, while it should be and even the access to justice can be problematic in case you are disabled.

The situation regarding transmigrants is alarming. A recent NGO reports they are confronted with police harassment in 1 out of 4 cases. This while the police is an important access point for the provision of the right for information and the access to justice.

Of course, not everything is bad. Victims' Rights have a long tradition in Belgium. Through history and recently some good examples did develop. We are reporting specifically on them in the fourth part of the Report.

Finally, we round up with gaps and recommendations leading to this conclusion.

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### 4. CASE-LAW

### 5. OTHER SOURCES OF INFORMATION

See footnotes.



# APPENDIX 1 – CONTACT LIST OF INTERVIEWED PROFESSIONALS

#	Name	Institution	E-mail	Phone #
1	Liesbeth Cornelissen	CAW Oost-Vlaanderen , focal point children		
2	Nancy Devroey	Justitiehuis Leuven		
3	Inge Laurijssen	Slachtofferbejegening politie Antwerpen		
4	Neil Paterson	Stafmedewerker forensic services. Sam, vzw		
5	Katrien Van den Broeck	Juriste CAW ANTwerpen, slachtofferhulp		
6	Selma Benkhelifa	Progress Lawyers Network		



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