VOCIARE

ESTONIA

NATIONAL REPORT

Victims of Crime Implementation Analysis of Rights in Europe

VOCIARE Victims of Crime Implementation Analysis of Rights in Europe
promotor Victim Support Europe
manager partner APAV Apoio à Vítima
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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 Given its scope and ambition, authors are aware that some elements may be inaccurate or out of date.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

Access to state legal aid in Estonia is usually not the problem, but issues emerge with the **quality of the legal aid** provided. This may be due to the fact that there is no specialisation for lawyers within the Estonian Bar Association (Eesti Advokatuur), the body which appoints lawyers to cases. Therefore, the lawyer may not always be sufficiently competent in the legal aspects of the case appointed to them, which leads to victims not receiving proper legal advice. Furthermore, the law does not regulate the exact content and scope of the state legal aid lawyers work.

Information on victims' rights is said to be provided from the first contact (normally police officer) as well as by other authorities or service providers who come into contact with the victim later. Still, those who work closely with the victims report **low levels of awareness and understanding** of their rights by the victims in question. This derives in part from the fact that victims are traumatized and authorities (irrelevant of the trainings provided) do not yet fully understand the nuances of interacting with different kind of victims.

Support services work relatively effectively and victims are referred to them by other authorities (mainly the police). Problems may arise with the geographical location of victim support centres and victims who need support (1 victim support centre per region and scarce transport opportunities) and in some degree, the quality of the service is different due to it being provided by one specialist in each region: this makes it highly dependent on the personal traits and willingness to work of this one victim support worker.

Individual needs and risk assessment seems to be not yet systematically implemented. Practice differs between different locations. Although in some regions different project-based programs like MARAC (Multi-Agency Risk Assessment Conference) have been tested or are in use at the moment, these solutions are neither sustainable nor common practice.

INTRODUCTION

The present national report aims at assessing the practical implementation of the Victims' Directive in Estonia in the context of project VOCIARE - Victims of Crime Implementation Analysis of Rights in Europe.

The project's research team used a range of approaches to get an overview of the situation in Estonia in the field of protecting victims' rights. To support the work presented in this report, three research tools were used in order to obtain the desired information: a desk research, an online survey, and interviews.

As a part of desk research, steps taken were a legislative analysis and a mapping of competent authorities and organisations. In order to assess how the Victims' Directive has been implemented, analysis of national legislation was conducted on the transposition of the Directive into national law. In addition, mapping of the relevant authorities and organisations was needed to secure the understanding about division of responsibilities between authorities, services and organisations which work directly with victims. Information from published sources, such as the published statistics, annual reports of state institutions, reports on Estonia by international organisations and other was also analysed.

The national online survey was a particularly important tool for the research as it enables a much broader evidence base and allows for statistical analysis. It consisted of closed-ended questions directed at organisations and practitioners working in close contact with victims (police, prosecutors, judges and court staff, policy makers and victim support organisations). A total of 27 responses out of 78 query was received (two law firm lawyers, eight Social Insurance Board specialists, nine prosecutors, three Police and Border Guard investigators, two ministry officers and three representatives of non-governmental organisations). The survey took place from May – July 2018.

The third instrument, the interviews, served to complement the desk research. Four interviews with stakeholders were conducted during May and June 2018. These consisted of: one lawyer at a women's shelter (Interviewee 1), one representative of an NGO supporting victims of human trafficking, intimate partner violence and offering psychological counselling (Interviewee 2), one prosecutor (Interviewee 3), and one worker of the governmental Victim Support Department (Ohvriabi) (Interviewee 4). All interviews except for one were conducted face to face The interview with the victim support worker was conducted by phone.

Regarding its structure, the current report first provides a basic overview of the legal framework. Subsequently, an evaluation of the practical implementation of each Article of the Victims' Directive is presented. That part explains if and how articles and rights provided by the Directive are transposed into Estonian law. Finally, a chapter of good practices and recommendations is presented.

BASIC OVERVIEW OF THE LEGAL FRAMEWORK

Estonia transposed the Victims' Directive through several legal acts such as the Penal Code, Code of Criminal Procedure, State Legal Aid Act, and also Victim Support Act. The Estonian Code of Criminal Procedure and the Victim Support Act were amended regarding the status of victim and victim's rights in December 2015 and the amendments entered into force on July 1, 2016 and January 1, 2017. The changes in the Victim Support Act on services available for victims concentrated on victims of domestic violence. They entered into force on January 1, 2017.

The amendments mainly concerned the following:

- the definition of a victim;
- victim's right to interpretation services;
- assessment of individual protection needs;
- right to information;
- assistance to a victim who is a minor;
- right of the victim to choose an person to accompany him or her in any procedural acts (unless the body conducting the proceedings has refused it with good reason).

The definition of victim in Estonian legislation is in accordance with the minimum standards defined by the Directive, it also includes the "person close" to the deceased victim. In addition, it is now explicitly stated that a natural person can have status of a victim even if criminal proceedings were not commenced.

Regarding the transposition of the Directive the majority of the Directive's provisions were transposed. However, some are transposed and/or implemented only partially, for example:

- Article 3 (Right to understand and to be understood) is transposed into national legislation as an explicit right but it lacks specification on how this should be implemented in practice.
- It is questionable whether Estonia has transposed the Article 22 in its fullest, for example there is no mention that the individual assessments should be carried out with the close involvement of the victim and take into account their wishes. In addition, the law does not explicitly mention victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics. The latter is especially worrisome since the Estonian Criminal Code does not include any general or specific aggravating circumstance related to bias motivation of committed criminal offences.

The current research will analyse how the rights stipulated in the Directive are put into practice at national level in Estonia by examining each Article of the Directive.

General overview of the criminal procedure in Estonia

In Estonia, criminal proceedings are conducted by courts, prosecutors' offices and investigative bodies, e.g. the police. If there is a reason and grounds, the criminal procedure could be commenced by the investigative body or prosecutor's office. The reason to start criminal proceedings is either a report of a criminal offence or any information indicating that a criminal offence has taken place, whether it was reported or not. The pre-trial investigation is mostly conducted by the police. The Prosecutor's office leads the pre-trial proceedings and safeguards the legality and efficiency of the proceeding. When the pre-trial investigation is concluded, a prosecutor sends the bill of indictment to the court or terminates the procedure.

The proceeding at the court is the second phase of the criminal procedure in Estonia. The victim is the participant in a criminal proceeding (a party) along with the suspect or an accused, his or her counsel, civil defendant and the third parties. The victim has a right to be involved in the proceedings at each stage of the proceeding and in every court instance until proceedings continue

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.

Estonian laws have two main definitions of "victim". According to §3(1) of the Victim Support Act, victims are "/…/ persons who have fallen victim to a criminal offence, negligence or mistreatment or physical, mental or sexual abuse." The Act stipulates persons eligible for victim support and defines the term "victim" broadly which corresponds to the main objective of the Directive that victims should have access to support services regardless the seriousness of the crime. In addition, the Act stipulates that family members are also entitled to services, for example the family member has a right for the compensation of psychological assistance. There is also compensation to the dependant of the victim in case the direct victim has lost his/her life for the damages caused by crime if the direct victim has lost his/her life. The legislation defining this compensation is vague and its interpretation is unclear. A request was sent to the Social Insurance Board for a clarification, but an answer has never been received.

The Victim Support Act in conjunction with Social Welfare Act establishes the broad list of persons that can be considered family members:

- children, parents and grandparents;
- persons who are married or in a relationship similar to marriage;
- ascendants and descendants related in the first and second degree;
- other persons who have a shared household.

Notably, whilst the Directive includes siblings within its definition of family member, these are not explicitly referred to in national legislation. Although shared household, may cover some situations, it will not cover siblings who do not or did not live with the victim. Equally, the Directive places no limitation on the degrees of closeness between relatives in direct line. This compares with national legislation which limits this to the second degree. In practice this can mean that a great grandchild or great grandparent of a victim would not have rights under national legislation, whilst the EU affords such rights.

The Code of Criminal Procedure provides the following definition "Victim is a natural or legal person whose legal rights have been directly violated by a criminal offence aimed at the person or by an unlawful act committed by a person not capable of guilt. In the case of an attempt to commit a criminal offence, a person is a victim even if, instead of the legal rights attacked, such legal rights are violated the violation of which is covered by the legal rights attacked. /…/ A natural person is a victim even in the case a criminal offence or an unlawful act committed by a person not capable of guilt caused the death of any person close to him or her and damage was caused to him or her as a result of the death."

The term "person close to the deceased victim" is broad and has no additional discriminative provisions and is therefore in line with the term "family members" in the Directive. In essence, the definition in the Code of Criminal Procedure specifies persons eligible for a victim status with procedural rights in the criminal procedure. However, further information could not be obtained as to how 'any person close to him' is defined and whether any interpretation excludes persons covered by the Victims Directive.

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.

In Estonia, Article 3 of the Directive is transposed in several provisions of the Code of Criminal Procedure as following:

Complying with Article 3 of the Directive, the Code of Criminal Procedure §8(1) states that investigative bodies, Prosecutors' Offices and courts must explain to the participants in the proceeding, the objective of the act and the rights and obligations of the participants. Paragraph 8(7) specifies that they must explain to a victim his or her right to contact a victim support official and, if necessary, receive victim support services and the state compensation and explain which opportunities arising from the Code can be used to ensure the safety of victims. Paragraph 281 of the Code requires a judge, in particular, to explain to victims their the rights and any obligations.

This demonstrates that Article 3 is transposed into national legislation as an explicit right. However, it lacks specification on how this should be implemented in practice. In particular, there is no requirement that the information should be given in simple and accessible language, taking into account for example victims' special needs.

The majority of the respondents from government bodies say there are sufficient measures to ensure that officials are capable of recognising the victims' individual communication needs. However, non-governmental organisations are much more critical with the statement and say that there are rarely any measures implemented. For example NGOs state that victim is allowed to take support person with her/him, but in reality it's not often allowed. The information provided to victim usually depends who is the officer and there are no general practice, so the service quality is often uneven.

The majority of government bodies say that victims are always asked whether they have understood the information given to them though most of the non-governmental experts disagree with that and say that it is rare for someone to ask. More detailed surveying of victims who report to the police would be required to understand the extent, or not, if this issue.

Despite these concerns, all respondents say that generally, government institutions' use of language when interacting with victims is relatively good and comprehensible. All the respondents find that information has been adapted so that it is understandable for children, the hearing-impaired, the mentally disabled, and the visually impaired. The majority of the respondents lack information on how the information reaches people who lack literacy, as there has been no contact with people in this segment. For foreigners interpreter is guaranteed, but it can take time, if it's in some not so much known language.

However, in interviews the stakeholders were more critical of the ability of the officers and officials to provide information in a manner that individual victims would understand.

The stakeholders, except for Interviewee 2, agree that since the adoption of the Directive, police, prosecution and victim support services have all received trainings which have raised awareness on communicating with different victims groups. Indeed, all interviewees stress the importance of the training of the specific officers or officials who come in contact with the victim, which has an effect on the process from the victim's perspective. Interviewee 1, however, points out the high rates of labour turnover in the police force, means that not all officers have the same level of training on how to deal with victims. To ensure consistent knowledge, training would need to be offered on a regular basis and to all new recruits.

According to Interviewee 1, knowledge on the Directive is relatively low in local governments institutions, social services and other support services providers, but as they often come into contact with victims, they should be aware of the suitable communication practices with victims and the Directive in general.

None of the stakeholders are aware of a regulated needs assessment procedure. Special needs (especially mental disabilities) are often complicated to assess correctly. This requires an expert to carry out the assessment correctly, but it can take time to get such an expert – by which time the investigation has already moved forward, without necessarily have taking into account the victims specific needs, as Interviewee 2 points out.

Paragraph §38(5)(3) of the Code of Criminal Procedure stipulates that the victim has a right to have one person chosen by him or her to accompany him or her in any procedural acts unless

the body conducting the proceedings has refused it with good reason. Most of the respondents to the survey say that the victims are sometimes escorted by an accompanying person. Only if this could influence the course of proceedings is this prohibited. An accompanying person is only prohibited where this could influence the course of proceedings. Whilst there is no restriction in law preventing a victim from requesting an alternative accompanying person, we found no information on whether this does or does not happen in practice.

At the same time, NGOs that are directly engaged with victims point out in the survey that often there is the attitude that victims can cope by themselves and that a support person would only interfere with the process. The interviews confirm the scepticism of NGOs. Interviewees say that the support persons are usually allowed to accompany the victim, but in some cases they have been removed from hearings or from the court. Sometimes it has been done by the police with no apparent reasons (no reasons were provided), but sometimes stakeholders who represent the victim have asked the person to leave – this is when there is suspicion that they may influence the victims (for example in human trafficking cases when someone from the network of traffickers acts as a good friend/boyfriend of the victim, but actually aims to get the victim back into the network).

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.

Article 4 is mostly transposed in §§ 8 and 38 of the Code of Criminal Procedure. The provisions stipulate in detail how to safeguard the rights of participants in proceedings and also list the rights and obligations of the victims. According to the Code, law enforcement has the obligation to inform the victim about victim support possibilities in Estonia. Usually the police is the first contact point for the victim. Paragraph 33 of the Victim Support Act reaffirms the obligation of investigative bodies to provide such information not only to the victims but also to the dependants who are beneficiaries of the Act. However, there is one prominent difference between the Directive and Estonian laws, namely, Article 4 stipulates that victims have the right to receive information from the first contact with a competent authority but the Estonian do not explicitly mention "from the first contact". In addition, although according to the § 8(1) of the Code of Criminal Procedure investigative bodies, Prosecutors' Offices and courts must explain to the participants in the proceeding all the rights and obligations of the participants, it may be too broad wording also to cover Article 4 subparagraph (h) that the victim should receive information about available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings.

A majority of the online survey respondents said that most crime victims do receive most of the aforementioned information. This was confirmed by the interviewees. Information tends to be given orally but also in writing. Distribution of brochures to the victims, in Estonian and in Russian, were mentioned both in the online survey and in the interviews, as was the availability of information on the internet (e.g. it turned out in the interviews that information in English is only available on the webpage of the Ministry of Justice). Depending on the role of the victim in the proceedings, the victim is also given information on a running basis.

At the same time, some of the interviewees and NGO respondents to the online survey that deal with protection of women's rights were critical of this aspect. In the online survey they say that often victims are given a run-around, being sent from one official to the next. In the interviews it is said that the amount of information and the way it is explained vary due to the different attitude and training of police officers (who are usually the first contact). Interviewees 1 and 2 specifically mentioned that handing out the brochure or referring to the information on the internet is not enough, because victims are often traumatised and do not fully grasp everything that is explained to them. Thus, the different interviewees say that they always need to explain things further and repeat details. Interviewee 3, the prosecutor points out that she always explains until she is certain that the victim understands what is happening around them.

Generally, it is difficult for the interviewees to assess whether victims receive all the necessary information from the first contact, as the victims themselves are usually not aware which information should be given to them. Moreover, even if victims have further questions, this may be due to the trauma experienced (information was given, but not comprehended the first time) rather than the quality of the information or its provision. Nevertheless, the impact of trauma on comprehension should be understood and taken into account.

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 Estonia, Article 5 of the Directive is transposed in §195 of the Code of Criminal Procedure. It stipulates that the report of a criminal offence can be submitted orally or in writing; the oral report is recorded and a copy of the report is given to the person who submitted the report. In addition, a written confirmation must be sent to a victim who submitted a report of a criminal offence confirming the receipt of the report within 20 days of the receipt. Also, §195(5) includes the right to language assistance that must be provided in case of such need: "If necessary, language assistance shall be provided to a victim who is the person who submitted a report of a criminal offence. At the request of the victim, the confirmation concerning receipt of a report of a criminal offence shall be issued to him or her in a language which he or she understands."

40% of the respondents to the survey agree that crime victims always get an official confirmation on the submission of their official criminal complaint (16% of the respondents disagree with that). The majority of the respondents find that the victim is always allowed to file the complaint in the language they comprehend. Indeed, this was confirmed in the interviews as well. It was specified that the police must ensure the translation.

Although writing a complaint is not mandatory in order to initiate an investigation, according to Interviewee 1, it is still demanded in some police stations. This poses a problem, because victims often lack the skill to write the complaint in a manner which would ensure that the case would be investigated. They lack legal knowledge on which aspects to emphasise, which terminology to use etc. To help overcome these problems, sometimes the victims support worker (Interviewee 4) or lawyer at women's shelter (Interviewee 1) have helped victims to file complaints.

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 right of victims to receive information about their case as established in Article 6 of the Directive is transposed into the Estonian law in numerous provisions of the Code of Criminal Procedure, procedures are relatively detailed and correspond to the essence of Article 6 of the Directive.

Most of the online survey respondents said that crime victims are notified of their rights to receive information on their criminal proceedings and victims are always informed of the case proceedings when they have submitted their complaint. This was confirmed by the interviewees who also added that usually information (as much as legally possible) is given to them upon request. However, sometimes giving out information may be complicated: for example, in cases of intimate partner violence, when the victim and the offender share the same living space. In these cases, information may be withheld during the initial investigation before the start of criminal proceedings, to avoid putting victim's safety at risk.

In 2011 University of Tartu conducted a research on victims' and witnesses' experience with the criminal justice system among 136 victims and 106 witnesses in Estonia. 53% of respondents noted that they had sufficient information about their case proceedings and 47% found available information about their case inadequate.1 These numbers demonstrate that there is room for improvement and nearly half of victims and witnesses were not satisfied with the situation. There is no later data available but given that the law was not notably changed due to the transposition of Article 6 of the Directive, there is little basis to believe that situation has improved eminently.

The online survey conducted for the present report brought out that in their practice the respondents (mostly NGOs) see that victims do not always consider the justification for the decision to be sufficient. According to Interviewee 1, before seeking sentence, prosecutors also ask victims their opinion. However, as victims are not familiar with the law they easily accept the prosecutor's decision. Notably, in relation to proceedings where the victim and criminal still live together, victims may not have the motivation to ask for a tougher punishment.

As is stated in § 133 (5) of the Code of Criminal Procedure, victims have the right to receive information concerning taking into custody of a person suspected of a criminal offence and request to be notified of release of the person held in custody in the event of any danger, except in case the communication of such information would cause any harm to the suspect; and victims can request to be notified of the release of the convicted offender before the prescribed time or escape of the convicted offender from a custodial institution in the case the information can prevent danger to the victim.

A majority of prosecutors state in the online survey that they will notify the victims about their right to be notified of the release or escape of the offender, also they say that upon request victims are notified of the release or escape of the offender. Most of the interviewees agree that victims are informed about their right to receive such information upon request. If the victim has requested to be informed about the release of the offender, the victim or their representative will be notified.

Interviewees did not have detailed information about the process of risk assessment after the release or escape of the offender. Interviewee 1 pointed out one intimate partner violence case in which different stakeholders cooperated and worked out a safety plan in order to avoid further victimisation after the release of an offender because of the high risk of a repeat offence. Nevertheless, this kind of cooperation is exceptional and the most common measure used to prevent repeat victimisation or intimidation upon an offender's escape or release is applying for a restraining order. However, Interviewee 1 mentions that in some regions of Estonia, the first restraining orders have only been granted in recent years, which shows that the measure is not used uniformly.

1 University of Tartu. (2012). Kannatanud ja tunnistajad süüteomenetluses ("Victims and witnesses in a criminal proceeding"). Retrieved from: www.kriminaalpoliitika.ee/sites/krimipoliitika/files/elfinder/dokumendid/kannatanud_ja_tunnistajad_suuteo menetluses._tartu_ulikool_rake._2012.pdf.

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.

The assistance of an interpreter or translator and translation of documents relevant to the proceedings is stipulated in §10 of the Code of Criminal Procedure. On the basis of the experience of online survey respondents, a free-of-charge interpreter service is offered in police interrogations, investigations and the entire court hearing.

However, the online survey and the interviews did highlight several problems with regard to the interpretation service. One such problem is the availability of interpreters. Interviewees (Interviewee 1 and 4) mentioned the lack of skilled translators/interpreters in the case of less spoken languages. Related to that, responders to the online survey found it problematic that when the interpreter has to be outsourced because of a more obscure language, the entire process is delayed. Interviewees 1 and 4 also cast doubt on the quality of the interpretation - whether interpretation is correct in terms of detail. Interviewees lacked knowledge on whether any quality control is done with regard to the translation/interpretation service. Additionally, both the online survey and interviews mentioned the interpreters' lack of knowledge on how to deal with victims, especially with vulnerable victims. Non-governmental organisations find that often the interpreter does not take the vulnerability of the victims into consideration. One interviewee brought an example from one sexual violence case where the interpreter was changed upon the request of victims' representatives because the victim (female) perceived the intonation of the interpreted (male) accusing. This indicates that that the system functions quite well in terms of considering victims' needs and wishes.

A majority of the online respondents who work in the state system say that the information given to victims at first contact, the decision not to initiate or to terminate an investigation, notification of the time of court hearings and the final judicial decision will definitely be translated and made available to the victim.

Paragraph 10 of the Code of Criminal Procedure states, in particular, that translation of the text which is essential for understanding the substance of the ruling on termination of criminal proceedings or the court judgment or for ensuring the fairness of the proceedings into his or her native language or a language in which he or she is proficient, may be requested by the victim within ten days. The latter was added to the paragraph as part of the transposition of the Directive.

The stakeholders did not point out any major issues with providing translations in the criminal proceedings but information from the online survey and interviews was contradictory. In the online survey, NGOs say that often the only document that is translated is the judicial decision. Procedural documents are mostly not translated. Yet, in the interviews, the stakeholders insisted that usually important documents are translated and oral summaries may be given on other witnesses accounts etc. They could not explain with certainty the verification process on whether to provide written or oral translation. They did say that it was dependent on the officials involved in the case and their usual practice, but that it also depends on the wishes of the victim. The general practice in Estonia is, therefore, rather unclear.

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.

Paragraph 8(7) of the Code of Criminal Procedure obliges investigative bodies, Prosecutors' Offices court to explain victims their right to contact a victim support service and, if necessary, receive victim support services and the state compensation prescribed for victims of crimes of violence and explain which opportunities arising from the Code can be used to ensure the safety of victims. It is noteworthy that wording "if necessary" misses the essence of the Directive since it does not leave any discretion to the state, the victims must have access to the victim support services.

The Victim Support Act, paragraph 3, stipulates that:

"a victim support service is a public service aiming at maintaining or enhancing the ability to cope of persons who have fallen victim to criminal offence, negligence or mistreatment or physical, mental or sexual abuse."

Receivers of such services are not exclusively required to have submitted a formal complaint about the criminal offence. At the same time, the victims who have not reported the crime have much more limited access to services, e.g they do not get psychological counselling, monetary compensation.

The service is accessible across Estonia in police stations by the principle of regionality and delivered by the Estonian National Social Insurance Board (*Sotsiaalkindlustusamet*) which is a state institution under the Ministry of Social Affairs (*Sotsiaalministeerium*). It may also transfer the provision of victim support services to a legal person or local government. The Estonian National Social Insurance Board has set up and manages Victim Support Information Line 16 016 that operates during working days and business hours and provides first-hand information about the victim support system in Estonia.

The majority of the survey respondents say that crime victims are often referred to victim assistance services and that in general 62 % of the respondents find that the victim assistance service often meets the needs of crime victims. 17% of the respondents say that this sometimes and 11% feel that it rarely meets the needs of the crime victims. NGOs are more critical of the services as they find that the needs of the victims are rarely or only sometimes satisfied. According to Interviewee 1, as the state victim assistance services locations are in Police offices it helps the cooperation between victim assistance and police, but there are also negative aspects for example their work time is from 8.00 - 17.00. However, some risks are raised through this system. For example, since they are part of the Police office, victims can feel they are obliged to listen to or follow their advice. For example, a victim support service officer wanted to stay at an investigator and victim meeting. When the victim asked the officer to leave, he did not do that and threatened the victim, so there can be abuse of power.

All of the respondents point out that with additional funding for non-governmental organisations and better legal acts, the quality of victim assistance service could be improved. Also, a majority of respondents find that the state should work more closely with non-governmental organisations so that they could provide more effective support services.

The stakeholders state no major limitations to accessing victim support services and point out that the service is relatively good. Depending on the concrete person offering the service in different regions, the quality of the service may vary. There are some limitations resulting from the law on the extent of the services (only victims of human trafficking have the right to receive services, e.g psychological counselling until the need disappears) and due to lack of personnel/ funding, the queues to psychologists/psychiatrists are sometimes too long. Referral to these specialised services is usually done by victim support services, but victims are referred to victim support by police.

In smaller places, transport can be a problem: there is one victim support centre per every region and it operates during the week from 8am to 5pm. This means that it can prove to be a challenge for families involved in restorative justice procedures, people living further away from the centre and people whose work schedule is not very flexible, to receive the services.

Interviewee 1 points out that there is a high risk of burnout among victim support workers, which should be mitigated by offering collegial supervision and supervision. Still, victim support services

are evaluated by all interviewees to be working effectively and the MARAC (Multi-Agency Risk Assessment Conference) approach has been piloted in some regions (project based), which has proven to be very useful. MARAC is a victim focused model for case management in intimate partner violence cases, which involves risk assessment and includes all key agencies; it has been tested in three areas of Estonia and is now in the stage of further implementation2. In one region (Saaremaa) the victim support worker conducted a pilot project on offering counselling on how to manage their anger and violence to offenders in intimate partner violence, which proved to be very effective and well accepted by the offenders themselves and anticipated by the victims (during the project period no violence occurred in the families). At the moment they have found no interested parties to carry on this project.

All stakeholders point out that sometimes the victims themselves refuse support services although specialists clearly see the need. If this happens with child victims (parents not willing to cooperate), child protection services are contacted so the necessary support can be offered.

Interviewee 4 acknowledges the lack of awareness-raising on victim support services during the past 1o years – actions have been taken to improve the situation only recently and take a long time due to bureaucracy and the change of people in the administration. Before the changes in management, some materials for awareness-raising on governmental Victim Support Services were printed with support from the Police and Border Guard Board, which, according to Interviewee 4 shaped the understanding for a period of time that victim support services were part of police and awareness on the support services offered by state was relatively low. However, she concludes that the situation is improving.

From the interviews conducted there do not seem to be major problems with informing victims about victim support services. However, most interviewees agree that the knowledge of rights in criminal proceedings is generally low among the population and more education or awareness-raising would be needed.

2 MARAC juhtumikorralduse mudel (Multi-Agency Risk Assessment Conference). Retrieved from https://www.sotsiaalkindlustusamet.ee/et/ohvriabi-huvitis/marac-juhtumikorralduse-mudel

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.

Services provided to victims are listed in the Victim Support Act §§3 and 4 and are generally defined as "a public service aiming at maintaining or enhancing the ability to cope of persons who have fallen victim to criminal offence, negligence or mistreatment or physical, mental or sexual abuse" and include:

1. counselling of victims;
2. assisting victims in communicating with state and local government authorities and legal persons;
3. ensuring safe accommodation;
4. ensuring catering;
5. ensuring access to necessary health services;
6. providing necessary material (financial) assistance;
7. providing necessary psychological assistance;

8. enabling necessary translation and interpretation services for receiving the services provided within the framework of victim support services;

9. providing other services necessary for physical and psycho-social rehabilitation of victims

Victim Support Services defined under the Victims Act are organised by the Estonian National Social Insurance Board that is part of the National Social Insurance Board. Pursuant to §68(3) of the Victim Support Act, in addition to delivering these services directly, the Board may also transfer the provision of support centre services to a legal person or local government authority. Importantly the notion of public service in the Act does not exclude provision of support through non-governmental organisations.

Services provided by the Social Insurance Board are a free public social service. There are 20 offices with 26 victim support officers in total across Estonia3. The service does not rely on cooperation with volunteers in the provision of services.

As a rule, the victim support service is in the same building as the police to secure a smooth referral system. In 2017, in total 8118 persons contacted the victim support the offices across Estonia, majority – 4750 - victims of intimate partner violence cases.

In addition, the state is financing a women's support centre service and it is ensured by the Estonian National Social Insurance Board. Pursuant to §68(3) of the Victim Support, in practice this means a tendering procedure and commonly the service is provided by local women's shelters that are NGO's and usually with a long history of providing the service. The shelters, 15 in total, are located in each county; in Tallinn, the capital city of Estonia, there are two shelters4.

The addresses of the support centres are not disclosed to the public. There is a central phone number 1492 working round-the-clock that provides support and initial counselling to the victims of violence against women5. In 2016 the number of women who turned to the women's shelters was 1939, in 2017 the number was 3135.6

The person directly providing the service must have completed in-service training on the subject of violence against women or completed the subject addressing violence against women at a university, the state has established by the Minister's regulation7 rules for

3 Estonian National Social Insurance Board, structure of the organisation. Retrieved from: http://www.sotsiaalkindlustusamet.ee/et/ohvriabi/ohvriabi-tootajate-kontaktandmed

4 Estonian National Social Insurance Board, women's shelters. Retrieved from: http://www.sotsiaalkindlustusamet.ee/et/ohvriabi-huvitis/naiste-tugikeskused#Naiste%20tugikeskuste%20kontaktandmed

5 Women's helpline 1492. Retrieved from: http://www.naisteliin.ee/index.php?keel=2&id=115

6 E-mail communication with the Social Insurance Board, September 19, 2018.

7 Naistevastase vägivalla teemalise täienduskoolituse kava, maht, ülesehitus ja sisu. Retrieved from: https://www.riigiteataja.ee/akt/113062017009

the plan, volume, structure and contents of the in-service training. There are also other requirements for providing services such as psychological counsellors must have higher education in psychology and legal assistance must be provided by a person with a degree in Law.

Pursuant to § 66 of the Victim Support Act the service provider of womens' support centres must:

1) ensure safe temporary accommodation to the victim and initial crisis counselling around the clock;

2) cooperate for the purpose of achievement of victim's independent ability to cope with state and local government authorities and legal persons concerned;

3) ensure that the support centre has the premises and equipment required for daily life;

4) establish internal procedure rules and notify the accommodated victim thereof.

The state has also established a detailed description of the service that the service provider must follow8. The number of beds at the shelters is stipulated in the procurement conditions, and the number is preconditioned based on regions not a country as a whole, the requirement was to have 96 bed places in 2017 in Estonia. This compares to recommendations developed by the Council of Europe9 that there should be 1 place per 7500 – 1000 of the population. This would equate to between 130 and 173 places in Estonia. At the same time, according to the Social Insurance Board their approach is to be flexible based on the needs of each region since the latest trend is that victims use the accommodation services less and less, at the same time the need for counselling services has increased. One of the reasons for the mentioned trend could be that women are more aware about the different services and seek help and solutions before they actually need accommodation service.10 At the same time, this trend has not been addressed in any research study to date so it is impossible to evaluate what is really behind this new phenomenon. Whilst it should be avoided that shelters are consistently under utilised, the immediate assumption that this is due to a lack of need is at the least a risky approach. Further research should be conducted to understand reduction in usage since this could be due to e.g. lack of awareness of the service, fears about using the service. In such circumstances, the cause of the reduction should be addressed.

Funding to the Victim Support Service is provided annually from the state budget but the funding

8 Requirements for the service provider. Social Insurance Board. 2018. Retrieved from: https://www.sotsiaalkindlustusamet.ee/et/ohvriabi-huvitis/naiste-tugikeskused#Naiste%20tugikeskuse%20teenusekirjeldus%202018

9 Prof. Liz Kelly, 'Combating violence against women: minimum standards for support services', Council of Europe - https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF(2007)Study%20rev.en.pdf

10 E-mail communication with the Social Insurance Board, August 6, 2018.

to the women's shelters is purchased as a public procurement. In 2018 the budget for the shelters is 770 000 euros which is an increase of 150 000 euros compared to 201711. In the previous years the amount of budget available has been criticised by the Estonian Women's Shelters Union since according to their opinion the amount did not allow to continue a sustainable operation and provide the necessary integrated services12.

74 % of survey respondents find that victims receive always or often consultation and support, 14% find that it happens sometimes and 11% that victims receive it rarely. Also 74% of the respondents find that there is information on direct referrals for victims to an appropriate special victim assistance service, 22% find that it happens sometimes and 11% that its available rarely. A Majority of the respondents from state offered victim assistance service say that generally there is emotional and psychological support, NGO-s say it's not like and most people don't enough support they need.

Problems in the delivery of services as identified by Interviewees are set out in the previous section.

11 Sotsiaalkindlustusamet leppis naiste tugikeskustega kokku pikaajalises riikliku teenuse arendamise plaanis, 02.10.2017. Retrieved from: https://www.sotsiaalkindlustusamet.ee/et/uudised/sotsiaalkindlustusamet-leppis-naiste-tugikeskustega-kokku-pikaajalises-riikliku-teenuse

12 Eesti Naiste Varjupaikade Liit, Teenuse rahastamine 2017. Aastal. Retrieved from: http://naisteliin.ee/index.php?id=160 A request for further information regarding budget was sent out to the relevant instances, but no reply was received in time for the conclusion of this report (December 2018).

ARTICLE 10 - RIGHT TO BE HEARD

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

Pursuant to §38(1) of the Code of Criminal Procedure a victim has the right to:

- contest a refusal to commence criminal proceedings or a decision to terminate them;
- file a civil action;
- give or refuse to give testimony;
- submit evidence, requests and complaints;
- examine the minutes of procedural acts and give statements on the conditions, course, results and minutes of the procedural acts, where such statements are recorded in the minutes;
- examine the materials of the respective criminal file;
- participate in the court hearing.

A victim has also right to give consent to the application of a temporary restraining order and request the application of a restraining order. In addition, the victim may request that his or her hearing is conducted by a person of the same sex when it comes to sexual violence, gender violence or a criminal offence committed in a close relationship, except if the hearing is conducted by a prosecutor or a judge or if this would hinder the course of the proceeding. The latter was added solely due to the transposition of the Directive and can be seen as a step forward in securing the right to be heard of the victim.

The right of child victims to be heard is provided in §70 of the Code of Criminal Procedure which establishes, in conformity with the Directive, that the child's age and maturity must be taken into account.

81% of the respondents say that crime victims are always or often given the opportunity in the course of criminal proceeding to provide explanations and submit evidence, 11% say that it happens sometimes and 7% of respondents think it rarely happens.

18% of the respondents (mostly civil society organisations) say that right of the victim to be heard is limited in certain phases of the proceeding, 62% (mostly government bodies) do not think so. NGOs point out that sometimes the victim will not be questioned after giving the first testimony and the case will be closed. Also, often, the victim is not aware which stage the case is, sometimes it is not even known who is the investigator, and so on. Some lawyers also point out that if the third person (including the representative) submits a criminal report the victim will not be contacted or clarified and the procedure will not be instituted.

26 out of the 27 respondents state that the age and maturity level of child victims are always taken into account. Only one of the respondents (NGO representative) disagreed, but no further explanation could be received. When clarifying the topic in a follow-up interview, another NGO representative explained that she do not see problem and there's no cases.

A majority of the respondents say that the measures for evaluating the age and maturity are more or less sufficient. At the same time, lawyers say that traumas and low knowledge of the law amongst victims inevitably place them in a weaker position. Victims have the possibility of talking with a crisis counsellor at the moment they need it by telephone. NGOs state that there are possibilities to help the victims more, but in general they are not implemented or it varies, depending on where the victim lives and how good the cooperation is between different take holders.

Interviewees generally agree that the victim's perspective and evidence is taken into account in the court's decision. Some experiences differ, for example once there was a case in the practice of a support service provider (Interviewee 4), who had to act as a guardian in a case involving a minor – she did not notice her point of view to have been taken into account in the decision of the court. Others did not mention such cases.

It seems on the basis of these interviews that the situation involving child victims is relatively good. There are enough trained professionals and people with long experiences who can work with children in criminal proceedings so that their statements could be taken into account and they would be treated properly. None of the stakeholders pointed out problems with children's testimonies and it seems that the latter are taken into account whenever possible.

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.

Pursuant to §207 of the Code of Criminal Procedure the victim has a right to file an appeal with a prosecutor's office against refusal to commence criminal proceedings. The victim may also file an appeal with the Office of the Prosecutor General against termination of criminal proceedings or dismissal of an appeal against a decision not to prosecute by a prosecutor's office. A prosecutor's office or the Office of the Prosecutor General must form a reasoned order on dismissal of an appeal and send a copy of it to the appellant. An appeal may be filed within ten days.

In addition, according to § 208 of the Code of Criminal Procedure, if an appeal or request for termination of criminal proceedings is dismissed by an order of the Office of the Prosecutor General, the person who submitted the appeal or request may contest the order in a circuit court through an advocate within one month as of receipt of a copy of the order.

Interviewees mention that victims are generally given information on this right. Only Interviewee 4 points out that sometimes victims are not aware of this opportunity. Interviewees 1 and 2 only know about a few cases where the refusal to commence criminal proceedings was overturned. Also, the deadline for appeal is quite short, which may cause some problems for victims who would wish to appeal, but do not have the knowledge to improve the application themselves and

do not have a legal representative.

There are few statistics available on this matter, but the information received from the Office of the Prosecutor General, which reflects only a portion of the decisions not to prosecute, contradicts the experience of Interviewees. The Office of the Prosecutor General states that in 2016, 332 appeals on the decision not to commence criminal proceedings were filed with the Office of the Prosecutor General, of which 35 were satisfied. Similarly in 2016, 274 appeals on the decision to terminate criminal proceedings were filed, of which 61 were satisfied. In 2017, the Office of the Prosecutor General annulled 62 acts on termination of criminal proceedings and 35 acts on refusal to commence criminal proceedings.13

13 Official reply from the Office of the Prosecutor General, August 10, 2018.

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.

Conciliation proceedings have been in place in Estonia for more than ten years and the transposition of the Directive did not bring about significant changes in the legislature in this respect. Since mediation is used almost exclusively in criminal proceedings, the aim is to reach an agreement of conciliation and also agree on compensation of damages between the suspect and victim. It must be noted, that although law establishes the majority of required safeguards, the Article is not fully transposed. Namely, there is no explicit requirement in the law that the offender has to acknowledge the basic facts of the case.

Pursuant to § 2032 of the Code of Criminal Procedure, the prosecutor's office or court may send a suspect or accused and the victim to conciliation proceedings with the objective of achieving conciliation between the suspect or accused and the victim and remedying of the damage caused by the criminal offence. The consent of the suspect or accused and the victim is necessary for application of conciliation proceedings. In the case of a minor or a person suffering from a mental disorder, the consent of his or her parent or another legal representative or guardian is also required.

According to § 64 of the Victim Support Act, the conciliation service is ensured by the Estonian National Social Insurance Board in accordance with the principle of regionality (meaning that the service is available in every county) and the procedure for conducting the conciliation service is set out in a regulation by the Minister of Social Affairs14. The regulation has a special attention on the victim and states that the aim of the conciliation is to ensure the victim's wellbeing.

Whilst mediation in domestic violence cases is not allowed in many European countries; these cases comprise the majority of conciliation service cases in Estonia. There is no one clear

14 Procedure for conducting conciliation proceedings. RT I, 26.01.2018, 23.

opinion on whether the application of conciliation in matters of violence in close relationship is a reasonable type of proceeding. There are only very few studies on the topic and the survey of the current research and interviews with the stakeholders gave contradicting results. At the same time, since there are no additional safeguards in place for the victims of domestic violence compared to other victims, the Estonian legislation does not comply with the Directive's aim to pay special attention to victims whose consent may not be genuine due to his or her special situation. Meaning, victims of domestic violence are often victims repeatedly and there is a high probability for power imbalances in these relationships. That can all influence consent for conciliation proceedings.

In 2018 an MA student of University of Tartu Irina Tsugart interviewed 12 victim support service providers from four regions of the victim support department of the Estonian National Social Insurance Board and found in her Master Thesis that there are different opinions. Some conciliators share the position, that violence in close relationships cannot be conciliated, because the parties of the conflict are in different controlling positions and the party who caused damage should take liability for his or her act. At the same time, some interviewed conciliators emphasise it to be good that cases of violence in close relationships are sent to conciliation proceedings, because in such case a victim support service provider who is acting as conciliator has a possibility to monitor the families in need of support and provide such support, besides, there is a hope that the parties evaluate the reached situation and try to change it.15

Estonia offers some conciliation justice services and the majority of the respondents confirm that such a concept exists. At the same time almost all respondents find that it does not offer any extra protection for the victims from becoming victimised again or to protect from intimidation outside of criminal proceedings.

Restorative justice services are provided in Estonia and two of the stakeholders (victim support worker, Interviewee 4, and lawyer at women's shelter, Interviewee 1) confirm that these are used fairly often. According to Interviewee 4, the process of restorative justice is very regulated and works well. Interviewee 1 explains that the information and explanations on restorative justice services are given to the victim by the victim support worker or the investigator. If the victim agrees to restorative justice, the mediator starts working with the terms and conditions between two parties. Sometimes restorative justice is considered a good option (also in intimate partner violence cases) as the victim can clearly state their own terms (the regulation is quite open in this part: terms may include moving out from a shared living space, making repairs or renovations in a shared living space, demanding the offender to participate in psychological counselling, monetary compensation, restraining order). It seems to be working quite well and no problems are pointed out in terms of providing information on such a possibility.

15 Tsugart, I. (2018). Lepitusmenetlus kui taastava õiguse siire lähisuhtevägivalla kriminaalasjades. University of Tartu. Retrieved from http://dspace.ut.ee/handle/10062/61125

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.

Pursuant to §41(3) of the Code of Criminal Procedure, state legal aid is provided to victims in criminal proceedings on the basis of and pursuant to the procedure prescribed in the State Legal Aid Act. The whole legal aid procedure is prescribed in that Act which covers the application process and the provision of the service by Estonian Bar Association's members. At the same time, if a court finds that the essential interests of a victim may be insufficiently protected without an advocate, the court may decide to grant state legal aid to the person on its own initiative.

In addition to standard legal aid provisions which have been enshrined in law for more than ten years, there is also the possibility to designate a representative to a victim with restricted active legal capacity under state legal aid. A new provision was added to the Code of Criminal Procedure (§41(31)) during the transposition of the Directive, which requires that the body conducting proceedings must designate a representative to a victim with restricted active legal capacity under state legal aid in the following cases:

1) it may be presumed under the circumstances that the interests of the legal representative of the victim are in conflict with the interests of the victim;

2) the victim who is a minor is separated from his or her family;

3) the victim is an unaccompanied minor for the purposes of the Act on Granting International Protection to Aliens.

Other victims must apply for the state legal aid according to the general principles of obtaining the legal aid. Pursuant to §17 of the State Legal Aid Act, the court can refuse to grant state legal aid if the costs of legal services do not presumably twice exceed the applicant's average monthly income that is calculated on the basis of the average monthly income in the last four months preceding the submission of the application, from which taxes and compulsory insurance payments, amounts earmarked for fulfilment of a maintenance obligation arising from law and also reasonable housing and transport costs have been deducted. It falls within a judge's discretion to decide about amounts that can be considered reasonable.

Estonian legislation does not restrict access to legal aid based on the type of crime that has taken place16. According to §12 of the State Legal Aid Act, an application for state legal aid must be submitted in Estonian. However, an application may be submitted in English if legal assistance is applied for by a natural person whose place of residence is in another Member State of the European Union or who is a citizen of another Member State of the European Union or a legal person seated in another Member State of the European Union. In addition, the processing authority must organise the translation of an application submitted in another language widely used in Estonia; in practice this means Russian language.

Stakeholders point out that it is not necessary for the victim to fill out the application form of legal aid themselves, it is usually done by the police officer. Therefore there is no need for the form to be available in different languages.

One problem with legal aid is the quality of it: Interviewee 3 mentions that there seems to be no specialisation within the Estonian Bar Association, which means that lawyers appointed within the system of state legal aid are sometimes not familiar with the peculiarities of certain types of cases. Other stakeholders bring out similar problems – lawyers not investing enough time into these cases, not being diligent enough. This is partly caused by the fact that the work of state provided lawyers is not regulated clearly enough (what are their concrete tasks etc).

Interviewee 2 points out that victims are eligible to too few hours of free legal aid and should be granted 1 hour of free legal counselling automatically – without having to apply for it. According to §22(7) of the State Legal Aid Act, the court, the Prosecutor's Office or the investigative body that decided the granting of state legal aid will:

- verify whether the application submitted by a lawyer is correct and justified and
- determine on the basis of the application of the lawyer the justified time spent for provision of state legal aid,
- the justified steps taken for provision of state legal aid and
- the justified fee payable to the advocate for provision of state legal aid and
- the necessary expenses incurred upon provision of state legal aid to be compensated.

If the court, Prosecutor's Office or investigative body deems the time spent is not justified, the extent of compensation may be reduced.

16 However, there is no research on what is the impact on victims who don't have legal aid – do they forego a lawyer – and does this strongly impact on their access to rights.

ARTICLE 14 - RIGHT TO REIMBURSEMENT OF

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.

According to the § 178(1) of the Code of Criminal Proceeding the following expenses incurred in connection with a criminal proceeding shall be reimbursed to a victim:

1) unreceived income in accordance with subsection (4) of this section;

2) daily allowance;

3) travel and overnight accommodation expenses.

The aforementioned expenses will also be compensated for in case the court session is adjourned. Subsection 4 specifies that victims who lose their salaries or wages due to their participation in the proceeding (only when summoned by the body conducting the proceedings), shall receive payment equivalent to the amount of their average wages, on the basis of a certificate from the employer, for the full time of their absence from work. If a victim fails to submit a certificate from the employer, reimbursement for the time of absence from work shall be calculated based on the established minimum wage.

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.

The right to the return of property is stipulated in the Code of Criminal Procedure. Before the transposition of the Directive, such a right was already present in the Code. Pursuant to § 124(3) of the Code, physical evidence or confiscated objects should be immediately returned to their owner or former lawful possessor if this does not hinder the criminal procedure. In general, physical evidence or confiscated objects are returned to storage. No information was identified on what attempts are made to return property as quickly as possible. §124(4) of the Code offers an intermediate solution in special cases. The provision states that if six months have elapsed from the confiscation of physical evidence and there is no one accused in the criminal matter, the owner can make a request the have the property being stored with him or her pursuant to the conditions for storage of physical evidence. The prosecutor may request to extend the period of storage and this will happen automatically where a request for return by the owner is not submitted.

Additionally, §126(12) of the Code mentions that people to whom property is to be returned are notified to collect it but if the person has failed to collect it within six months after becoming aware of the decision on return, it may be transferred or destroyed by the holder thereof pursuant to the procedure provided for in the State Assets Act.

Interviewee 1 points out some cases where victim's property was held with seemingly little reason, but in general there seem to be no problems with this article. It seems that items are returned as quickly as possible and if the victim does not wish to get their property back because it is ruined, they can ask for monetary compensation from the offender through filing a civil action. The property is stored in the police storage room or, during the court proceedings in the courthouse with all the other evidence. No information was available on practices to ensure that return of property is carried out in a sensitive matter – this being particularly important in cases where the victims was killed.

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.

According to the Code of Criminal Procedure a victim has the right to file a civil action in criminal proceedings and §38(4) of the Code obliges an investigative body or prosecutor's office to explain to the victim his or her s rights, the procedure for filing a civil action, essential requirements for a civil action, deadlines for filing a civil action and the consequences of allowing such term to expire, and the conditions and procedure for receipt of legal aid ensured by the state. In addition, according to § 381 (4) of the Code, the hearing of a civil action in criminal proceedings is exempt from state fees

The request for compensation must be made within the criminal proceedings. According to § 381 the Code of Criminal Procedure a victim may submit a civil action claim in criminal proceedings if:

1) the objective of the claim is to restore or remedy the well-being of the victim infringed by an act which is the object of the criminal proceedings if the factual circumstances, which are the basis for the claim, overlap in a substantial part with the facts of the criminal offence proceeded and if such claim could also be heard in civil proceedings;

2) it is a claim for compensation for damage by a public authority which could be filed in administrative court proceedings.

Pursuant to § 310 of the Code, if a court makes a judgment of conviction, the court shall satisfy the civil action or proof of claim in public law in full or in part or dismiss or refuse to hear it. If a court makes a judgment of acquittal or terminates the criminal proceedings, the hearing of the civil action or proof of claim in public law shall be refused.

Interviewees point out some problems due to limitations on the time frame in which the claim may be filed. As Interviewee 3 explains, the victim cannot file a civil suit after the court proceedings of the criminal case have begun. According to Interviewee 2, this causes injustice to victims whose damages are not visible by this time (for example (mental) health problems, diseases like HIV or hepatitis C in the case of victims of human trafficking).

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.

The Code of Criminal Procedure foresees no restrictions based on citizenship or residency about the possibility to report the crime to national authorities in Estonia and pursuant to § 9(2)(2) of the Victim Support Act, a victim who is a citizen of the European Union is entitled to receive compensation.

The Code of Criminal Procedure does not mention an obligation to take the testimony of citizens resident in other EU Member States immediately after reporting the crime.

At the same time, § 691 of the Code offers the possibility of a deposition of testimony which can be used to reduce delays in taking a testimony. More specifically, a prosecutor's office, suspect or counsel may request a hearing, before a preliminary investigation judge, of a person who is a witness in a criminal proceeding, if the object of the criminal proceeding is an intentional criminal offence for which at least up to three years' imprisonment is prescribed as punishment. A court shall satisfy the request if it is concluded that circumstances would make a later hearing of a witness in the court impossible.

The dismissal of the request is formalised by a reasoned ruling which can be contested by way of an appeal against the court ruling. The request for deposition of testimony must be answered within five days by the court and if the request is satisfied, the court will set the date and time of the hearing at the earliest opportunity and will notify the prosecutor's office and the counsel immediately. Nevertheless, it is not clear whether this procedure would be helpful to victims having to return quickly to their home countries.

The Code of Criminal Procedure offers the possibility of telehearing in order to provide testimony before the court. According to §468 a telehearing of a person staying in a foreign state may be requested if an 'in person' hearing of the witness is complicated or involves excessive costs or if it is necessary to protect the witness or the victim. The request shall set out the reasons for telehearing the person, the name of the person to be heard and his or her status in the proceeding, and the official title and name of the person conducting the hearing.

A majority of the respondents of the survey said that they were unable to assess how often the relevant authorities were capable of taking testimony from crime victims living in a different member state when a crime victim has filed a criminal complaint. At the same time, they believe that all of the necessary means would probably be available if such a situation should arise, but there are no case study for that.

Stakeholders who had knowledge on this topic mentioned no major issues around this article. Video conferencing is used when necessary, statements are taken with the help of interpreters if needed (if the police officer and victim do not find a common language to interact in).

Since the stakeholders interviewed for the research had little or no experience with the topic, it is impossible to assess whether and how often the deposition is used in reality and how much it helps in practice to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed.

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.

Article 18 of the Directive regarding victims' right to protection is transposed into the Code of Criminal Procedure by § 1411 that stipulates terms and conditions for temporary restraining order. § 1411 states that for the protection of the private life or other personality rights of a victim, a person suspected or accused of a crime against the person or against a minor may be prohibited from staying in places determined by a court, from approaching persons determined by the court or communicate with such persons. The order shall be made at the request of a prosecutor›s office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling. A temporary restraining order is applied to a suspect or accused with the consent of the victim. The concrete reasons and conditions of the restraining order must be set out in the ruling by the court. The determination of these restrictive measures is conditioned by the principles of necessity, adequacy and proportionality.

Analysis done by the Ministry of Justice shows that 82% of the time, temporary restraining order requests are approved by the court. The temporary restraining order measure is mostly (89%) applied in cases of domestic violence.17

When victims are witnesses in the criminal proceedings, they are covered by measures to be taken within the criminal procedures, such as the non-disclosure of the witness's identity. According to § 67(1) of the Code of Criminal Procedure a preliminary investigation judge may, at the request of a prosecutor's office, declare a witness anonymous by a ruling in order to ensure the safety of the witness and pursuant to §287(4) of the Code a witness bearing a fictitious name is heard by telephone and the participants in the proceeding submit their questions to the witness through the judge. In addition, according to §287(5) of the Code, the court may allow a telehearing to be

17 Ministry of Justice, 2014, "Ajutise lähenemiskeelu kohaldamise ülevaade 2011-2013"

conducted or use a partition to hide the witness form the accused. That can be requested or implemented on court's own initiative.

As to the question of whether crime victims and family members receive sufficient protection against intimidation and retribution, the respondents' opinion fell into two sides depending on whether they were from the government-sector or third-sector. One side (the government-sector) says that protection is provided always and the other (third-sector) says very rarely.

The majority of the respondents say that crime victims and their family members do not always receive protection against the risk of being emotionally or psychologically traumatised. 77% - 83% of the respondents say that crime victims and their family members are always or often treated with dignity and respect both during the interview by investigative authorities and by the prosecutor's office as well as when giving testimony (7% - 14% say its happens sometimes).

Stakeholders mention that some kind of risk assessment is always done, but they are not aware of the systems and measures in place. Those who have had experience with the MARAC approach, say it was very useful because it brought different stakeholders together (local government, support persons, victim support, police, prosecutor) in order to find the best solution to the situation. Normally, victim's protection needs are not systematically assessed. In some cases, a restraining order is used, but it is more complicated when children are involved due to a parent's right to maintain contact with their children.

As Estonia is so small, it is difficult to "disappear" so that the offender would not find the victim. It is possible to find people from different registries and by asking the right people, even in the event of name change.

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.

A letter of explanation to changes in the Code of Criminal Procedure due to the transposition of the Directive declares that Article 19 is not a subject to legislative changes in the transposition and the right should be secured by the practical implementation and planning of the criminal proceeding. It also states that in a new courthouse in Tallinn separate waiting rooms only for victims are planned.18

Most respondents say that nowhere are there separate waiting rooms and separate entrances into buildings and trajectories within the building for victims and criminals. At the same time in practice, the meetings with the police and victims always take place at different times to the suspect to avoid contacts.

Interviewees acknowledge that if requested, contact is avoided to the extent possible. There have been problems with victims and offenders using the same toilets in courthouses, and as mentioned above, victims and accused persons cannot always be in separated areas in the facilities, especially courts. If it is requested, a screen is provided to avoid eye contact in the courtroom, or hearings are done via video, victim and offender being in different rooms or different towns even. Usually every measure (screen, long-distance hearing, interviews at different times) is taken to avoid contact, if it is deemed necessary and/or requested by the victim. Nevertheless, victims

18 Seletuskiri kriminaalmenetluse seadustiku muutmise ja sellega seonduvalt teiste seaduste muutmise seaduse eelnõu, millega laiendatakse kannatanute õigusi kriminaalmenetluses, juurde.(2015). Retrieved from https://www.riigikogu.ee/tegevus/eelnoud/eelnou/3fdc8de9-e0bc-4c52-87ac-b823f8369cfe/Kriminaalmenetluse%20seadustiku%20muutmise%20ja%20sellega%20seonduvalt%20teiste%20seaduste%20muutmise%20seadus,%20millega%20laiendatakse%20kannatanute%20%C3%B5igusi%20kriminaalmenetluses/

first have to be aware of this right in order to be able to file the request. Moreover, statistics are not available on the actual request and approval rate for such measures.

Normally interviews with the police take place at different times for the victim and the offender. According to § 77(1) of the Code of Criminal Procedure, persons may be confronted if a contradiction contained in their statements cannot be eliminated otherwise. § 77(1) and (2) explain that in confrontation, the relationship between the persons confronted shall be ascertained and questions concerning the contradicting facts shall be posed to them in series, during which the previous statements of a person confronted may be disclosed and other evidence may be submitted. However, §77(6) of the Code of Criminal Procedure allows confrontations to be organised by means of a technical solution, meaning that the participants of the confrontation can be in separate locations or rooms. Furthermore, Interviewee 3, the prosecutor explains that confrontation as a questioning tactic is rare.

Given the missing legal regulation and somewhat ambivalent evidence collected, as well as differences in survey results and interviews with the stakeholders, it would appear that the right of victim to avoid contact with the perpetrator is not uniformly respected in Estonia.

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.

Due to the transposition of the Directive a new right was added into the Estonian law, according to §38(5)(3) of the Code of Criminal Procedure the victim has a right to have one person chosen by him or her to accompany him or her in any procedural acts unless the body conducting the proceedings has refused it with good reason. There are no studies on how effective the right to accompaniment of a victim during criminal investigations by a legal representative and a person of choice is.

Concerning the number of interviews and optimal length between the time a crime is reported and an interview, there is no general rule. At the same time, on June 10, 2015, the state defined its crime prevention priorities and these priorities include, among other, domestic violence, serious offences against minors and human trafficking. It means that investigations on these crimes must be prioritised over crimes which are not considered of priority investigation. In addition, it is also stated in the document that the protection of rights and dignity of the victims should be respected and paid attention to.

Half of the respondents to the survey indicate that interviews with victims of non-violent crime are sometimes conducted after a delay (mostly Social Insurance Board specialists and NGOs). If there is a delay it is usually because the police are overworked and more severe cases have been set as a priority, or the delay may be due to procedural norms. In smaller regions, it may also be because the investigator is on an official assignment or holiday.

At the same time the majority of the respondents say that nearly always, victims are interviewed as few times as possible and they can be escorted by a person of their choosing. On the other hand, NGOs disagree with this position, stating that this rarely or never happens. It was also stated in the survey that medical examinations are used as little as possible.

Usually there is no delay in the interviewing process in the case of violent crimes, but sometimes human trafficking cases for example take more time to proceed due to their more complicated nature, which needs officers with special training. This would account as justified delay.

None of the Interviewees mentioned problems with this article. Repeat questioning is done in the event of new circumstances or evidence appearing. In the experience of Interviewees who support victims, medical examinations are used as little as possible, but these are advised by the police (concerning victim's health and the course of criminal procedure). In the experience of Interviewee 4, medical examinations are sometimes refused by victims. Interviewees 2 and 4 point out, that medical staff often does not have the necessary training or skills when it comes to communicating with victims or avoiding secondary victimisation.

Legal representatives are usually not refused to accompany the victim. None of the Interviewees could bring out any specific justifications for such refusal, should this happen. At the same time some support persons have experienced removal from different procedures during the investigation, but they could not name any specific reasons that have been given. Some explanations just go "we want to talk to the victim alone" and no further justification is given.

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.

Article 21 is transposed to the national legislature mainly by general principles in the Code of Criminal Procedure, according to § 12 there are the following restrictions on public access to court sessions:

(1) A court may declare that a session or a part thereof be held in camera:

1) in order to protect a state or business secret or classified information of foreign states;

2) in order to protect morals or the private and family life of a person;

3) in the interests of a minor or a victim

4) in the interests of justice, including in the cases where public access to the court session may endanger the security of the court, a party to the court proceeding or a witness.

In addition, pursuant to §9(4) of the Code, in a criminal proceeding, it is permitted to interfere with the private and family life of a person only in order to prevent a criminal offence, apprehend a criminal offender, ascertain the truth in a criminal matter or secure the execution of a court judgment. According to § 214(2) of the Code information concerning pre-trial proceedings can be disclosed only with the permission of and to the extent specified by a prosecutor's office and pursuant to § 214(2)(4) of the Code the disclosure is not permitted if it violates the rights of the members of the proceeding or third parties, particularly in the case of disclosure of sensitive personal data.

Also, during the pre-trial proceedings the authorities must follow the Public Information Act provisions §35(1)(11) and §35(1)(12) that require to classify the the following information intended for internal use only: information which contains sensitive personal data and information which contains personal data if enabling access to such information significantly breaches the inviolability of private life of the data subject.

Regarding the self-regulatory measures the Code of Ethics of the Estonian Press the following two points are worth mentioning, more specifically:

4.8. When covering crime, court cases and accidents, the journalist shall consider whether the identification of the parties involved is necessary and what suffering it may cause to them. Victims and juvenile offenders shall not be identified as a general rule.

4.9. Materials violating the privacy of an individual can only be disseminated if public interest outweighs the right to privacy.

In addition, it is possible to file a complaint to the Estonian Press Council about material that has appeared in the press and the Council provides the public with a possibility to find solutions to disagreements with the media without the need to go to court. There is no research available to give opinion whether this option helps to protect the privacy, including personal characteristics of the victim since the desk research on the webpage of the Council shows that there have been almost no complaints and resolutions during the last couple of years relevant to the Article 21.

The majority of respondents say that very often the relevant authorities adopt all means at their disposal to protect crime victims' privacy. Most respondents say that the protection measures are adopted only for a certain type of crime victim. Such as: murder, sexual offences, physical abuses, incest, child victims.

Most of the respondents also say that the existing measures for protecting privacy are not very effective. The respondents say that media representatives are not advised to take self-regulated measures to protect the victim's private lives.

Interviewees' views are similar to respondents'. They also mention that in case of a closed hearing, all participants are forbidden from sharing any information concerning the trial to third parties. In the case of such event, a fine will be issued.

As mentioned above, due to the smallness of Estonia, it is more difficult to protect privacy and identity. Some proposals have been made by NGOs to separate registries that involve the information of victims of harassing pursuit or human trafficking, but up to this day, no such measures are in place.

It is possible to request the omission of personal data of the victim or even the place where the crime happened from the court decision. From the experience of interviewees, these requests are usually agreed to. Also, the requests by victims to hold hearings in camera instead of public are usually agreed to. Detailed statistics on how the system works in practice were not identified during the research, however.

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.

The topic of individual assessment of victims to identify specific protection needs was added to the Code of Criminal Procedure due to the transposition of the Victims' Directive. According to § 372 of the Code of Criminal Procedure, the purpose of an individual assessment is to guarantee necessary services in a timely manner for the victims who need it, as well as special measures and protection to vulnerable victims in criminal proceedings, when necessary.

In practice, the assessment was already partly taking place, however the addition of this principle in explicit wording, was necessary for it to become a clearer obligation for the professionals conducting proceedings. During the desk research the authors of the current study found no information about guidelines or procedures to assess individual needs of the victim. It is argued that there is no need to prepare a special document in the course of the assessment since; the visible outcome is mainly whether the victim has been granted suitable special protection measures, which will generally be seen in the materials of a criminal case. However, the absence of an effective reporting procedure can inhibit a victims ability to question a decision and the reasons for such a decision. Moreover, the obligation to prepare a report helps ensure that this right is actively implemented.

In addition to the bases of individual assessment stemming from the Victims' Directive the legislation includes, as an additional criterion, the suspected person ("the personality of the suspect"), because if the suspected person has previously been repeatedly punished for offences against the person, or is a member of a criminal organisation, the protection needs of the victim may be greater.

At the same time, it is questionable whether Estonia has transposed the Article in its fullest, for example there is no mention that the individual assessments should be carried out with the close involvement of the victim and take into account their wishes. In addition, the law does not explicitly mention victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics. The latter is especially worrisome since the Estonian Criminal Code does not include any general or specific aggravating circumstance related to bias motivation of committed criminal offences.

The Directive also establishes the obligation that officials involved in criminal proceedings who are likely to come into personal contact with victims must receive necessary training so that they are able to protect victims from secondary victimisation and identify their needs as well as deal with them in a respectful, sensitive, professional and non-discriminatory manner. Persons who are likely to be involved in the individual assessment to identify victims' specific protection needs and to determine their need for special protection measures should receive specific training on how to carry out such an assessment. Equally, training should be promoted for lawyers, prosecutors and judges and for practitioners who provide victim support or restorative justice services.

In order for the professionals conducting proceedings to have good abilities for assessing victims' individual needs, the state in its implementation plan for Strategy for Preventing Violence 2015–202019 has established the activity "Prevention of burnout of professionals conducting proceedings", according to which the principles for necessary training are analysed and developed. At the same time, due to the fact that the Strategy is still in implementation phase, it is difficult assess whether the trainings and methods have helped to identify specific protection needs.

The respondents say that nearly always, the victims' needs for protection are assessed individually, and in most cases, individual wishes are taken into account. Often, the respondents say, risk and threat assessments are conducted and these can be successfully adapted later on. To prevent the need for excessive communication with authorities, practical protocols and questionnaires are used in the work.

The practical implementation of this article differs among regions. Interviewee 1 explains that usually it is up to the victim to express the wish for specific protection needs and the concrete measures (screen, using different rooms etc) are discussed with the prosecutor, who then requests for specific protection measures. This is to be done before the general procedure begins. When such measures are requested, they are usually not denied, but victims are not always aware of the possibility of protection measures. Mostly these measures are used in cases involving sexual violence.

19 Strategy for Preventing Violence 2015–2020. (Tallinn 2015) Retrieved from http://www.kriminaal-poliitika.ee/sites/krimipoliitika/files/elfinder/dokumendid/strategy_for_preventing_violence_for_2015-2020.pdf

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.

Article 23 is explicitly linked to the individual assessment required by Article 22 of the directive and lays out specific protection measures that victims identified as particularly vulnerable should have access to. As stated under the analysis of Article 22, the topic of individual assessment of victims to identify specific protection needs was added to the Code of Criminal Procedure due to the transposition of the Victims' Directive. Pursuant to § 372 (3) of the Code, the individual assessment is a basis to decide whether the hearing shall be conducted in the premises adapted for the special needs of the victim, by a specialist trained for hearing victims with special protection needs or with his or her participation or, if possible, by the same person during the whole proceedings.

In addition, according to §287(5) of the Code, the court may allow a telehearing to be conducted or use a partition to hide the witness from the accused. That can also be requested or implemented on the court's own initiative. Paragraph 86 (6) also stipulates that questions concerning the moral character and habits of a suspect, accused or victim may be posed to a witness only if the act which is the object of the criminal proceeding must be assessed in inseparable connection with his or her previous conduct.

A majority of the respondents answered that victims with special protection needs are always interviewed in specially customized rooms, and only trained specialists interview victims. NGO-s say that it's offered just for children any other person for example rape victim, to not get special protection.

In general, the same person conducts the interviews and in general all victims of sexual and gender violence are interviewed by a person of the same gender as the victim.

No major issues are pointed out by stakeholders with granting special protection during criminal proceedings. If it is requested, a secret trial is usually allowed, screens or video conferencing is used if requested. Stakeholder 2 points out one sexual violence case, where the translator was of opposite gender to the victim, but was replaced after a request to do so. Stakeholder 2 also explains that since the victim is allowed to have up to 3 representatives, their practice as an NGO supporting victims of human trafficking has been to use two representatives during video hearings: one beside the victim and one at the courtroom. This ensures that the victim receives necessary explanations about the process. Victim's wishes are taken into account and respected if possible.

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.

Paragraph 70 of the Code of Criminal Procedure states that if necessary, the hearing of minors is video recorded. During the transposition, paragraph 41 (31) was added to the Code in order to meet the requirement for a special representative for child victims in cases listed in the Article 24.

To the knowledge of the majority of the respondents, all interviews of child victims are recorded audio visually, and if necessary a special representative is always appointed to represent juvenile victims.

If there is a conflict between the child and the person with parental responsibility, the juvenile victim is allowed to use legal assistance in their own behalf.

No major problems are brought out by the interviewees with children's rights in criminal proceedings. There are specialists at the police with special training to work with children and children are always interviewed by a person with necessary training. Furthermore, the protections needs and support needs of children are taken into serious consideration. If there is any doubt that the victim may be a child, they are treated correspondingly.

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 Strategy for Preventing Violence for 2015-2020 (*Vägivalla ennetamise strateegia 2015-2020*), sets as a priority for the state in the coming years, improving the identification of victims and the referral systems: "In order to make sure that sectoral specialists are able to recognise signs of violence and provide adequate help to the victims, the specialists must be informed and trained. The role of healthcare employees in working with violence victims must be clarified, their skills in identifying and helping a violence victim must be improved and their cooperation with other organisations helping violence victims must be facilitated. This is most relevant for family physicians, paediatricians, gynaecologists, ambulance medics, midwives, family nurses and school nurses. /…/ In-service training for addressing violence-related topics must be ensured for teachers of kindergartens and schools; they must be supported in preparing their study materials. A need for in-service training has been recognised among the social workers and child protection employees of local governments; attention must be paid to specialists working with children with special needs and adults and to providers of services to violence victims. It is considered

necessary to provide joint trainings and network trainings to ensure a common information space of specialists of various fields working together on violence cases."The respondents say that police officials, prosecutors, advocates and victim assistance workers receive sufficient training on the topic of crime victims' needs. A majority of the respondents say that judges could be trained better on the topics. They also say that other experts (administrative bodies, first responders) could receive more training and be given more knowledge.

Interviewees agree with respondents and also mention that especially judges should be trained more on specific methods of communication with the victims, avoiding secondary victimisation, vulnerability of the victims of different crimes and different victim groups. Compulsory trainings are foreseen for beginner judges: this involves a training on ethics. A separate, non-compulsory training on the Directive for judges was offered in autumn 2016.20

Other bodies like police, lawyers, prosecutors, court staff and especially victim support workers have received many trainings on these aspects, and for example Interviewee 4 pointed out that in one region, the local police put together guidelines for themselves after the adoption of the Directive. However, all stakeholders still agree that more training on is always needed, special attention should be given to level of the communication skills of police officers and local governments who offer social services to victims and therefore should also be aware of the Directive. Interviewee 4 also mentions the importance of cooperation and experience sharing between the different practitioners (for example prosecutors and victim support workers). Interviewees 1 and 3 explain that legal professionals lack psychological skills and there is too little emphasis on it in legal education, therefore additional training is needed.

20 E-mail communication with the Legal Information and Judicial Training Department of the Supreme Court of Estonia, September 19, 2018.

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.

A majority of the respondents say that the awareness-raising campaigns conducted by the government about domestic violence have been relatively effective. There have not have been any other larger awareness raising campaigns.

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GOOD PRACTICES

In the research process, researchers identified several good practices which have been implemented in Estonia and could be transferred to other Member States.

Good cooperation between police and victim support services. The fact that a referral mechanism in Estonia is well established between police and victim support services could be considered as the good practice. The aspects that make this as a good practice to follow, include proximity of victim support in police stations across Estonia, established formal practices in case of victims of domestic violence, and personal contacts between police and victim support officers.

MARAC (Multi-Agency Risk Assessment Conference) approach in intimate partner violence cases. MARAC was developed in the United Kingdom and has been used there as well as in Finland very successfully. Although it has only been tested in three places in Estonia, it has proven to be successful since it is network-based and includes all key agencies, which need to work together in order to achieve the goal of preventing further victimisation and offences. MARAC involves risk assessment and creating an action plan for intervention. Social Insurance Board who is coordinating the project aims to test this approach also in cases involving juvenile offenders.

Offering psychological counselling to repeat offenders. This practice was piloted in one area of Estonia very successfully with offenders in intimate partner violence. The project was encouraged by the victims and was surprisingly well received by the offenders (all men), who often contacted counsellors themselves and were more than willing to participate in counselling. During the project period, no violence occurred in the families participating.

Roundtables with different stakeholders to share information and experiences. This allows different agencies to discuss their cases and their approach to them, mutually raise awareness on details of each others work protocol and create a shared understanding of the criminal procedure.

In cases of intimate partner violence, **removing the offender rather than the victim** from the scene is a new practice which is starting to be implemented. Additionally, the victim is offered support and counselling after the offender has been taken away. Commonly in intimate partner violence cases, victims are the ones who are being removed or leave their home. The new approach has been tested in Pärnu and Saaremaa and will be introduced in Raplamaa.

GAPS, CHALLENGES, AND RECOMMENDATIONS

Throughout the development of this report, the researchers have identified gaps and challenges regarding the practical implementation of the Victims' Directive in Estonia.

Communication with victims

- National agencies should change the notion of the victim as someone who is coping by himself/herself and does not need a support person. At present NGOs feel that it is often thought that support persons only disturb the process.

Information to victims

- It has been recorded that more effort should be placed on victims of crime getting all information immediately and on not sending them from one official to the other.
- It should be increasingly acknowledged that the victim's trauma and low knowledge of the law inevitably places victims in a weaker position.

Receiving information about case

- The content of a decision should be more clearly explained to the victims of crime as at present they do not think the justifications to be sufficient.

Interpretation and translation services

- It has been identified that there is a lack of translators and interpreters. National agencies should provide training to the translation bureaus they use when communicating with victims of crime as the interpreters often lack specific skills to communicate with victims, e.g take into account their vulnerability and trauma.
- Also, in addition to court documents, proceeding documents should be translated.

Legal aid

- In order to improve the quality of legal aid, more finances should be targeted at legal aid services and organisations that provide victim support services.
- In order to improve the availability of victim support services, competent third sector organisations should be involved more.
- The Estonian Bar Association should guarantee the specialisation of lawyers who provide state legal aid in order to avoid a situation where a lawyer competent in financial crimes has to provide legal aid in a case of sexual abuse of children. This would raise the quality of the legal aid provided.

Training of professionals

- Judges should receive more training; it is thought that it is especially judges who have not taken part in different training courses that would increase knowledge on specific methods of communication with the victims, avoiding secondary victimisation, vulnerability of the victims of different crimes and different victim groups.
- Also other specialists (administrative bodies, first responders) should be trained on communicating with victims. Administrative bodies often provide social services to victims and therefore should also be familiar with the Directive. First responders also lack necessary communication skills and cannot provide information to victims in a suitable manner.
- Police officers, prosecutors, lawyers and victim support workers should make sure that all newcomers receive necessary training so that the existing good level could be maintained.

CONCLUSION

The overall state of ensuring minimal rights to victims as established in the Directive 2012/29/EU (Victims' Directive) in Estonia is uneven, mostly it depends where the victim is geographical located or is the victim minor.

Based on the results of desk research, interviews and web survey, the situation of victims of crime and their rights, support and protection measures have improved over the years. Although the transposition of the Directive into national law has taken time — the amendments entered into force officially in two parts: on 1 July 2016 and 1 January 2017 — the actual practice in many aspects was in line with the requirements of the directive already before the amendments in law took effect. Because of that it is hard to rate the exact role of the Directive and how much the measures have improved afterwards, but there is no doubt that in some cases it was a good motivator for the state to raise the quality of the services.

Through the web surveys and the interviews with professionals of different areas of action (police officers, prosecutors, lawyers and victim support workers) we can state that the quality of victim support service in Estonia is uneven, mostly it depends where the victim is located and who is her/his first contact, so state can't guarantee the equal rights for all victims. Mostly the quality is better in the areas where the non-governmental organisations are offering extra services, for example legal aid and psychological counselling.

There are some good practices implemented in different areas in Estonia. One such example, is the use of the MARAC (Multi-Agency Risk Assessment Conference) approach, which is based on network of all key agencies working together in order to achieve the goal of preventing further victimisation and offences in intimate partner violence cases. Although it has only been tested in three places in Estonia, it has proven to be successful. Similarly, the pilot project for offering psychological counselling to repeat offenders worked very well, as the offenders often contacted counsellors themselves and were more than willing to participate in counselling.

Research, however, also identified gaps and challenges. One of the main issues is the quality of the state legal aid: as of now lawyers who are offering the state legal aid do not specialise, so the quality of state legal aid varies significantly. Equally problematic is the lack of common practices among officials working with victims for dealing with individual needs and risk assessments. At the moment it works well in some areas in Estonia and even there only on a project basis. Practice is also uneven and legal regulation lacking on the Article 19 right of victims to avoid contact with the perpetrator.

Restorative justice services aim is more to reach an agreement of conciliation and compensation of damages caused by crime between the suspect and victim. To a lesser extent it provides prevention and counselling, which should be one of the aims of restorative justice according to the Victims' Directive. So the Estonian system does not offer any extra protection for the victims from becoming victimised again or to protect them from intimidation.

The gaps that the current report identified have already been pointed out in previous studies. Different local and international organisations have drawn the attention of the state and policy makers about these problematic aspects.

We recommend to fully and clearly implement each article of the Directive. This concerns, in particular, Articles 12 and 19, where the implementation in national law is the least in compliance. Secondly, we recommend to review the quality of the interpretation and translation services, as right now they do not take into account the victims' vulnerability when offering interpretation. Similarly, there is a clear need to improve the quality of the legal aid and victim support services, which requires the state to increase the funding for these activities in future. Finally, different stakeholders should work more closely and involve more non-governmental organisations to offer support to victims. as their opinion about the quality of services mostly splits.

Also there should be conducted more studies about quality of victim support service to prevent the situations where there are no data available to evaluate its quality.

All of the respondents point out that with additional funding for NGO's who work with victims and better legal acts, the quality of victim assistance service could be improved. Also a majority of respondents find that the state should work more closely with non-governmental organisations so that they could provide more effective support services as for now state provided victim support services and NGO's do not co-operate as much they should.

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APPENDIX 1 – CONTACT LIST OF INTERVIEWED PROFESSIONALS

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1	Merle Albrant	Järva women's shelter	merle@naisteliin.ee	00372 56633880
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3	Lea Pähkel	Prosecutor's office	Lea.Pahkel@prokuratuur.ee	00372 6 944 246
4	Katrin Paukson	Victim Support Department (under Social Insurance Board)	Katrin.Paukson@sotsiaalkindlustusamet.ee	00372 5757 0744

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