

VOCIARE

MALTA

NATIONAL REPORT



Victims of Crime Implementation Analysis of Rights in Europe



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Implementation Analysis
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DISCLAIMER

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

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

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 Given its scope and ambition, authors are aware that some elements may be inaccurate or out of date.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

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EXECUTIVE SUMMARY

Directive 2012/29/EU, commonly known as the Victims' Directive, establishes minimum rights to all victims of crimes and constitutes the core of the European Union's legislative package aiming to guarantee that all victims of crimes have access to information, support and protection.

The practical implementation of the Directive is complex and challenging. Member States needed to transpose it to the national context and develop legislation as well as policies to allow victims to exercise rights referred by the Directive. Hence, the report aims to assess the practical implementation of the Victims' Directive in Malta, providing a detailed overview of the situation in this country regarding this matter.

After thorough assessment, it was possible to detect gaps and challenges in the practical implementation of the Directive. The main problem arising in the implementation of rights for victims of crime is that most measures lack any form of real structure. The majority of authorities do not have standard procedures or protocols to follow and each individual professional implements their own standards, often based on their experience.

Firstly, of concern was the finding that when victims report a crime to the Maltese authorities they are not subsequently provided with any **written information** on the case, with language barriers being of prime cause. One solution is for uniform procedures to be adopted, with victims being provided with a standardised set of information on their rights and their role in the criminal justice procedure. Throughout investigations and criminal proceedings, further problems were highlighted when the victim was due to be **notified of the release or escape of the offender**. In the majority of cases, it seemed that the victim was not notified about the current status of the proceedings. One suggestion on how to combat this is the introduction of an automated process, rather than reliance on individual professionals working on the case.

Further problems arose regarding the right to receive **confirmation of the complaint** filed. It is common practice for lawyers to request a copy of the complaint, but this proved to be difficult due to limited office hours. It was also mentioned that in some cases, a small fee was added for additional copies. It was determined that procedures must be created to allow for all victims to obtain a free, immediate and automatic copy of the written complaint.

It was identified that there is a **systematic lack of qualified translators and interpreters**, compromising the exercise of many rights, such as the right to translation and interpretation or the right to understand and be understood. In addition to an inadequate budget for these services, it proved difficult to find translators or interpreters for particular languages. With an

inadequate number of interpreters accessible, it is essential that a team is set up and is available on a frequent basis.

Regarding the individual assessment of victims, Maltese legislation has not embraced the two-step approach to identify victims in need of special protection measures. It seems that there are no individual evaluations being conducted in Malta and, overall, the individual assessment of victims as it is envisaged in the Directive is not performed. The only victims who may, as a result of an individual assessment, benefit from special protection measures are minors and victims of trafficking in human beings.

Although special protection measures are given to **minors**, not every child is given the same treatment when being interviewed. With only two locations in Malta having child friendly interview rooms, improvements are urgently needed. In particular, it is vital that toys are kept in all local police stations; the number of people present should be kept to a minimum so as to provide a quiet environment; and the child should dictate the speed, rhythm and pace of the interview.

Finally, it has been identified that there is a need for further **training for all professionals** working with victims of crime. Particularly, all professionals in contact with vulnerable persons should receive continuous, in-depth training to ensure that they are able to understand and be aware of the victims' needs and to learn how to treat victims with respect, professionalism and in a non-discriminatory manner. Overall, training in Malta is seen as inadequate and could be greatly improved.

Despite the above-mentioned gaps and challenges, some good practices have been identified with respect to the practical implementation of the Victims' Directive in Malta. It is worth highlighting some examples.

The first example worth noting is the **prioritisation of sensitive cases**. Special attention is given to specific groups of vulnerable victims, with exceptional consideration given to child victims and victims of trafficking. In particular, when dealing with victims of trafficking, an informal procedure has been implemented whereby once law enforcement authorities are notified of a case, all of the services are notified immediately. The urgency of the matter is apparent, as legal and support services are called to the police headquarters at any hour of the day or night.

In respect of the **victim's right to be accompanied** by a legal representative during criminal investigations, it is best practice in Malta for law enforcement authorities to allow a friend or family member to accompany the victim during investigations. Apart from providing emotional support to the victim, if the victim is a foreign national (who does not speak English or Maltese—the two national languages in Malta), it is often the case that the friend or family member is able to speak English and thus is able to assist the authorities in communicating certain information to the victim.

Regarding access to and support from **victim support services**, the services available in Malta are extremely good. Victims have access to the Victim Support Unit within the Maltese Police Force and Victim Support Malta (a Non-Governmental Organisation). Amongst a number of other services available to victims of crime, these two free services provide the victim with essential information and cater to the individual needs of the victim.

Malta has introduced positive steps in relation to the **right to return of property** and authorities ensure that, where necessary, the victim is not stripped of his or her valuables. If evidence is needed to be taken from an electronic device (such as a mobile, laptop or tablet of the victim), the Court appointed expert meets the victim to extract the information at the victim's earliest convenience.

In respect of Article 21, the right to **protection of privacy**, one very positive practice has been adopted by law enforcement, and that is the audit of police systems. Any data imputed, amended, read or accessed is logged and through these mechanisms, it can be established whether information is being divulged. If so, action can be taken against the offender.

Special measures are in place to ensure the **protection of victims with specific protection needs**. When an interview is carried out with victims of sexual or gender-based violence, it is often conducted by a person of the same sex as the victim. Particular measures are also taken for victims that have disabilities. If the victim needs assistance to attend the Court hearing, law enforcement officers may accompany the victim or assistance may be given by the health authorities, who will provide transport.

Child victims are considered to be particularly vulnerable by the competent authorities. In respect of Article 24, and the **protection of child victims**, Maltese Courts have introduced the appointment of child advocates. Child advocates are specialist lawyers who are appointed by the Courts to be aware of the child's interest. Child advocates are appointed to examine the child and to make sure the rights of the child are protected throughout the proceedings.

The present national report, completed within the context of project VOCIARE, was extremely useful to assess the practical implementation of the Victims' Directive in Malta, identify good practices and gaps and challenges. Gaps are not unusual and have been identified and outlined in previous reports. It is important to keep promoting and delivering training to competent authorities and promoting awareness raising campaigns, directed to both professionals working closely with victims and the general public.

INTRODUCTION

This national report aims to assess the practical implementation of the Victims' Rights Directive in Malta in the context of project VOciare- Victims of Crime Implementation Analysis of Rights in Europe.

The project's research methodology was created and adopted specifically for this purpose. The first two steps taken in order to develop this report were a legislative analysis and a mapping of competent authorities and organisations. In order to assess how the Victims' Directive has been implemented in Malta, it was vital to know more about national legislation, to know how the Directive was transposed into national law in order to further analyse whether such legislation is being implemented, how and by whom. Mapping competent authorities and organisations was also essential to guarantee that detailed answers will be provided by the authorities, services and organisations which work in direct contact with victims.

To support the work presented in this report, three research tools were developed in order to obtain the desired information: desk research, an online survey, and interviews (four were conducted with professionals who work with victims of crime in Malta). The period of time covered by the desk research is from 2015 until the present day. The online survey and interviews were carried out during the months of May and June 2018.

The desk research was the first stage of the project. It included research of legal and policy instruments, literature and existing studies, opinions, discussions and other sources which are related to victims' rights. Quantitative and qualitative information on the research topic was collected, covering, for example, statistics on the situation of victims, academic literature on the topic of victims' rights implementation (where possible), media reports and relevant NGO research.

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 having contact with victims (which included police, prosecutors, judges and court staff, policy makers and victim support organisations).

The third instrument, the interviews, enabled the researcher to collect additional data to the desk research. Any questions which remained unanswered, or where findings were inconclusive, the researchers identified a key stakeholder with whom these specific questions could be discussed, in addition to the list of questions which were provided via the research tools.

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

Furthermore, after thorough analysis, a chapter on good practices is presented, as well as a chapter identifying gaps, challenges and recommendations. These chapters will provide possible good practices to be implemented by other Member States as well as those to be maintained in Malta. They will also provide information on what is deficient or can be improved.

The final chapter will provide a conclusion of this report.

BASIC OVERVIEW OF THE LEGAL FRAMEWORK

The Victims' Directive (the Directive) was adopted on 25 October 2012 by the European Parliament and the Council, and Member States were required to transpose it into national law by 16 November 2015.¹ In Malta, the Directive was transposed into the Maltese legal framework through the adoption of the Victims' of Crime Act, 2015 (the Act)².

Besides the **Victims' Act**, there are other pieces of legislation which regulate victims' rights, namely the Criminal Code of 1854³ which deals with **crimes and punishments**, the **laws of criminal procedure** and matters applicable to all **criminal trials**, the Police Act of 2017⁴ on the **protection of witnesses and victims** and the Gender-Based Violence and Domestic Violence Act of 2018⁵ which established the **legal regime applicable to the prevention of domestic violence and the protection and assistance of its victims**.⁶ Other relevant legislation is the Criminal Injuries Compensation Scheme Regulations of 2012⁷, which determines how **crime victims may apply for compensation**, the Legal Aid Agency (Establishment) Order of 2014⁸ which implements a system of **legal aid** and the Legal Aid Agency Procedures Order of 2016⁹ which establishes the **procedures to be adopted by the legal aid agency**. The existence of other legislation overseeing the rights of victims is an indication that the Maltese legislator was concerned with the governance of these rights prior to the enactment of the Directive. Also, many of the laws have been amended and updated subsequent to the application of the Victims' Act, reflecting the importance given to the rights of victims of crime in Malta and reinforcing victim's role and rights in criminal proceedings.

In order to better grasp how the Victim's Directive is being implemented in Malta and to what extent victims' rights are being upheld, a few considerations regarding Maltese criminal proceedings are necessary. Criminal proceedings have **two main phases**: the **investigation phase** and the

trial phase. After the trial phase, it is possible that the proceedings carry on into the **appeal phase**. The **investigation phase** comprises all the actions aimed at ascertaining whether a crime was committed, who committed it and their liability, and gathering evidence. The investigation is carried out by police officers. Once it is established that there is sufficient evidence, charges are presented. A suspect is always arraigned before the Court of Magistrates. If a suspect is arraigned under arrest, the Court must first decide whether their continued detention is founded on a provision of law and then inform them that they may request bail. If they are not arraigned under arrest, they will be notified of the charges and of the date when they must appear in court for the first hearing. There are **three different types of trials** depending on the seriousness of the charges brought against the suspect: **summary proceedings** before the Court of Magistrates; **Proceedings before the Court of Magistrates** following the compilation of evidence; and **trial by jury**¹⁰.

In consideration of the above, victims can participate in the various phases of the criminal proceedings in different degrees, having different obligations and attributions, depending on the role he or she assumes in the proceedings. During the entire procedure, however, victims have various rights enshrined in the Directive. Overall the **majority of the provisions of the Directive were transposed into Maltese law**. However, some are **not expressly included** or were **transposed inadequately**. The following pages will analyze, one by one, how these provisions are implemented, in order to shed light on the current situation of victims and their enjoyment of these rights within the Maltese criminal system.

1 All Member States, with the exception of Denmark, opted into the Directive system.

2 A copy of the legislation is available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12306&l=1>

3 A copy of the legislation is available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574&l=1>

4 A copy of the legislation is available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8686> This replaced the Police Act of 1961

5 A copy of the legislation is available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12830&l=1>

6 Prior to the Gender-Based Violence and Domestic Violence Act of 2018, the Domestic Violence Act (Cap.481) was in force, but has subsequently been repealed.

7 A copy of the legislation is available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8983>

8 A copy of the legislation is available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12259&l=1>

9 A copy of the legislation is available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12470&l=1>

10 Detailed information on criminal proceedings in Malta can be found at https://e-justice.europa.eu/content_rights_of_defendants_in_criminal_proceedings_-169-mt-en.do?member=1

EVALUATION OF PRACTICAL IMPLEMENTATION

ARTICLE 2 - DEFINITIONS

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

Prior to the transposition of the Directive, Maltese law did not contain a definition of a victim. According to law enforcement, a victim was defined (unofficially) as a person who had suffered a crime, not including family members¹¹.

Subsequent to the transposition of the Directive, the Victims' Act provides the definition of a victim as *"(a) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; (b) family members 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 and (c) minors who are witnesses to forms of violence"*¹².

This change in legislation was welcomed, with the definition now widely used by key stakeholders. The media broadly reported the adoption of the Victims' of Crime Act, 2015 (the "Act") and explicitly referred to a victim as those who have suffered *"physical, mental or emotional harm or*

¹¹ Interviewee 4.

¹² Victims' of Crime Act, 2015.

*economic loss*¹³" caused directly by a criminal offence. Reference was also made to the inclusion of family members.

Various victim support services also provide a definition of who a victim is. Victim Support Malta defines a victim as a person who has *"suffered harm, including physical, mental or emotional harm or economic loss directly caused by a criminal offender"*. For clarity, Victim Support Malta also states that a person is considered as a victim *"regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them"*¹⁴. In addition, the Aditus Foundation (Accessing Rights) provides a Factsheet on the rights of victims of crime which also contains a definition. According to the Aditus Foundation a victim is *"a person who has suffered harm, including physical, mental or emotional harm or economic loss which was caused by a criminal offence; or family members 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"*¹⁵.

It is interesting to note that the media reporting and the definitions given by the support services do not make reference to part (c) of the Act which refers to minors (who are witnesses to violence) also being classified as victims.

¹³ Calleja, C. (2015). New law gives crime victims legal aid right: Support group director welcomes changes. Times of Malta. Retrieved from: <https://www.timesofmalta.com/articles/view/20150420/local/new-law-gives-crime-victims-legal-aid-right.564676>

¹⁴ Victim Support Malta. Retrieved from <http://victimsupport.org.mt/faq/>

¹⁵ Aditus & The Critical Institute. (n.d.). Rights of victims of crime (factsheet n° 10). Retrieved from <http://aditus.org.mt/Publications/atlas/atlasfactsheet10.pdf>

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 Malta, Article 3 of the Directive is transposed in Article 3 of the Act¹⁶.

According to some professionals, **there are no specific measures to identify a victim's needs** (assessment) which have been implemented since the transposition of the Directive and in particular, **there are communication issues** when dealing with law enforcement authorities¹⁷. When a crime is reported, **victims are not provided with any written information** and specifically in a language they understand¹⁸. It was stated by one professional that victims who not speak both Maltese and English struggle when they attend a police station to make a report, primarily because law enforcement authorities communicate between themselves in Maltese.¹⁹ Specific reference was made to migrants and how language barriers and cultural differences would affect this group of vulnerable victims the most²⁰.

¹⁶ Paragraph 1 states in relations with any competent authority in the context of criminal proceedings, all communications between the said authority and any victim shall be conducted in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood. Paragraph 2 states unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, a victim may be accompanied by a person of his choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

¹⁷ Interviewee 1 and 2.
¹⁸ Interviewee 1.
¹⁹ Interviewee 2.
²⁰ Interviewee 1.

One major issue with the right to understand and be understood is that the police do not have their own pool of professional interpreters and translators. If a translation was needed, law enforcement would “fish around the police station”²¹ to find someone to assist. However, it appears that steps are being taken to change this approach as the Malta Police Force is currently hiring professionals who provide linguistic support.

Victims with hearing impairments are usually given adequate access to information through the use of a sign language specialist. The procedure in these cases is that police officers contact an agency (Agenzija Appogg) which then provides the relevant service²².

A distinction was drawn between the victim's communication with law enforcement authorities and court officials. According to most professionals, an interpreter is provided if the victim does not speak Maltese (one of the two national languages in Malta- the other being English²³) during Court proceedings. There appears to be an inadequate number of interpreters available though, with one professional explaining that a number of sittings had to be deferred because one was not available²⁴ and another suggesting that it would be better to have a pool of interpreters available on some sort of on call basis²⁵.

With reference to Part 3(2) of the Act and in respect of an accompanying person, the results of the Survey indicate that victims are, when possible, accompanied by a person of their choice and if a victim is refused this right it is because the course of proceedings would be prejudiced²⁶.

²¹ Interviewee 3.
²² Interviewee 4.
²³ Please note that all Court proceedings are conducted in Maltese unless it is requested that they be conducted in English by the perpetrator.
²⁴ Interviewee 1.
²⁵ Interviewee 2.
²⁶ Answers to the Survey Questions 3.4 and 3.5.

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 of the Directive is transposed almost in its entirety in Section 4 of the Act. Consequently, Maltese law gives victims the right, from their first contact with the competent authorities (which in most instances appears to be with law enforcement), to access all of the information mentioned in Article 4(1) of the Directive .

One of the first issues faced when analyzing this Section is that the way the Directive has been transposed into Maltese legislation means that a “competent authority” has not been identified. Therefore, the norm is open to interpretation. It could be law enforcement or it may be a social welfare agency or a support service.

Even though it is not explicitly established who the competent authority is, the general interpretation is that the Victim Support Unit of the Malta Police Force fulfils this role²⁷. Victims should receive support and information on their rights from first contact with the competent authority. Media reports state that victims often complain about the way they are treated at police stations and health clinics and that they are not made aware of their rights. As a result, advocates have been calling for a first response team for victims in domestic abuse cases since

²⁷ Victim Support Unit. (2018). Victims of crime act: Information and support[leaflet]. Floriana. The Malta Police Force. Retrieved from <https://pulizija.gov.mt/en/services/Pages/Victim-Support-Unit.aspx>

2016²⁸. Thus, the Victim Support Unit within the Maltese Police Force was officially launched in April 2017²⁹. It was suggested that this Unit should bring together law enforcement, healthcare professionals, social workers and victims’ rights lawyers and it was hoped that the introduction of this specialized Unit would perhaps displace the “*lack of empathy and trust*”³⁰. The Unit provides victims with the required information, liaises with victims throughout proceedings and makes efforts to understand the victims’ situation.

It is also useful to understand the approach taken towards information provision. According to law enforcement, once a victim files a report, they are “*supposedly*” given a leaflet which details their basic rights and they are then referred to the main [police] website which explains the law³¹.

From collecting research on this topic, one of the key issues is whether all information is provided and if so, when is it provided. Findings of the Survey report, that upon first contact with the relevant authority, only *partial information* is received by the victim³². One of the reasons for this could be because there is no standard approach to dealing with complaints by a victim. It is worth noting that even in the “*absence of a formal structure*”, police have incorporated into their normal tools, measures to flag when a victim needs support or a particular service³³.

A new policy was launched at the end of 2017, ensuring that all domestic violence complaints would be processed in the same way and in a coordinated manner³⁴. It was suggested that victims were treated differently dependent upon to whom they reported the crime and which authority they were seen at. For example, a victim who went to the police, received a different response to a victim attending the emergency room. Besides this new policy, a new law (the Gender-Based Violence and Domestic Violence Act of 2018), ensured that all complaints are investigated irrespective of whether the victim withdraws a report or not³⁵. To date, it is not apparent whether a standardized approach has in fact been implemented.

²⁸ Sansone, K. (2016). Advocates call for first response team for victims in domestic abuse case. Times of Malta. Retrieved from: <https://www.timesofmalta.com/articles/view/20160726/local/advocates-call-for-first-response-team-for-victims-in-domestic-abuse.620033>

²⁹ <https://pulizija.gov.mt/en/police-force/police-sections/Pages/Victim-Support-Unit.aspx>

³⁰ Sansone, K. (2016). Advocates call for first response team for victims in domestic abuse case. Times of Malta. Retrieved from: <https://www.timesofmalta.com/articles/view/20160726/local/advocates-call-for-first-response-team-for-victims-in-domestic-abuse.620033>

³¹ Interviewee 4.

³² See responses to Question 4.1 (c).

³³ Interviewee 3.

³⁴ Caruana, C. (2017). Domestic violence victims to receive more protection: Abuse reports will ‘no longer go unnoticed’, authorities vow. Times of Malta. Retrieved from <https://www.timesofmalta.com/articles/view/20171106/local/domestic-violence-victims-to-receive-more-protection.662224>

³⁵ Gender-Based Violence and Domestic Violence Act, 2018

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 Malta, Article 5 of the Directive is transposed in Section 5 of the Act. It guarantees, when submitting a complaint, that if the victim does not understand nor speak Maltese or English, they may make the complaint in another language or have the assistance of an interpreter. It also defines that victims should be given a written acknowledgement of the complaint (stating the basic elements of the offence) and, if the victim does not understand nor speak Maltese or English, a translated version should be provided free of charge in written form.

Survey results suggest that victims receive a written acknowledgment of their formal complaint³⁶. Lawyers are also conscious of the fact that a victim should receive this written confirmation and it is common practice for them to request a copy. However, it is sometimes extremely difficult to obtain a copy as it can only be obtained during certain (limited) hours. There are also instances where the victim was charged for a copy or was told that only one copy was free and there would be a charge for additional copies³⁷.

Another issue arises in relation to the request for a copy of the complaint. It seems that when victims file a complaint, they are given a “receipt” (acknowledgement of the complaint) but that they don't always have access to the written report. This means that they cannot verify the details of the complaint and whether it is indeed accurate and if it features all they wanted to convey³⁸.

³⁶ See the answers to question 5.1.

³⁷ Interviewee 1.

³⁸ Interviewee 2.

Supporting evidence confirms that victims, in particular of domestic violence, have no confidence in the law enforcement authorities where a complaint is made. As one victim stated, “I did not file a report after the fourth time. By then, I had lost all trust in the police”³⁹.

³⁹ Author Unknown. Victims of domestic violence have no confidence in the police, report shows. (2015). Times of Malta. Retrieved from <https://www.timesofmalta.com/articles/view/20150820/local/victims-of-domestic-violence-have-no-confidence-in-the-police-report.581318>

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 Section 4 of the Act. Nevertheless,

many measures have not been effective in practice, which is illustrated by the following cases. The first one concerns a victim of theft who was left uninformed about investigation developments. The victim discovered later that certain details of the case were excluded from the police report and consequently had to testify in court in the presence of the intruder⁴⁰.

Another victim, this time of domestic violence, filed a judicial protest after the police failed to arraign her husband. Lawyers accused the authorities of failing to recognize the gravity of the situation and criticized the lack of information and protection afforded to the victim. The victim said *"she was kept completely in the dark about the case"* and any information she received was obtained by her lawyers *"through the grapevine"*⁴¹.

In light of the above, it is of key concern how the system operates in Malta. There are recurrent problems when victims are due to be notified of the release or escape of the offender. In the

40 Grech, H. (2015). Victims of Crime Act not being fully implemented – Victim Support Malta. Malta Independent. Retrieved from : <http://www.independent.com.mt/articles/2015-11-16/local-news/Victims-of-Crime-Act-not-being-fully-implemented-Victim-Support-Malta-6736150216>

41 Dalli, k. (2016). Victim lives in terror, files protest for 'police failure'. Times of Malta. Retrieved from : <https://www.timesofmalta.com/articles/view/20160323/local/victim-lives-in-terror-files-protest-for-police-failure.606579>

majority of cases known by lawyers and support services, victims were not notified about the current stage of proceedings. One example was where a victim had reported being stalked and raped. The victim was informed by the prosecuting investigating inspector that the perpetrator was to be arraigned. In fact, he was never arraigned, was released and no charges ensued⁴².

The main problem identified with the provision of information, is the way the law enforcement authorities were structured in Malta. At local police stations, the officer in charge of that particular police station was the *"do all"*⁴³. Unfortunately, this is a result of insufficient human resources and police officers having a heavy caseload, meaning that often details were not linked to a particular victim. One suggestion on how to combat this issue was the introduction of an *"automated process"* whereby when an offender was released from prison, a *"flag would come up on the system"* saying the person has been released and that the victim must be informed⁴⁴.

Analysis found that the system operates in a very restrictive way. Upon first contact with the competent authority, no contact is made with a specially trained person. There is, indeed, no specialized training on how to take reports in Malta⁴⁵. There is also no apparent assessment procedure which determined if a victim was informed of the status of the proceedings. Survey results corroborate that only *"sometimes"* victims are provided with information regarding the course of proceedings⁴⁶. Information to keep the victim informed often comes from lawyers. However, when the victim was to rely on the police to keep them up-to-date, the access to information is deeply dependent on the police inspector and also on how easy is to contact the victim. If the victim was *"not reachable on the first phone call, the likelihood of them finding out [any information] becomes more remote"*⁴⁷. When victims are, indeed, informed, it happens almost always via telephone⁴⁸. It is highly unusual for a victim to receive a letter with information about their case.

42 Interviewee 1.

43 Interviewee 3.

44 Interviewee 3.

45 Interviewee 3.

46 Responses to question 6.3.

47 Interviewee 2.

48 Interviewee 4.

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 right to interpretation and translation is established in Section 7 of the Act. It is expressly stated that “where the injured party does not understand the language in which the criminal proceedings are conducted or any evidence is adduced, such proceedings or evidence shall be interpreted to him either by the court or by a sworn interpreter”⁴⁹. It is also specified that a victim is provided with translations of information “essential to the exercise of this rights”⁵⁰. According to the legislation, this includes decisions relating to the end of the proceedings and, upon request, the reasons for the decision (unless it is a verdict in a trial by jury)⁵¹.

Despite the above, although Malta is obliged to grant these services in light of the Directive, in practice there is a lack of translators and interpreters. This has been predominantly highlighted by the media in respect of human trafficking cases. Support services in Malta were contacted after the publication of the yearly Trafficking in Persons (TIP) report.⁵² The report flagged that there was an “inadequate availability of translators for victims”. When asked about this issue, support services noted that this was a matter of “great concern” and that although victims are entitled to interpreters by law, they are often denied access to this service⁵³. It wasn’t clarified as to why this may happen.

49 Clause 7 (1) of the Act.

50 Clause 7 (2) of the Act.

51 Clause 7 (3) of the Act.

52 The TIP report is written by the U.S government. It is deemed to be the world’s most comprehensive resource of governmental anti-trafficking efforts. A copy of the report can be found at <https://www.state.gov/documents/organization/271339.pdf>. Malta is discussed on pages 272 and 273 of the Report.

53 Carabott, S. (2017). Malta’s failure to convict human traffickers has NGOs worried: Not a single human trafficking conviction since 2012. Times of Malte. Retrieved from: <https://www.timesofmalta.com/articles/view/20170711/local/maltas-failure-to-convict-human-traffickers-has-ngos-worried.652880>

Research showed that the main issue in Malta is the lack of human resources in this area and there are **not enough translators or interpreters available**⁵⁴. There is also a **lack of funds** to guarantee that qualified interpreters and translators aid people who do not speak the national language. Additionally, it is very difficult to find translators or interpreters for particular languages, for example, Arabic. Thus, sometimes, **inadequate translations** are provided. For example, a victim national from an African country (particularly from East Africa), who might have some knowledge on Arabic is assigned a translator who translates the communications into Arabic even though the victim does not have sufficient knowledge on this language to fully understand the information provided⁵⁵. Emphasis was also placed on the **lack of female interpreters**. This could be difficult for some female victims.

The Act allows the possibility to provide an oral translation or oral summary of essential documents instead of a written translation (on condition that it does not prejudice the fairness of proceedings)⁵⁶. When questioned how authorities verified whether an oral summary may be provided instead, lawyers confirmed that in a Court scenario, translation must always be performed in the written manner (as evidence)⁵⁷.

Survey findings corroborate these conclusions and indicate that the main problems in respect of the right to translation and interpretation is the “lack of availability of interpreters” and the “false assumption that victims understand the language of the proceedings well enough”⁵⁸. Taking into account the present limitations and difficulties, **the right to interpretation and translation is not always fulfilled in Malta**, which is considered by some experts working in the field as one of the most serious obstacles to access justice in the country.

54 Interviewee 1.

55 Interviewee 1.

56 Clause 7(6).

57 Interviewee 1.

58 Reference to question 7.3.

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.

Article 8 of the Directive - the right to access victim support services is contained in Section 12 of the Act which covers the assessment of and assistance to victims of crime and also Section 13 which details what support services must provide. There does not appear to be any distinction mentioned here between services provided by the State in comparison to those provided by an NGO.

The Act ensures the right of victims to access the services in a confidential manner, free of charge; before, during and for an appropriate time after proceedings. Upon receiving a complaint and without any undue delay, the authority shall refer the victim to victim support services⁵⁹. A distinction is made between victim support services (general) and “specialist support services”⁶⁰.

Quite alarmingly, a media report written in August of 2017 highlights the need for a “revamp of structures” to address domestic violence⁶¹. With domestic violence becoming the third most reported crime after theft and damages⁶², the Faculty for Social Wellbeing urged authorities to strengthen the infrastructure. As confirmed by the survey results, more funding is needed to

⁵⁹ Clauses 13(1) and (2) of the Act.

⁶⁰ Clause 13(3).

⁶¹ Author unknown. Revamp of structures to address domestic violence urged: Domestic violence has become the third most reported crime. (2017). Times of Malta. Retrieved from <https://www.timesofmalta.com/articles/view/20170822/local/revamp-of-structures-to-address-domestic-violence-urged.656249>

⁶² Detailed statistics on Gender-Based Violence are contained in the Survey requested by the European Commission, Directorate-General for Justice and Consumers and co-ordinated by the Directorate-General for Communication published in November 2016.

improve victim support services in Malta.⁶³ The biggest barrier is not promoting the service, but making sure that someone will assist the victim in a timely manner⁶⁴. However, the Faculty did praise the positive move by law enforcement authorities to set up the Victim Support Unit. There have also been improvements to the national police system. When a report is entered onto the system, there is a button that the officer can press and the Victim Support Unit would know that a particular victim requires assistance⁶⁵.

The **Victim Support Unit** is a **national specialist support service**. Although, accessibility of the service is restricted as it is **only available to those who have reported a crime to law enforcement authorities**⁶⁶. It is also limited as it predominately deals with victims of domestic violence and not all victims of crime. Therefore, it is problematic to define it as a universal service (offering support to all victims of crime). Specific data wasn't obtained regarding the nature of the service, but it was reported by professionals that the quality of service was good. Some professionals agree that the Victim Support Unit is very effective, in particular, in keeping the victim informed about ongoing proceedings and providing crisis intervention support⁶⁷.

In addition to the Victim Support Unit, there are a **network of organisations** operating to deliver victim support services across the country. Victim Support Malta, for example, is a universal service which offers support to all victims of crime⁶⁸ and currently deals with approximately 180 victims a year (and with this number of victims is operating at full capacity⁶⁹). Victim Support Malta is considered to be very good at providing long term support (with support being available as long as is needed). In particular, emotional support is provided via counselling as well as psychotherapy to all victims, many who have been through extremely traumatic events.⁷⁰ Victim Support Malta is the only NGO which provides support free of charge to victims of all types of crime.

Regarding geographic coverage, Victim Support Malta has just one office. The location is central and victims shouldn't have any issues travelling to the destination as Malta is a small island. Victims can look for support in this office during weekdays. Their opening hours vary (as it is dependent on appointment) but somebody is always generally available by telephone during office hours.

The Victim Support Unit is located at the Police Headquarters in Floriana. The Unit is a single point of contact for victims of crime and support is accessible during office hours and by appointment.

⁶³ See answers to question 8.3.

⁶⁴ Interviewee 3.

⁶⁵ Interviewee 3.

⁶⁶ Interviewee 2.

⁶⁷ Interviewee 2.

⁶⁸ Information available at <http://victimsupport.org.mt/>

⁶⁹ Interviewee 1.

⁷⁰ Interviewee 1.

Another means of support to victims of crime is the **emergency hotline** which was set up under Agenzija Appogg (the social services department in Malta)⁷¹. The hotline is a **government funded, free service** and is **available on a 24/7 basis**. Law enforcement authorities often encourage victims to call and, when they do, they talk to trained volunteers who listen to them and refer them to additional specialist services if necessary. There might also be follow up sessions and discussions⁷².

Besides the above, the Women's Rights Foundation⁷³ (a voluntary organisation) provides free legal advice and initial legal representation to women who are survivors of domestic violence, sexual assault and human trafficking. Although, given the nature of the foundation, services are obviously limited. As the focus is on women and being committed to informing, educating and empowering women concerning their legal rights, it is not a service available to all victims.

In March 2014, prior to the enactment of the Victims' Act, a **Sexual Assault Response Team** was set up⁷⁴. The team operates on a 24 hour a day, 7 days a week basis from Mater Dei Hospital in Malta. Victims of sexual assault can, therefore, call at the hospital, at any time, in order to access a number of services including a medical check-up, police intervention and social work services. Following these services, individuals are also entitled to the use of free psychological services and free legal representation or consultation. Although it is a national service and is easily accessible, it is not available to all victims of crime, dealing specifically with victims of sexual assault only.

Visibility of victim support services is an issue. One typical problem concerns referral from the competent authority, with victims not necessarily being informed of the services available⁷⁵. Public awareness of such services wasn't automatically affected by this though, with statistics on domestic violence showing that 96% of respondents in Malta were aware of support services available to women⁷⁶.

Many other organisations exist which work with different groups of people, for example, migrants, people with disabilities and children, among others. When carrying out their work, these organisations often provide support to their beneficiaries if they fall victims of crime or refer them to other specialised institutions. This report is, due to its scope and extension, not the appropriate place to list all these organisations but it should be mentioned that the network of NGOs in Malta, as what happens in the case of Victim Support Malta, often ends up fulfilling the gaps not covered by State support.

71 <https://fsws.gov.mt/en/appogg/Pages/support-line-179.aspx>

72 Interviewee 3.

73 <https://www.wrf.org.mt/>

74 Page 56 of the Malta Human Rights Report 2014 compiled by the 'People for Change Foundation'. The Sexual Assault Response Team is a joint initiative between Victim Support Malta, The Ministry for Family and Social Solidarity, the Ministry for Health, and the Ministry for Home Affairs and National Security. The service is available to both men and women over the age of 18 and includes free legal representation and psychotherapeutic intervention.

75 Interviewee 1.

76 See page 14 of the Survey requested by the European Commission, Directorate-General for Justice and Consumers and co-ordinated by the Directorate-General for Communication published in November 2016.

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.

Among other organisations which provide for support services only to certain victims or only to victims of certain types of crimes, Victim Support Malta is, as mentioned before, the only NGO which provides support free of charge to victims of all types of crime.

Victim Support Malta provides both generic and specialised services, including emotional, legal, psychological, and social support. The services include the provision of emotional support to assist in overcoming trauma following a crime; legal information pertaining to the criminal procedures (e.g. the right to request compensation and to access forms of protection); and practical assistance (liaison with the police and other ancillary matters). The services also include personalized and integrated support to victims with specific needs (victims of sexual, domestic or gender-based violence), as well as support and post-traumatic counselling. In addition, Victim Support Malta plays an important role in preventing crime by carrying out a number of public awareness campaigns⁷⁷. Victim Support Malta also provides an anonymous and confidential online service for victims of crime⁷⁸. Unfortunately, due to a lack of funding, the online chat service is not currently available.

77 Please see <http://victimsupport.org.mt/projects/> for a list of projects carried out by Victim Support Malta.

78 Victim support online is an online service provided by Victim Support Malta, in partnership with SOS Malta. The aim of Victim Support Online is to provide support to victims of crime through the mediums of chat and e-mail. Details can be found at <http://www.vso.org.mt/>

It is important to highlight that there are shelters available for victims of crime, particularly for victims of domestic violence. Shelters available include Dar Merhba Bik, Dar Qalb ta'Gesu, Dar Teresa Spinelli and the Ghabex Emergency Shelter (this shelter also provides immediate protection to women victims of human trafficking. These services are committed to the promotion of a society with zero tolerance to violence and offer short and long term accommodation in a safe environment to victims of domestic violence.

The **shortage of funding** and the passive role of the State on the same matter are major issues when it comes to victims receiving support from victim services. It is one of the main problems **limiting access to services**. For example, the agency Agenzija Appogg⁷⁹, there are not enough resources, both physically and structurally, to support the volume of victims needing advice. Agenzija Appogg is a government agency who, in a nutshell, conducts follow up work. So, in a case of domestic violence, Agenzija Appogg's mission is to provide the victim with follow up action on accommodation, legal advice and medical services. However, it does not have the resources to manage the service. In fact, they have a large backlog. Victims are potentially being "shorthanded"⁸⁰.

Regarding referral, professionals agree that a social partnership between the government and NGOs, combining their resources and knowledge, would really enhance all victim support services⁸¹. Survey results suggest that referrals to specialist support services are occasional⁸². At present, the referral system is not automatic, but there have been some referral experiences between the police, the Victim Support Unit and Victim Support Malta to provide support for victims. However, it must be noted that collaboration currently happens due to professional relationships and not because there is any kind of standardized protocol.

Finally, the package of information given to victims is not uniform. There is no assurance strategy to guarantee that victims receive adequate support, regardless of the place where the crime is reported and of the authority with whom the victim gets in touch with. One suggestion made by a former police officer, was that there needs to be a much more "victim centred" approach or a "customer style policing"⁸³. A formal needs assessment should take place and victims should not be assessed as a result of the police officers experience. This leads to disorganisation and haphazard decisions and referrals.

79 <https://fsws.gov.mt/en/appogg/Pages/welcome-appogg.aspx>

80 Interviewee 3.

81 Interviewee 2.

82 The most frequent answer to question 9.2 was "sometimes".

83 Interviewee 3.

ARTICLE 10 - RIGHT TO BE HEARD

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

The victim's right to be heard has not been expressly transposed into the Act. The right of child victims to be heard is detailed in Section 14 of the Act, which enforces the assistance, support and protection of victims who are minors. Section 14A also allows for the appointment of a support person during the proceedings (when a victim has been identified as a minor).

It is difficult to analyse whether the testimony given by a victim influences the Court's decision⁸⁴. However, generally, the victim's testimony was always heard. This is supported by survey results according to which victims are often heard and enabled to provide evidence during criminal proceedings⁸⁵. However, restrictions do seem to be placed on the right to be heard. It was suggested that there are not enough appropriate measures to enable victims to testify, for example, via audio visual or video conferencing. This decision is largely at the discretion of the presiding magistrate and the majority "still feel that they need to look at the demeanour and composure of the victim testifying in the presence of the perpetrator"⁸⁶. Video conferencing is also limited due to practical matters and technicalities (it is not available in the Court room but in a separate conference room), and the reluctance of the Court to delay the proceedings for it to be carried out⁸⁷.

For child victims, the system appears to differ. If a child is to testify in Court, audio visual is always used. A child, as a vulnerable person, would never be allowed to testify in open Court and the Court is very sensitive to the needs of the child⁸⁸. The age and maturity of the victim would most certainly be taken into account during the proceedings. Survey results confirm that there are sufficient measures in place to assess a child's age and maturity⁸⁹. During proceedings, law enforcement authorities, namely the vice squad and the child protection unit (of Agenzija Appogg), conduct an assessment of the child and take appropriate measures according to the results of the joint report, in accordance with a Memorandum of Understanding concluded between law enforcement authorities and Agenzija Appogg on how to handle such sensitive cases⁹⁰.

84 Interviewee 1.

85 Note answers to question 10.1.

86 Interviewee 1.

87 Interviewee 4.

88 Interviewee 1.

89 The answers to question 10.7 were "rather sufficient" and "sufficient".

90 Interviewee 3.

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

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

The victim's right in a decision not to prosecute is transposed into national law by Section 8 of the Act. This Section states that the victim will be notified of any decision by law enforcement authorities not to start proceedings against the perpetrator, without delay. Reasons must also be given on why the decision was taken.

Media reports give an example of an instance when a victim was not informed of the decision not to prosecute⁹¹. A domestic violence victim recounted that her husband waited for her in a car outside their children's school and brandished what looked like a gun. The gun turned out to be fake. The man was arrested on the day of the incident, but was released the following day with no charges made against him. The victim complained that she was not given any information whatsoever (this case was also discussed in respect of Article 6- the right to receive information).

Another example relates to a complaint regarding hate speech. The police did not issue charges and so they were asked to provide a reason as to why they would not do so⁹². Unfortunately, the complainant was never provided with any information. Further requests for information, based on the contention that accordingly to Maltese legislation, law enforcement authorities are duty bound to provide information as to why charges are not going to be issued were simply denied.

91 Dalli, K. (2016). Victim lives in terror, files protest for 'police failure'. Times of Malta. Retrieved from: <https://www.timesofmalta.com/articles/view/20160323/local/victim-lives-in-terror-files-protest-for-police-failure.606579>

92 Interviewee 1.

One of the only ways in which it is possible for the revision of a decision not to prosecute is the procedure where one is able to complain about law enforcement, on the basis that the case was not handled in the proper manner⁹³. However, there is a three-month prescription period. Court proceedings in Malta are a lengthy process and often victims are not aware of their right to make this complaint. One professional noted that a victim wanted to file a complaint against a police officer for inappropriate behavior, five months after it had happened. It was then too late to do so.

93 Interviewee 2.

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.

Restorative justice services are transposed into Maltese legislation by Section 9 of the Act. Restorative justice services are only to be used if they are in the interest of the victim, subject to safety considerations (there is absolutely no risk of secondary victimization or of the perpetrator harming the victim) and based on the victim's free and informed consent.

In 2017, it was reported in the media that the new mediation scheme would allow *"released prisoners to clear the air with their victims"*⁹⁴. This service, run by the Victim Support Service within the Department of Probation and Parole, is voluntary and is only applicable if both offender and victim agree to the terms. It was highlighted that victim protection remained a crucial point, but that the scheme would help offenders to reintegrate into society. The article finishes by concluding that implementation of the scheme will require a culture change and *"won't be accepted from day one"*⁹⁵.

Regardless of the introduction of the scheme, in practice, this system for criminal mediation does not seem to be used. As one interviewee remarked, *"I am not sure it has ever happened. I think we are very far away from that"*⁹⁶. It was not possible to obtain any official data on whether mediations have taken place or any information on existing mechanisms if mediation was to be used moving forward in Malta.

94 Diacono, T. (2017). Criminals and their victims to get mediation services: New mediation scheme will allow released prisoners to clear the air with their victims. Malta Today. Retrieved from https://www.maltatoday.com.mt/news/national/75810/criminals_and_their_victims_to_get_mediation_services#.WyDRN6czY2x

95 Diacono, T. (2017). Criminals and their victims to get mediation services: New mediation scheme will allow released prisoners to clear the air with their victims. Malta Today. Retrieved from https://www.maltatoday.com.mt/news/national/75810/criminals_and_their_victims_to_get_mediation_services#.WyDRN6czY2x

96 Interviewee 3.

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.

The right to legal aid is transposed into national law through Section 10 of the Act. However, instead of transposing the content of Article 13 of the Directive, it makes a reference to an existing national legal regime, article 570 of the Criminal Code and provides that, for the purpose of such proceedings, any reference in those provisions to the accused shall be construed as being applicable to the victim.

Any person wishing to apply for a legal aid lawyer has to apply with the Legal Aid Agency⁹⁷. The Agency carries out the merit and means test (if applicable) and if the person is eligible for the benefit of legal aid, a legal aid lawyer will be appointed. All victims of crime can request to be assisted by the legal aid service. No assessment criteria is required⁹⁸. It is worth noting that there can be no appeal if the Agency refuses to grant legal aid.

Concerns have been raised as to the **practical and effective availability of legal aid**. Due to the **limited funding** available, practitioners usually take on legal aid work on top of their full time private practice employment and therefore are frequently not able to dedicate a fair amount of time to their non-fee paying clients. As at the 9th of February 2017, there were only 17 lawyers on the legal aid roster, of which 4 perform legal aid work in Gozo⁹⁹. This limited number of available lawyers can lead to a situation where a legal aid lawyer is appointed for the accused and the victim also requests a legal aid lawyer, resulting in a conflict and the case being deferred¹⁰⁰.

A report carried out by the Aditus Foundation also raised some concerns about legal aid in Malta, namely that there needed to be more information on the right to a legal aid lawyer for victims of crime¹⁰¹. There also seemed to be widespread confusion as to how a victim might apply for legal

97 The Legal Aid Agency was set up in 2014.

98 Assessment criteria is detailed at <https://justice.gov.mt/en/legalaidmalta/Pages/assessment.aspx>

99 Camilleri, C. (2017). Access to legal assistance in Malta: Mapping the availability of legal assistance for the protection of fundamental rights in Malta. Hamrun, Malta: Aditus Foundation, The Critical Institute. Retrieved from: http://aditus.org.mt/Publications/atlas/atlasreport_2017.pdf

100 Interviewee 1. Please note that Gozo is a sister island of Malta and has its own Court.

101 Camilleri, C. (2017). Access to legal assistance in Malta: Mapping the availability of legal assistance for the protection of fundamental rights in Malta. Hamrun, Malta: Aditus Foundation, The Critical Institute. Retrieved from: http://aditus.org.mt/Publications/atlas/atlasreport_2017.pdf

aid. Lawyers in Malta suggested that legal aid representation has to be ordered by the Court. Law enforcement stated that an application had to be made to the magistrate during the first Court hearing and that an application cannot be made online for criminal proceedings¹⁰². Another professional noted that the procedure was extremely hazy and that different information would be provided by different persons¹⁰³. To conclude, there needs to be one consolidated procedure (and awareness made to all) on how victims can apply for legal aid, with ease and without delay.

102 Interviewee 4.
103 Interviewee 2.

ARTICLE 14 - RIGHT TO REIMBURSEMENT OF EXPENSES

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

The Act is silent on Article 14 of the Directive- the right to reimbursement of expenses. However, Section 4(k) of the Act (detailing the right to receive information from a competent authority) says that the following information must be offered to the injured party in order for the victim to access the rights of the Directive; *"how and under what conditions expenses incurred as a result of the victim's participation in the criminal proceedings can be reimbursed"*. No further details are given as to how this right can be exercised.

Academic literature and media reports on the topic seemed to be nonexistent. Among professionals it also appears to be a lack of information to share on this subject. One lawyer commented that there is no system for reimbursement for participating in the proceedings (like, for example, travel expenses incurred)¹⁰⁴. Another professional referred to legal expenses acquired during criminal proceedings. In some cases, the Court would order the offender to pay the legal fees incurred. The decision would be made when the Court is deciding on judgment¹⁰⁵. This then creates further questions; what if the case doesn't reach Court or what about those cases that get acquitted due to a lack of evidence? The right to reimbursement of expenses is written in the legislation, but there is no formal structure or guarantee that this right will be given to victims.

104 Interviewee 1.
105 Interviewee 3.

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.

Maltese legislation is completely silent on Article 15 of the Directive- the right to the return of property. Any property seized from the victim in the course of the proceedings is held at the Law Courts as evidence¹⁰⁶. It is common practice for the victim's property to be returned once judgement has been given and the case has been finalized. In fact, there is no average time for courts to return the victims' property. Criminal procedures are lengthy and the return of property often becomes problematic.

As stated above, this could potentially mean long delays in the return of property to the victim. However, where evidence needs to be taken from an electronic device (such as a mobile, laptop or tablet of the victim) the Court appoints an expert who would meet the victim to extract the information at the victim's earliest convenience. This positive step means that where necessary the victim would not be stripped of his or her valuables¹⁰⁷.

106 Interviewee 2.

107 Interviewee 1.

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.

Article 16 of the Directive has not been transposed into the Act. However, Section 12 (b) states that victim support services must provide (i) information, advice and support relevant to the rights of victims *including on accessing national compensation schemes for criminal injuries*.

As a victim of a crime, under Malta's 'Criminal Injuries Compensation Scheme'¹⁰⁸, victims may apply for compensation for the damages they suffered as a result of the crime. The Scheme is not available for all crimes¹⁰⁹, meaning that the victim would need to seek advice as to whether they were eligible in their situation. As defined in the Regulations, an application can be made regarding any damage suffered as a consequence of a violent intentional crime, including *"rape, pornography, GBH [grievous bodily harm] and arson"*¹¹⁰. Dependents of the victim may also apply for compensation and the Scheme is open to Maltese citizens, EU nationals and habitual residents of Malta.

Applications for compensation under the scheme are submitted on the appropriate application form, accompanied by a police report and submitted not later than one year from when the crime was committed. Applications are received at the Ministry for Justice, Culture and Local Government, the Office of the Attorney General and Victim Support Malta (a non-Governmental organisation)¹¹¹.

108 Criminal Injuries Compensation Scheme Regulations dated 29th May 2012. The purpose of these regulations is to implement the provisions of Council Directive 2004/80/EC relating to compensation to crime victims.

109 In the regulations, "criminal injuries" means any damage suffered as a consequence of a violent intentional crime.

110 Author Unknown (2012). Criminal Injuries Compensation Scheme Extended to rape, pornography, GBH, arson victims. Malta Independent. Retrieved from <http://www.independent.com.mt/articles/2012-06-10/news/criminal-injuries-compensation-scheme-extended-to-rape-pornography-gbh-arson-victims-311375/>

111 Victim Support Malta. (n.d.). Victim Support Malta-FAQ. Retrieved from <http://victimsupport.org.mt/faq/>

Criminal injury compensation is paid to the victim by the Maltese government and all claims must relate to crimes committed after 1 January, 2006. The maximum sum that can be granted is €23,300 and this amount cannot be exceeded, even in cases in which there is more than one claimant. Claims can also now be filed by people who are “habitual residents” of Malta¹¹². Before the Regulations came into force, a claim for compensation could only be made by a Maltese citizen or a citizen of an EU state.

112 Author Unknown (2012). Criminal Injuries Compensation Scheme Extended to rape, pornography, GBH, arson victims. Malta Independent. Retrieved from <http://www.independent.com.mt/articles/2012-06-10/news/criminal-injuries-compensation-scheme-extended-to-rape-pornography-gbh-arson-victims-311375/>

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.

Article 17 of the Directive is transposed in Section 11 of the Act. Section 11 establishes that a victim of a criminal offence, committed in another Member State and who resides in Malta, if unable to file a complaint in that Member State may file a complaint in Malta under article 546 of the Criminal Code. National authorities must immediately communicate this occurrence to the competent authorities of the territory where the crime was committed, unless proceedings were

instituted by Maltese police. Of concern are the survey findings, which suggest that competent authorities are not always in a position to take a statement from the victim immediately after a complaint is made¹¹³.

Media reports on this subject were uncommon. However, it is interesting to note an article reporting on a “rape attempt” on a cruise liner¹¹⁴, an incident which happened in international waters. Police in the United Kingdom interviewed the victim and gathered evidence from her, but as the cruise ship was registered in Malta, criminal proceedings were instituted in Malta. Cross-border cooperation appears to work well with the United Kingdom and the reason for this could be because the two countries share a common language.

In practice, cooperation with other Member States through videoconferencing is a possibility, but it is not the preferred method of choice in Malta. It would be usual for victims to testify in the Maltese Court, because there was often a challenge to the validity of the statement once it was taken via video conference¹¹⁵. Law enforcement officials confirmed that there were cases where a victim was offered a flight and accommodation in order to come to Malta to testify¹¹⁶.

In relation to nationals of other EU Member States, who were a victim of a crime which occurred in Malta, most professionals state that the treatment given to foreigners differed slightly from the one provided to Maltese nationals. Particular reference was made to translation and interpretation services in cases where the victim does not understand the national language¹¹⁷.

113 Reference is made to the answer “sometimes” to question 17.1.

114 Police want cruise ‘rape attempt’ man arrested. (2015). Times of Malta. Retrieved from <https://www.timesofmalta.com/articles/view/20150306/local/police-want-cruise-rape-attempt-man-arrested.558670>

115 Interviewee 2.

116 Interviewee 4.

117 Issues regarding access to interpretation and translation raised in relation to implementation of Article 7 of the Directive also need to be considered here.

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 a victim’s right to protection is not transposed as a separate clause. Clause 12(b)(v) says that victim support services must provide advice (unless otherwise provided by other public or private services) relating to the risk and prevention of secondary and repeat victimization, of intimidation and of retaliation. The protection of victims is also referred to in respect of vulnerable victims such as minors (Clause 14) and victims of trafficking in persons (Clause 16) of the Act. However, the Act is severely wanting on this subject as there is no specific mention of an adequate level of protection if the competent authorities find that there is danger of intimidation, retaliation and repeated victimisation. There is also no reference to protection of the victim’s family members.

Media reports refer to a lack of faith in the criminal justice process and that it is often felt that the system creates “secondary victimisation”, which hinders rather than helps the victim’s situation¹¹⁸. Major problems arise in guaranteeing the protection of victims from secondary and repeat victimization, with victims constantly being faced with such situations to the point where they would “require psychiatric help”¹¹⁹. Survey findings support this view, with the general opinion being that victims and their family members are not receiving adequate protection against the risk of emotional or psychological harm¹²⁰.

Victim Support Malta reinforced that there is a fear of retribution from the perpetrator and that much more needs to be done in order to protect the victim. It was noted that the victim often remained unprotected after going to Court as perpetrators often flouted treatment orders.

118 Carabott, S. (2016). Domestic violence : Victims twice over. Times of Malta. Retrieved from <https://www.timesofmalta.com/articles/view/20160711/local/domestic-violence-victims-twice-over.618289>

119 Interviewee 1.

120 Answer to question 18.2 of the Survey.

Accordingly, it was recommended that sentences needed to be harsher, with protection orders issued especially when the perpetrator was a substance abuser, had mental health issues or was physically violent and controlling¹²¹.

As mentioned above, research showed that when a victim files a police report, a risk assessment is not undertaken¹²². Moreover, there are no effective protection measures that can be requested at this time (for example, perhaps a protection order issued by the police). The police do not have the power to issue such order. A new law was passed by an act of Parliament, which will give the police the authority to request a temporary protection measure, but at the time of writing the law was not yet enforced. According to the new law, the police would have six hours to request a temporary protection measure from the duty magistrate, which would then be effective for thirty days. At that point in time, let's say in the case of domestic violence, the police can then remove the perpetrator from the home.

121 Carabott, S. (2016). Domestic violence : Victims twice over. Times of Malta. Retrieved from <https://www.timesofmalta.com/articles/view/20160711/local/domestic-violence-victims-twice-over.618289>

122 Interviewee 1.

ARTICLE 19 - RIGHT TO AVOID CONTACT BETWEEN VICTIM AND OFFENDER

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

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

In Malta, the Act is completely silent in respect of Article 19 of the Directive concerning the right to avoid contact between the victim and the offender.

The fact that this Article of the Directive has not been transposed is perhaps of no surprise given the practicalities of how criminal proceedings are conducted in Malta. One media report highlights this concern perfectly. In one particular case, a man accused of harassment was warned by a magistrate about his behaviour in Court after repeated outbursts against the alleged victim. The media report says that the victim *"burst out crying"* after continued remarks made by the man who was sitting, rather worryingly, just *"a few metres away"*¹²³.

During discussions regarding the right to avoid contact between the victim and the offender, there was no mention of an assessment of the premises where criminal proceedings take place. Thus, it appears that no measures have been implemented to ensure the avoidance of contact. Survey findings also proved inconclusive,¹²⁴.

Regarding how proceedings are conducted at the police station, both the victim and the offender are often called into the building at the same time and whilst they may be spoken to separately, *"there is a very good chance they will meet"*¹²⁵. The situation is no different in Court buildings. Although there is a possibility for the victim being able to make use of video conferencing so he or she does not have to face the offender, very often they are *"always in the same corridor"*,

123 Micallef, K. (2016). Victim bursts out crying in court amid remarks by alleged stalker. Times of Malta. Retrieved from <https://www.timesofmalta.com/articles/view/20160113/local/victim-bursts-out-crying-in-court-amid-remarks-by-alleged-stalker.598635>

124 Note the responses to question 19.

125 Interviewee 2.

commonly sat across from each other and frequently for hours at a time¹²⁶. There do not appear to be separate waiting rooms.

Article 19(2) of the Directive states that Member States should ensure that “*new court premises*” have “*separate waiting areas*” for victims. The Courts of Justice building is located in Valletta, Malta. It was built in the neoclassical style between 1965 and 1971 on the site of Auberge d’Auvergne, which had been destroyed by aerial bombardment during World War II¹²⁷. As the building is not new, there are not any different entrances. The way the building is structured means there is very limited room to manoeuvre¹²⁸. There is one main entrance and everyone who enters the Court building has to go through the same security check point. Even when the offender is imprisoned and escorted to Court by law enforcement officials, they are delivered to the Court on a basement level, but when they come up through the elevator, the elevator comes up to the same corridor that the victim is in (the public corridor). It is very likely he or she will walk right past the victim and although he or she would be handcuffed, he or she can still talk and make comments near the victim. This could upset the victim. “*Even a stare is enough*” to cause trauma¹²⁹.

Contact is deemed necessary in separation proceedings, even in cases of domestic violence and there is almost always an attempt to conduct mediation between the victim and the perpetrator¹³⁰. This is of great concern and is often contrary to the interests of the victim, with the possibility that the situation could become dangerous.

126 Interviewee 2.

127 <http://www.judiciarymalta.gov.mt/the-courts>

128 Interviewee 3.

129 Interviewee 3.

130 Interviewee 2.

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.

A victim’s right to protection means that criminal proceedings must be conducted in a certain manner; including keeping interviews to a minimum without delay, medical examinations only when strictly necessary and the possibility for victims to be accompanied by a person of their choice.

The victim’s **right to be accompanied** by a person of their choice is transposed by Section 3(2) of the Act which says that a victim “*may be accompanied by a person of his choice*”. However, specific reference refers to this being applicable where, due to the impact of the crime, “*the victim requires assistance to understand or be understood*”.

The **accompaniment of the victim**, by a legal representative, during criminal investigations, does not seem to be called into question. It also seems to be general practice for the law enforcement authorities to allow a “*friend*” to accompany the victim during investigations. The victim is often refused physical support (accompaniment by friends or a social worker) during medical examinations though. No particular reason was given to justify this¹³¹.

Media reports refer to **long delays during proceedings**, with one victim deeply “*traumatised*” as the case against her assailant in the Maltese law courts “*drags on*”¹³². According to one police officer, this lengthy process diminishes the need to keep in touch with the victim, with victims

131 Interviewee 2.

132 Xuereb, M. (2017). Traumatized cruise rape victim still awaits justice : three years on, still no closure for british student. Times of Malta. Retrieved from <https://www.timesofmalta.com/articles/view/20170618/local/traumatized-cruise-rape-victim-still-awaits-justice.650987>

being kept less and less informed as the years pass by¹³³. Another article written by a victim support worker who deals with the coordination of sexual assault services details a lack of coordination and procedure resulting in extensive waiting times for the victim. When presenting the initial report, one victim was made to go to four separate police stations because authorities “couldn’t decide who should deal with the matter”. The same situation occurred at the hospital, where there were three law enforcement officers present, “but the report was not taken until their inspectors decided who was handling the case”. The same victim was then “made to wait for 9 hours for the magistrate to be informed of the case, so that forensic samples can be taken”¹³⁴.

In order to ultimately protect the victim from further trauma, ideally there should be standards in place regarding the optimal length between the time a crime is reported and an interview takes place. Interviews should be conducted in a timely manner because ultimately, they are the “gatekeeper of the information needed to trigger off an investigation”¹³⁵. However, there is no such standards in place and often a victim ends up in a situation where “they would have to repeat the story again”¹³⁶. There have also been situations where the victim was made to repeat their story “for veracity and credibility”. Survey responses also indicate that interviews are rarely conducted without unjustified delay¹³⁷. The most popular opinion being that police are overworked and there is a delay in collaboration between authorities.

It seems to be common practice for medical examinations to be kept to a minimum. However, there are situations when medical examinations are not carried out sufficiently, with unnecessary delays taken in relation to gathering urine and blood. If medical examinations are not carried out sufficiently, it limits the ability to identify drugs and alcohol present in the victim’s body¹³⁸. Also, if any evidence was missed (for example, bruises weren’t noted), victim support services would have to push for a second examination.

133 Interviewee 3. Reference is also made to Article 6, the victim’s right to receive information about the case.

134 Tabone, K. (2016). There is a huge problem with the way the maltese treat sexual violence : It’s about working case by case and making sure we’re not getting carried away. Lovin Malta. Retrieved from <https://lovinmalta.com/opinion/letter/there-is-a-huge-problem-with-the-way-the-maltese-treat-sexual-violence>

135 Interviewee 3.

136 Interviewee 1.

137 Questions 20.1, 20.2 and 20.3.

138 Interviewee 2.

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.

The Act does not make specific mention of what appropriate measures should be taken by competent authorities in order to ensure that the privacy of victims is protected. Neither is any mention made to what lawful measures should be taken to prevent the public dissemination of information that could lead to the identification of a child victim. However, Section 14 of the Act refers to the protection of minors and of particular relevance is Clause 14A(f), which lists the duties of a Support Person as “advising or requesting the Court on the issuing of protection orders both during and after the judicial process”. The protection of victims of trafficking in human beings is also contained in Section 16 of the Act, but again no specific reference is made to the prevention of public dissemination of information that could lead to the identification of a victim.

It is standard procedure that the media does not publish, by any means, the identity of victims who are minors, victims of trafficking in human beings or sexual crimes. An example of this was evident in the media reporting of a story about a girl accusing her grandfather of assault. Although, there was no ban on the publication of the man’s name, the victim’s was not published “to protect the identity of the girl who was 13 when she made the claims”¹³⁹. However, this is not always adhered to. Victim support services sometimes reported details of a recent case where the victim’s husband had been identified in the paper. “Even though she wasn’t identified directly, she was by everyone who knew him and so was her son, because the surname was particular as well”¹⁴⁰. Of concern is that there are no sanctions if the privacy of the victim was not protected by the media.

139 Xuereb, M. (2015). Girl, 13, lies about rape by grandpa. Times of Malta. Retrieved from <https://www.timesofmalta.com/articles/view/20150329/local/girl-13-lies-about-rape-by-grandpa.561745>

140 Interviewee 2.

In practice, **privacy** appears to be **very difficult to protect**. The **media** evidently play a large role in this. Survey respondents agree that the media are **not encouraged to adopt self-regulatory measures** to ensure the victim's privacy, *as prescribed by Article 21(2)*¹⁴¹.

Also, in most police stations, for example, **complaints are given at the front desk**, often in front of a large number of persons. Very often the victim is not taken straight away to a private room, which puts into question the protection of victims' privacy¹⁴².

One very **positive practice**, adopted by law enforcement, is the **audit of police systems**. Systems are heavily audited so any data that is imputed, amended, read or accessed is logged. Through these mechanisms, it can be established whether information is being divulged and action can be taken against the offender¹⁴³. There have been instances where police officers have been prosecuted for disclosing information on cases.

141 Answer to question 21.6.

142 Interviewee 2.

143 Interviewee 3.

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 two-step procedure¹⁴⁴ to evaluate the special needs of the victim (as envisaged in Article 22 of the Directive) is dealt with in Section 12 of the Act which deals with the assessment of and assistance to victims of crime. Particular emphasis is placed on 12(a) and "*the timely and individual assessment of victims*"; which appears to cover the first step, which is to determine whether the victim has any specific protection needs. Once the complaint is lodged, the competent authorities can, after making an individual assessment of the victims, determine whether or not they are considered a particularly vulnerable victim, as defined in Clause 12(a) of the Act¹⁴⁵. In accordance with this Clause, the assessment must take into account the personal characteristics of the victim, the type or nature of the crime and the circumstances of the crime. There is no reference to the second step put forward in the Directive, which determines if and what special protection measures should be applied to victims in need.

The majority of professionals' opinion it that individual assessments are not being performed in practice. Law authorities should conduct a risk assessment, but it was not possible to determine how this assessment was carried out in practice. Discussions for a "*multi-disciplinary approach*" to be used are, apparently on-going, but confirm on how far the project had progressed was not found¹⁴⁶.

Nevertheless, professionals from law enforcement disagree and claim that law enforcement officials carry out a needs based assessment and, together with Agenzija Appogg, conduct a risk

144 European Commission, Directorate-General for Justice and Consumers, DG JUSTICE GUIDANCE DOCUMENT related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, December 2013, p. 44.

145 Vulnerable victims are defined as (i) minors; (ii) victims of terrorism; (iii) victims of organized crime; (iv) victims of human trafficking; (v) victims of gender-based violence; (vi) victims of violence in a close relationship; (vii) victims of sexual violence; (viii) victims of exploitation or hate crime; and (ix) victims with disabilities.

146 Interviewee 3.

or safety based assessment if and when necessary¹⁴⁷. The needs based assessment is carried out after a police report is filed and evaluates whether the victim requires continued support. There is not a presumption of vulnerability or a standardized form or tool that is used, with assessments being conducted on a case by case basis.

In respect of the safety or risk assessment, law enforcement agents are currently working on creating a template with a standard set of questions in order to create conformity¹⁴⁸. The purpose of a risk assessment was ultimately to design a safety plan for the victim and to identify the risk factors which may result in repeat victimisation, intimidation or retaliation. However, in Malta, it is unclear whether there is a formal style of assessment, and any unofficial assessment carried out depended on the experience of the police officer working on the case¹⁴⁹.

Sometimes, protection is carried out at the very beginning of proceedings. To give an example, when the victim is being chased by the offender (there was one instance where the victim was chased inside the police station), the police would offer immediate protection¹⁵⁰. Another example, is when the victim requests that law enforcement officials escort them to the marital home to collect their belongings.

It is important to note that special attention seems to be given to particularly vulnerable victims, particularly domestic violence and victims of trafficking. When dealing with victims of human trafficking, it is usual practice for a lawyer to be called to assist the victim as soon as they enter the police station¹⁵¹. The advantage of this informal mechanism is that *“once a case comes in, the police bring the NGO’s on board”*¹⁵². The urgency of the matter is respected, with legal and support services being called in to the police headquarters at any hour of the day or night.

147 Interviewee 4.
148 Interviewee 4.
149 Interviewee 3.
150 Interviewee 3.
151 Interviewee 1.
152 Interviewee 1.

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.

Maltese legislation is silent in respect of Article 23 of the Directive. The Act clearly falls short of what is required by the Directive as **there are no special protection needs that the victim can benefit from**. The only victims who may, as a result of an individual assessment, benefit from special protection measures are minors and victims of trafficking.

Victims who are identified as minors, under Clause 14A, may be appointed a support person to assist the minor throughout the proceedings¹⁵³. Victims of trafficking are also given additional assistance and support; including the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment.

Survey findings confirmed that special measures are taken when any interview is carried out with victims of sexual violence or gender-based violence, with it “often” being conducted by a person of the same sex as the victim¹⁵⁴.

Special measures are also taken for victims who have disabilities. If the victim needs assistance to attend the Court hearing, law enforcement officers may accompany the victim. However, it is a “one-off procedure...a loose structure”¹⁵⁵.

The main practical problem arising in the implementation of these measures is a lack of any “real formal structure”. In Malta, it is an overall weakness as for the majority of services, there is an informal approach to nearly everything. Authorities do not have a Standard Operating Procedure (SOP) in respect of victims of crime.

153 As stated in Clause 14A(3), the functions of the support person shall include (a) guiding and assisting the minor in a sensitive manner during the judicial proceedings, and if necessary, after the justice process; (b) the provision of general emotional support to the minor; (c) advising the Court as to whether therapy or counselling is necessary both during and after the judicial process; (d) liaising with the minor’s parents or legal guardians, family members, and advocate, as appropriate; (e) informing the minor about the proceedings at Court and discuss, in a sensitive manner, his role during the proceedings; (f) advising or requesting the Court on the issuing of protection orders both during and after the judicial process, as appropriate; (g) monitoring the adherence to Court orders by perpetrators following the conclusion of the judicial proceedings; (h) monitoring the relationship between the minor and the perpetrators, both during and after the judicial process, as appropriate; (i) liaising with the appropriate agencies and, or professionals to ensure that the necessary counselling and, or treatment is provided, as appropriate; (j) advising or requesting the Court to issue any special measures as may be necessary in the minor’s best interest.

154 Responses to question 23.1d

155 Interviewee 3.

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.

Article 24 of the Directive is transposed into 14 and 14A of the Act. The audio-visual recording of interviews with child victims during criminal proceedings is the only provision of Article 24 of the Directive which is not provided for in the Act.

Within the justice system in Malta, there is no possibility to make particular physical adjustments (besides the audio-visual recording¹⁵⁶) in relation to trial cases concerning child victims or any other type of victim and/or crime. Additionally, **judges, magistrates and lawyers do not receive specialised training** regarding child victims and they are not specifically assigned to any case taking into consideration the nature of the crime or its victim.

One positive advancement is the introduction of **child advocates**. Child advocates are **specialist lawyers** who are appointed by the Courts to look out for the interest of the child. Child advocates are appointed by the Court to examine the child and to make sure the rights of the child are protected throughout the proceedings¹⁵⁷.

156 Xuereb, M. (2015). Brothers cleared of defiling girl, 6. Times of Malta. Retrieved from <https://www.timesofmalta.com/articles/view/20150503/local/brothers-cleared-of-defiling-girl-6.566488>

157 Interviewee 3.

In practice, dealing with a child victim requires compassion and understanding to ensure that their best interests are taken into account. Media reporting detailed that the police were accommodating in this respect, with particular emphasis placed on treating specific cases with *“the utmost sensitivity”*. In one particular case, law enforcement were *“treading very carefully”* and had not yet questioned teenage students about alleged sexual abuse as they were awaiting clearance from the court-appointed experts and wanted to be given *“the green light from a psychologist”* before proceeding further¹⁵⁸.

Interviews with child victims are almost always recorded audio visually.¹⁵⁹ Regarding child-only interrogation rooms, these are specifically designed to create a safe and stable environment for child victims. There are only two places in Malta that have specially designed rooms, built for interacting with children and these are found at Agenzija Appogg and the Vice Squad Unit at the Police Headquarters in Floriana¹⁶⁰. In sensitive cases (like child abuse), the child would immediately be transferred to Vice Squad or the Maltese hospital. At the hospital, there is a multi-disciplinary team available, comprised of a psychologist, a police officer and medical doctors; and there is a specific protocol (on how to reach out to children). However, children who are not victims of sexual abuse do not fall under this category and will be assessed at the local police station.

Best practice would dictate that every child is given the same treatment, but the fact is that there are not suitable rooms in every police station in the country. Improvements are needed, in particular with more adapted rooms being available and toys being kept in all local police stations (to facilitate better communication); making sure the minimum number of people present is kept to a minimum so as to provide a quiet environment; and letting the child dictate the speed, rhythm and pace of the interview.

158 Xuereb, M. (2016). Alleged victims of sexual abuse still awaiting clearance to speak to magistrate : Photos of teen victim posted on snapchat. Times of Malta. Retrieved from <https://www.timesofmalta.com/articles/view/20161122/local/alleged-victims-of-sexual-abuse-still-awaiting-clearance-to-speak-to.631763>

159 Reference is made to the survey findings and the answer to question 24.1.

160 Interviewee 3.

ARTICLE 25 - TRAINING OF PRACTITIONERS

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

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

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

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

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The Victim’s Statute does not transpose Article 25 of the Directive. With horrific reports of violence on the rise, it is extremely important that all professionals involved in the criminal justice system, including but not limited to police and court staff, lawyers, prosecutors, judges and victim support professionals, receive adequate training.

One media article suggests that we should insist on the introduction of family liaison officers at every police station, *“at every point in time”*¹⁶¹. The family liaison officers would essentially be *“trained first responders”*, who would ensure that victims and their families are handled with care, dignity and respect. Such professionals would also be trained to obtain information and evidence *“quickly and effectively”*; which would increase the quality of evidence at court hearings.

161 Chetcuti, K. (2017). The ugliness in some homes. Time of Malta. Retrieved from <https://www.timesofmalta.com/articles/view/20170820/opinion/The-ugliness-in-some-homes.656012>

Another article written urged the Maltese government to invest in making the system more efficient and to invest in “proper training and research”¹⁶². Recommendations were also given, with specialised training suggested when dealing with domestic violence victims. In particular, “lifelong learning” about domestic violence was needed, that caters for judges, lawyers and mediators.

¹⁶³. **Police recruits** receive three months of internal training at the Police Academy. Professionals from specialized services (such as victim support workers) are also invited to contribute to this training. In addition to the initial training held at the academy, there is *ad hoc* additional training. One recent training course focused on a specific group of vulnerable victims (domestic violence) and was carried out with approximately 90 police officers over a six-day period¹⁶⁴.

There is a national plan in place to increase the initial training for police officers from three months to two years and the training will be combined with “time on the field”. Also, there are discussions in place with the Police Academy about changing police training to be more “customer focused”¹⁶⁵. At first contact with the victim, the primary role of a police officer is not to take action, but to listen to the victim and make sure the victim is feeling safe and comfortable so that they can give their view of what has happened.

The **judiciary** have in-depth training once a year (in 2018, the training will be based on hate crime and hate speech) and **lawyers** are not required to receive any kind of mandatory training. However, optional professional development training is available. The survey results highlighted that training for prosecutors and judges is rather insufficient¹⁶⁶.

With regards to the training of **victim support staff** and **restorative justice workers**, there is no obligatory training and no plans to standardize this.

There is a need for further training for all professionals working with victims of crime¹⁶⁷. For example, the Victim Support Unit of the Malta Police Force requires continuous training. “One off training” is just not acceptable. Particular emphasis needs to be placed on interpersonal, active listening and communication skills. These are all “prerequisites” needed to communicate with victims of crime and unfortunately skills, which are lacking in some Maltese professionals.

¹⁶² Carabott, S. (2015). Excusing institutional violence means « more » domestic abuse. Times of Malta. Retrieved from <https://www.timesofmalta.com/articles/view/20151205/local/excusing-institutional-violence-means-more-domestic-abuse.594564>

¹⁶³ Interviewee 2.

¹⁶⁴ Interviewee 4.

¹⁶⁵ Interviewee 3.

¹⁶⁶ Answers to questions 25.1b and 25.1c.

¹⁶⁷ Interviewee 3.

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.

The Victims' Act does not transpose Article 26 of the Directive. Nevertheless, Malta is a party to a series of Conventions related to the right of victims, for example:

- Council of Europe:
 - European Convention on Mutual Assistance in Criminal Matters, April 1959 (in force in Malta since June 1994)
 - European Convention on the Compensation of Victims of Violent Crimes, November 1983 (in force in Malta since July 2015)
 - Convention on Cybercrime, November 2001 (in force in Malta since August 2012)
 - Council of Europe Convention on Action against Trafficking in Human Beings, May 2005 (in force in Malta since May 2008)
 - Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, October 2007 (in force in Malta since January 2011)

- United Nations:
 - United Nations Convention against Transnational Organised Crime, November 2000 (in force in Malta since September 2003)
- European Union
 - Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, May 2000 (into force in Malta since June 2012)

Media reports highlight that violence against women is a European concern and effective and coordinated action among EU member states to fight violence against women is among the objectives set by Malta's EU presidency¹⁶⁸. The commitment was made in the presence of EU Commissioner for Justice, Consumers and Gender Equality, Vera Jourova, during a conference organised as part of the Maltese presidency. In particular, Dr Dalli (Malta's Civil Liberties Minister) reiterated *"the importance of strengthening collaboration and networking among member states, civil society and EU institutions"* working in the field of gender equality and violence in order to eradicate female gender mutilation.

Regarding **awareness raising campaigns**, even though a more thorough analysis would be of interest, for reasons of restraints in the extension of the present report, only a very limited number of initiatives will be addressed.

At the end of 2017, a 16-day awareness campaign was started in Malta, with new measures introduced to combat gender-based and domestic violence. The main aim of the campaign was to create a strategy to tackle the causes of domestic violence and assist victims in a more effective way. The proposals were divided into two groups: one part being a gender-based and domestic violence strategy, and the other an action plan involving measures against violence, monitoring and evaluation. Alongside the policy paper, a 16-day awareness campaign was introduced, which highlighted the plight of victims. The main aim of the campaign titled *'Love Does Not Hurt - 16 Days of Activism'* was to put the issue on the national agenda. The theme challenges the myth that domestic violence is a result of love within a household. There was also a live performance in Republic Street, Valletta, which depicted the cycle of domestic violence¹⁶⁹.

¹⁶⁸ Author unknown. Time for coordinated action on violence against women: Minister Dalli and EU commissioner Jourova meet in Malta. Times of Malta. Retrieved from <https://www.timesofmalta.com/articles/view/20170204/local/time-for-coordinated-action-on-violence-against-women.638530>

¹⁶⁹ Further details of the press release can be found at https://www.maltatoday.com.mt/news/national/82490/national_strategy_on_genderbased_and_domestic_violence_launched#.WzHp21OFPpB

Another particularly interesting initiative in relation to the promotion of awareness of victim's rights is the Maltese adaption of the international project *"Hate No More"*¹⁷⁰. The main objective of this project is to create tools and carry out multidisciplinary training¹⁷¹, in order to raise awareness about hate crime and hate speech. The project's target group includes prosecutors, police officers and NGOs, as well as the general public and victims of crimes, in the hope that more hate crimes will be reported and victims will access support services.

¹⁷⁰ Victim Support Malta are currently working on this project with a number of other countries in Europe. A summary of the project can be found at http://victimsupport.org.mt/portfolio_page/project-hate-no-more/

¹⁷¹ Training sessions will be developed in each partner country (Portugal, Austria, Sweden, Italy, Malta, United Kingdom and Spain).

GOOD PRACTICES

Throughout the development of this report, the researchers have identified good practices regarding the practical implementation of the Victims' Directive in Malta, which may be easily transferable and potentially implemented in other Member States.

Prioritisation of certain sensitive cases

In Malta, special attention is given to specific groups of vulnerable victims, with exceptional consideration given to child victims and victims of trafficking. In particular, when dealing with victims of trafficking, an informal procedure has been implemented whereby once law enforcement authorities are notified of a case, all of the services are notified immediately. The urgency of the matter is respected, with legal and support services being called in to the police headquarters at any hour of the day or night.

Accompaniment of the victim

It is best practice for the victim to be accompanied by a legal representative during criminal investigations. It also seems to be general practice in Malta for the law enforcement authorities to allow a "friend" to accompany the victim during investigations. Apart from providing emotional support to the victim, if the victim is a foreign national (who doesn't speak English or Maltese), it is often the case that the friend does and so can assist the authorities in communicating certain information to the victim.

Access to and support from victim support services

Access to victim supports services and care from the various organisations available in Malta is extremely good. In April 2017, the Victim Support Unit within the Maltese Police Force was introduced. This Unit provides victims with essential information, continue to liaise with victims throughout proceedings and there is a conscientious effort to understand the victims' situation. In addition (together with other NGOs in Malta), Victim Support Malta is a universal service which offers support to all victims of crime. Victim Support Malta provides both generic and specialised services, including emotional, legal, psychological, and social support. The service provided by

Victim Support Malta also includes personalized and integrated support to victims with specific needs (victims of sexual, domestic or gender-based violence). Victim Support Malta provides support free of charge to victims of all types of crime and caters as much as possible to the individual needs of the victim.

Right to return of property

Malta has introduced positive steps to ensure that where necessary, the victim would not be stripped of his or her valuables. If evidence is needed to be taken from an electronic device (such as a mobile, laptop or tablet of the victim), the Court appointed expert meets the victim to extract the information at the victim's earliest convenience. The alternative was to wait until the end of the Court proceedings which are usually a lengthy practice.

Protection of privacy

Regarding Article 21, the right to protection of privacy, one very positive practice, adopted by law enforcement, is the audit of police systems. Systems are heavily audited so any data that is imputed, amended, read or accessed is logged. Through these mechanisms, it can be established whether information is being divulged and action can be taken against the offender¹⁷². There have been instances where police officers have been prosecuted for divulging information on cases.

Right to protection of victims with specific protection needs

Special measures are taken when interviews are carried out with victims of sexual violence or gender-based violence, with it often being conducted by a person of the same sex as the victim. Particular measures are also taken for victims who have disabilities. If the victim needs assistance to attend the Court hearing, law enforcement officers may accompany the victim. Also, assistance may be given by the health authorities, who can provide transport for a disabled victim.

172 Interviewee 3.

Child victims

Related to Article 24, the protection of child victims, is the introduction of child advocates¹⁷³. Child advocates are specialist lawyers who are appointed by the Courts to look out for the interest of the child. Child advocates are appointed by the Court to examine the child and to make sure the rights of the child are protected throughout the proceedings.

¹⁷³ For further information and analysis on the introduction of the role of the child advocate, you can obtain a copy of the thesis by Lara Michelle Camilleri at <https://www.um.edu.mt/library/oar/handle/123456789/16804?show=full>

GAPS, CHALLENGES, AND RECOMMENDATIONS

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

The main problem arising in the implementation of rights for victims of crime is that the majority of measures **lack any form of real structure**. In Malta, there is an **informal approach** to all aspects when providing a service. The majority of authorities do not have standard procedures or protocols.

Communication with victims (understanding and being understood)

Of concern is the fact that when a victim reports a crime to the Maltese authorities, he or she is not provided with any written information on the case, and in some instances in a language that they understood.

In order to deal with this issue, it is recommended that uniform procedures are adopted by law enforcement authorities, enabling all victims who file a complaint, to obtain a standardised set of information on their rights and their role in the criminal procedure. Information should be produced in different formats and translated into several languages.

Information to victims

The onus is placed on the competent authority to provide the information to the victim, however in practice, it is usually the victim who must seek the information. In Maltese legislation, the "*competent authority*" is not defined, making it difficult to establish what institution must provide the information in the first place. One of the key issues found, was that only partial information is provided to victims. By adopting a standard approach, Malta can ensure that the authorities provide such information and with a proactive attitude all information will be received.

Major problems were highlighted when the victim was due to be notified of the release or escape of the offender. In the majority of cases, it seemed that the victim was not notified about the current status of the proceedings. One suggestion on how to combat this is the introduction of

an “*automated process*” whereby when an offender is released from prison, a flag would come up on the system and that the victim would be informed.

Confirmation of the complaint

Not all victims are aware that they can ask for confirmation of the complaint filed. However, it is common practice for lawyers to request a confirmation for them. Difficulties were noted when trying to obtain a copy due to limited office hours and charges being added. Procedures must be created to allow for all victims (even those without legal representation) to obtain a free, immediate and automatic copy of the written complaint.

Interpretation and translation services

In Malta, it has been identified that there are not enough translators nor interpreters available to fulfil the demand. This compromises the exercise of many rights, such as the right to translation and interpretation, together with rights related to making a complaint, the right of victims’ resident in another Member State, as well as an obstacle to victims’ access to the justice system. The main reason for the shortfall is a lack of funds to guarantee that qualified interpreters and translators aid people who do not speak the national language. But also, it is very difficult to find translators or interpreters for particular languages. With an inadequate number of interpreters accessible, resulting in Court sittings being deferred, it seems vital that a team of interpreters is set up and is available on a frequent basis.

Individual assessment

Maltese legislation has not embraced the two-step approach to identify victims in need of special protection measures. It has been reported that there are no individual evaluations being conducted in Malta and overall, the individual assessment of victims, as it is envisaged in the Directive, is not performed in this country. The only victims who may, as a result of an individual assessment, benefit from special protection measures are minors and victims of trafficking. In summary, there is no real formal assessment, and any unofficial assessment carried out is dependent on the experience of the police officer in charge of the case.

Protection Measures

Alongside the need for an assessment to identify victims in need of special protection measures, immediate and reliable protection measures are desperately required. With many victims often fearing retribution from the perpetrator, much more needs to be done in order to protect the victim. Many recommended that sentences needed to be harsher, with protection orders issued especially when the perpetrator was a substance abuser, had mental health issues or was physically violent and controlling¹⁷⁴.

Protection of child victims

Best practice would dictate that every child be given the same treatment, but unfortunately in Malta, you do not find specifically designed rooms in local police stations, which would create a safe and stable environment for child victims. With only two places in Malta (a social service agency and the Police Headquarters) having child-only interview rooms, improvements are urgently needed. In particular, toys should be kept in all local police stations to facilitate better communication; the minimum number of people present should be kept to a minimum so as to provide a quiet environment; and the child should dictate the speed, rhythm and pace of the interview.

Training of professionals

It has been identified that there is a need to further training for all professionals working with victims of crime. All professionals in contact with vulnerable persons should receive continuous, in-depth training to ensure that they are able to understand and be aware of the victims’ needs and to learn how to treat victims with respect, professionalism and in a non-discriminatory manner. Particular emphasis was given to the needs to develop certain skills (interpersonal, active listening and communication skills), specifically for first responders.

¹⁷⁴ Carabott, S. (2016). Domestic violence : Victims twice over. Times of Malta. Retrieved from <https://www.timesofmalta.com/articles/view/20160711/local/domestic-violence-victims-twice-over.618289>

CONCLUSION

The present national report, completed within the context of project VOciare, was extremely useful to assess the practical implementation of the Victims' Directive in Malta. Through the disclosure of survey results and the completion of interviews of various professionals of different fields of action (lawyers, police officers, academics and victim support officers), both good practices and gaps have been identified.

Although the transposition of the Directive into national law presents some flaws, sometimes being transposed incompletely or incorrectly, certain gaps have been overcome by the good practices of professionals in different fields of work. Some of these good practices are highlighted below.

The first example is the prioritisation of certain sensitive cases, particularly child victims and victims of trafficking, with all services notified by the competent authority immediately, regardless of the time of day or night. Child victims are also given special protection during Court proceedings with the introduction of child advocates. The second example is that victims are allowed to be accompanied by a friend during investigations; providing both physical and emotional support at a time of need. The third example is the efforts being taken by victim support services, who provide free support to victims of crime and cater as much as possible to the individual needs of the victim. The fourth example is ensuring property is returned without delay, with an expert meeting the victim to collect evidence at the earliest opportunity. The fifth example, is the practice adopted by law enforcement of the audit of police systems. And, finally, the sixth example, concerns the specific protection needs provided to victims of sexual violence (during interviews) and victims with disabilities (with practical assistance to attend Court proceedings).

Nevertheless, this research also identified gaps and challenges, which are of great concern given the sensitive nature of the topic in question. These derive, once more, from the incomplete and many times incorrect transposition of the Directive into national law. Through the analysis of these negative points, it is possible to draw some conclusions.

First, it was identified that victims are not being provided with written information on their case, confirmation of their complaint and that translation services were insufficient. Moreover, the individual assessment of victims is not being carried out adequately. The only victims who, potentially benefit from the results of an individual assessment, were minors and victims of trafficking. With no real formal style of assessment, evaluations are dependent on the experience of police officers who would use different working practices, resulting in discrepancies. By adopting a standard approach and with written procedures in place, Malta can ensure that all authorities provide the same information and conduct investigations in a competent manner.

Finally, it was concluded that there is a need for further training for all professionals working with victims of crime. Training needs to be continuous and should ensure that professionals are able to understand and be aware of the victims' needs and to learn how to treat victims with respect, professionalism and in a non-discriminatory manner. Additionally, it is important to continue promoting awareness raising campaigns, directed to both professionals working closely with victims and the general public.

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Victims of Crime
Implementation Analysis
of Rights in Europe



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