

VOCIARE

PORTUGAL

NATIONAL REPORT



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



VOCIARE
Victims of Crime
Implementation Analysis
of Rights in Europe

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 Given its scope and ambition, authors are aware that some elements may be inaccurate or out of date.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

Member States were required to transpose the Directive into national legislation but need to guarantee its correct implementation in practice as well. This implementation has proved to be complex and challenging. Hence, the present national report aims to assess the practical implementation of the Victims’ Directive in Portugal.

After thorough assessment, it was possible to detect gaps and challenges in the practical implementation of the Directive. Among the most important ones are the following.

It has been recorded that professionals directly working with victims often do not possess adequate **communication skills** (clarity, calmness, and patience), which compromises the right of victims to understand and be understood. This is particularly significant when the victim is a child. It has been mentioned that judges are very formal, showing distance, and are not thoughtful and careful when inquiring children, posing some inconvenient and inappropriate questions to the child.

This also reflects the fact that it is not mandatory for judicial officers to receive training on victims’ rights. **Training** received by prosecutors is considered to be insufficient in what regards victimology. Similarly, lawyers do not receive regular training regarding victims’ rights and how to deal with them. A lack of sensibility is, thus, perpetuated. Training is required to apprehend better communication techniques, more knowledge, sensitivity and to gain practice in the field.

It has also been identified that, due to the fact that Article 11 of the Victim’s Statute is named as “right to information”, instead of “**right to receive information** (...)”, it might be implied by national authorities that victims should be the ones requiring for information. However, victim should not have the onus to seek for information. It is a duty of the authorities to provide such information and to adopt a proactive attitude in assuring information is received.

Furthermore, there is a lack of translators and interpreters. There is also a lack of funds to guarantee that qualified professionals aid people who do not speak the national language. This compromises the exercise of many rights, such as the right to translation and interpretation, which are crucial when making a complaint and for victims resident in another Member State, and creates obstacles to accessing justice in courts. This absence is also felt in other places

and situations, such as medical examinations, in hospitals or forensic medicine offices, which comprise places and situations in which it may be crucial for the victim to understand and be understood.

This is one of the biggest problems of the Portuguese judiciary system. Especially in a time in which the number of immigrants and tourists, particularly in city areas, is increasing. Interpretation and translation services used are arranged because there is an informal list comprising the contacts of particular interpreters and translators, collected via personal connections of police and judiciary staff, which circulates – also informally – between police stations and the different units of the Public Prosecutor’s Office.

In this case, it has been identified that a list of certified and qualified interpreters and translators could be a solution, together with more attractive payment to these professionals. It would help courts to call for a professional in an almost automatic way.

Regarding the individual assessment of victims to identify specific protection needs, contrary to what the Directive mandates, neither the Code of Criminal Procedure nor the Victim’s Statute make special reference to victims of crimes with bias or discriminatory motives, victims in close relationship with the offender, victims of terrorism, organised crime, human trafficking, gender-based violence, sexual violence, exploitation, and hate crimes. Moreover, both the Victim’s Statute and the Code of Criminal Procedure are silent on the presumption that child victims have special protection needs.

Furthermore, even though the two-step approach to identify victims in need of special protection measures seems to be embraced by national law, the regime is silent on how both steps work and how they are to be implemented in practice. In fact, it has been reported that there is no individual evaluation being done. Hence, overall, individual evaluation of victims as it is envisaged in the Directive is not performed in Portugal.

Finally, the national system for criminal mediation is not used. There seems to be no criminal mediations since 2011.

Despite the above-mentioned gaps and challenges, researchers were able to identify good practices with respect to the practical implementation of the Victims’ Directive in Portugal. It is worth highlighting some examples.

The first example worth mentioning concerns Article 10 (right to be heard) and the significant improvement in considering child victims’ special vulnerabilities and the use of a system called “statement for future memory”. This system allows for the child victims to be heard in the investigative phase as if they were to be heard in the final hearing but in a more informal scenario. This hearing happens in a smaller room where the parties to the procedure are present, namely

the judge, the defendant’s lawyers, the prosecutor and the victim support worker accompanying the child victim, or his/her lawyer if there is a need to assign one. The recording of the child’s testimony in this more informal and supposedly less stressful environment can be used as evidence in trial, thus avoiding a stressful experience for the child.

Regarding Article 14 (right to reimbursement of expenses), it has been identified that there are tools which are being used in order to avoid the dislocation of the victim to court when participating in the criminal procedure. For example, judges may use video conference to hear a victim who is located far away from the court and who would have to encounter great travel expenses.

Moreover, related to Article 18 (right to protection), researchers identified that police officers, prosecutors, court staff and others are accustomed to take measures to avoid the contact between the victim and the aggressor and that these measures, for example, taking the victim outside by the backdoor of the building or through the garage, are a part of their daily routine. This good practice was also identified for Article 19 (right to avoid contact between victim and offender).

It has also been reported that there is an increasing effort among police officers and prosecutors to avoid unnecessary repetitions of victims’ inquiries. There is a bigger effort to ensure that a complete a thorough first inquiry is performed, making sure the victim does not need to be questioned again in the course of the investigations.

Regarding Article 22 (individual assessment of victims to identify specific protection needs), although the Victim’s Statute and the Code of Criminal Procedure are silent on the reference that child victims are to be presumed as victims in need for special protection, in practice, it is common that child victims are considered to be particularly vulnerable by the competent authorities.

Finally, in relation to Article 25 (training of practitioners), APAV is frequently invited to instruct policemen on issues related to the protection of victims’ rights. Moreover, although students of the magistrate’s school are not obliged to attend training on victims’ experiences and needs, some officers have completed an “internship” in APAV (e.g., two-day observations).

The present national report, completed within the context of project VOCIARE, was extremely useful to assess the practical implementation of the Victims' Directive in Portugal. Although researchers were able to identify good practices, the existing gaps and challenges overlap the former. Gaps found are not unusual and have been identified and outlined in previous APAV reports. Thus, overall, APAV endorses a revision of the Victim's Statute and the incorporation of the Statute and other legal regimes related to the protection of victims' rights into the Code of Criminal Procedure, in order to create a consistent legal system and eliminate current interpretation and action problems. Moreover, 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

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

For this purpose, an adequate methodology was created and adopted. The first two steps taken in order to begin 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, it is vital to know more about national legislation, to know how the Directive was transposed into national law in order to further analyse if such legislation is being implemented, how and by whom. Mapping competent authorities and organisations is essential to guarantee that detailed answers will be provided by the competent authorities and organisations which relate to victims.

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

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

The 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 (police, prosecutors, judges and court staff, policy makers and victim support organisations).

The third instrument, the interviews, served as an addition to desk research. Any questions to which desk research could not respond, or where findings were inconclusive, the researchers identified a stakeholder/key informant with whom to discuss such specific questions, in addition to the list of questions which were provided via the research tools.

Regarding its structure, this report first provides a basic overview of the legal framework, an important element to take into account in a first approach in order to understand the transposition status of the Directive into national law. Subsequently, an evaluation of the practical implementation of the Directive will be presented. This document will explain if and how articles

and rights provided by the Directive are transposed into Portuguese law. Each right will be briefly described and explained, as well as its transposition and practical implementation.

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

BASIC OVERVIEW OF THE LEGAL FRAMEWORK

The Victims' Directive was adopted on 25 October 2012 by the European Parliament and the Council, and Member States were required to transpose it into national law until 16 November 2015¹. In Portugal, the Directive was transposed to the Portuguese legal framework through the adoption of Law no. 130/2015, on September 4th, 2015.

This law approved the twenty third amendment to the Code of Criminal Procedure (*Código de Processo Penal*, hereinafter CPP) and added to this code the Victims' Statute – a legislative piece where most Articles of the Victim's Directive are embodied and which is attached to Law no. 130/2015. From the outset, this means that the transposition of victims' rights provided in the Directive was not made directly into the CPP or other already existent dispersed legislation, but rather in yet another law which is complementary to the CPP.²

Besides the **Victims' Statute**, there are other dispersed pieces of legislation which regulate victims' rights, namely the Law no. 112/2009 which established the **legal regime applicable to the prevention of domestic violence and the protection and assistance of its victims** and Law no. 93/1999 on **witness protection**. Even though this is an indication that the Portuguese legislator showed some level of concern with victims' right even prior to the transposition of the Victim's Directive, the fact that there different laws related to protection of victims renders the regime disperse, which inevitable results in overlaps³, and impairs the reinforcement of victim's role and rights in the criminal proceedings.⁴

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

² APAV, APAV's Legal Opinion related to Law Proposal n° 343/XII amending the Code of Criminal Procedure and approving the Victims' Statute, transposing 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 (Parecer da APAV relativo à Proposta de Lei n.º 343/XII que procede à 23.ª alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva n.º 2012/29/UE, do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro n.º 2001/220/JAI, do Conselho, de 15 de março de 2001), 2015, p. 3. Available at: https://apav.pt/apav_v3/images/pdf/parecer_APAV_prop_lei_343_XII_transposicao_Directiva.pdf.

³ For example, Article 11 of the Victims' Statute prescribes victims' right to information and transposes the Directive's Article 6. However, part of the content of Article 11 of the Statute was already prescribed for in Article 247 of the CPP. See Ibid, p. 4.

⁴ APAV, APAV's Legal Opinion related to Law Proposal n° 343/XII amending the Code of Criminal Procedure and approving the Victims' Statute, transposing 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 (Parecer da APAV relativo à Proposta de Lei n.º 343/XII que procede à 23.ª alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva n.º 2012/29/UE, do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro n.º 2001/220/JAI, do Conselho, de 15 de março de 2001), 2015, p. 3. Available at: https://apav.pt/apav_v3/images/pdf/parecer_APAV_prop_lei_343_XII_transposicao_Directiva.pdf.

Regarding the transposition of the Directive into the Victims' Statute, overall, the **majority of the Directive's provisions were transposed**. However, **some articles were not sufficiently materialised**⁵, while **others were not transposed at all**. This is the case of Directive's Article 7, on the right to interpretation and translation; Article 8, on the right to access victim support services; Article 11, on right in the event of a decision not to prosecute; Article 12, on the right to safeguards in the context of restorative justice services; and Article 26 on cooperation and coordination of services.

In order to better grasp how the Victim's Directive is being implemented in Portugal and to what extent victims' rights are being upheld, a few considerations regarding the Portuguese criminal proceedings are necessary.

Regarding the way criminal proceedings are initiated, there are three different categories of crime in Portuguese criminal law. **Public crimes** are those which can be reported by any person and the criminal proceedings are initiated as soon as the Public Prosecutor's Office is informed, by any means, of the crime. This means that the criminal proceedings start independently of victims' will.⁶ On the other hand, when **semi-public crimes** are committed, the criminal proceedings can only be initiated when the victim(s) file a complaint (*queixa*), indicating his/her will to commence criminal proceedings.⁷ Finally, the criminal proceedings regarding **private crimes** are initiated in the same manner as those for semi-public crimes: through the filling of a complaint by the victim. However, in the case of private crimes, after the victim has filed a complaint, he/she has 10 days to apply for the status of **assisting party** to the Prosecutor. When the investigation phase of the proceedings is over, the assisting party to the Prosecutor is required to present private prosecution (*acusação particular*) and the failure to do so results in the termination of the proceedings⁸.

The criminal proceedings have **three main phases**: the **investigation phase**, the **pre-trial phase** and the **trial phase**. After the trial phase, it is possible that the proceedings carry on into the **appeal phase**.

⁵ For example, Article 11(3) of the Victims' Statute establishes that when victims report the crime, free assistance and translation – when the victim does not understand Portuguese – of the written report are secured. However, nothing else is established, throughout the Statute, on what free assistance means and how it is substantiated which means that in this regard, in practice, this Article is void. See *Ibid*, p. 5.

⁶ A few examples of public crimes are homicide (Article 131 of the Criminal Code), kidnapping (Article 158 of the Criminal Code), domestic violence (Article 152 of the Criminal Code) and child sexual abuse (Article 171 of the Criminal Code).

⁷ According to Article 113 a complaint can be presented by the victim or, in case of the victim's death, by his/her spouse or non-marital partner, children, adopted children, parents and adopters. Article 115 of the Criminal Code establishes that the persons who have the right to file a complaint can do so within the six months after the crime was committed or they were aware of the facts. Examples of semi-public crimes are: rape (Article 164 of the Criminal Code), bodily injuries (Article 143 of the Criminal Code) and theft (Article 203 of the Criminal Code).

⁸ Examples of particular crimes are: defamation (Article 180 of the Criminal Code), and libel (Article 181 of the Criminal Code).

The **investigation phase** comprises all the actions aimed at ascertaining whether a crime was committed, who committed it and their liability, and finding/gathering evidence. The investigation is carried out by law enforcement authorities under the supervision of the Public prosecutor.

The investigation phase comes to an end by one of three ways: the Public prosecutor considers that there is sufficient evidence that the suspect committed the crime and presents charges against him/her; the Public prosecutor considered that there is not sufficient evidence that the crime was committed by the suspect and, therefore, closes the case; or through the provisional suspension of the case which is the suspension of the case for a certain amount of time and the imposition of one or more obligations⁹ on the suspect¹⁰. In this latter case, if the suspect complies with these obligations during the suspension period, then the case is closed. According to Article 281 of the CPP, the provisional suspension of the case is only possible if the crime in question is punishable with a prison sentence lower than 5 years.

The **pre-trial phase** is optional and takes place at the request of the victim, if he/she has the status of assistant party, or the suspect, when they do not agree with the decision of the Public prosecutor at the end of the investigation phase. The purpose of this stage is, thus, to obtain judicial confirmation of the Public prosecutor's decision to present charges against the suspect or close the case in the end of the investigation phase. The pre-trial phase is directed by a pre-trial judge who is responsible for reviewing the evidence gathered, as well as any other evidence which the parties consider should be obtained, or which is submitted at this stage¹¹. The examining judge will question the victim whenever he/she deems it necessary and whenever the victim requests it. This phase ends with a discussion known as the examination discussion (*debate instrutório*). *This debate is presided by the pre-trial judge and involves the Public prosecutor, the defendant and the defence lawyer, the victim and the victim's lawyer.* **At the end** of this discussion, if the examining judge decides to dismiss the case, the defendant will not go to trial. This decision is called a **non-indictment decision** and may be appealed. On the other hand, if the judge decides to proceed with the case, the defendant will go to trial. This decision is called an **indictment decision** and, as a rule, may not be appealed.

If the defendant was charged at the end of the investigation phase or indicted in the pre-trial stage, the case moves on to the **trial phase**. The purpose of the trial is to decide whether there is enough evidence to convict the defendant of the crime of which he/she is accused of and, if so, to impose a sentence. The trial phase ends with the trial judge reaching a verdict and issuing a decision which includes the facts that the judge considers to be proved, unproved and the

⁹ Examples of these obligations are: the payment of compensation to the victim, the donation of a certain sum of money either to the State or to private charities, the provision of a community-interest service, the prohibition to live in particular areas or to contact specific people (Article 281, CPP).

¹⁰ Article 281 of the CPP establishes that the provisional suspension of the case can be requested by the Public prosecutor's Office *proprio motu* or at the request of the defendant or the assisting party. The provisional suspension of the proceedings are, then, determined by the pre-trial judge.

¹¹ Articles 286 and 288 of the CPP.

evidence on which it was based. **If the defendant is convicted**, the decision also includes the type of sentence and the information taken into account for deciding on the sentence.

In Portugal, the status of victims in criminal proceedings differs. Victims might participate in criminal proceedings as **assisting party to the public prosecutor**, as explained above. The assisting party cooperates with the Public prosecutor and he/she has the right to participate in the investigation and pre-trial phases, providing evidence, requesting appeals and presenting charges independently from the one presented by Prosecutor and, if the crime in question is a particular crime, present charges against the suspect even if the Public prosecutor's Office does not do so¹².

Victims might also be an **injured party or plaintiff** (*lesado*) if they suffered damages in consequence of the crime and they present a civil compensation claim¹³.

Additionally, victims might be **witnesses** in the criminal proceedings which means they will be questioned by the Prosecutor, the defendant's lawyer and/or the judge during trial hearings.

Finally, Law no. 130/2015 introduced to the CPP article 67-A which provided, for the first time in Portuguese criminal legal framework, a definition of **victim**¹⁴.

All the above considered, in Portugal, victims can participate in the various phases of the criminal proceedings in different degrees, *i.e.* having different obligations and attributions, depending on the role he/she assumes in the proceedings. During the entire procedure, however, victims have various rights enshrined in the Victims' Directive. The following pages will analyse, one by one, how this rights are implemented by the State and all the authorities which have direct contact with victims, in order to shed light on the current situation of victims in the Portuguese criminal systems and on extension of their enjoyment of these rights.

¹² Article 69 of the CPP.

¹³ See commentary on Article 16.

¹⁴ See commentary on Article 2.

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.

The Portuguese criminal legal framework provided, prior to the transposition of the Directive, a **definition of victim** in Law no. 112/2009 concerning the prevention of domestic violence and the protection of its victims, which many consider the first step for the assertion of victim's rights within the criminal justice system¹⁵. Article 2(a) of this Law defines victim as "(...) *any person who has suffered damages, including an assault on his or her physical or mental integrity, emotional or moral damage, or a material loss directly caused by an act or omission in the context of the crime of domestic violence provided for in article 152 of the Criminal Code.*" This definition is, therefore, restricted to **victims of domestic violence**.

With the transposition of the Victims' Directive, as explained above, Article 67-A was added to the CPP, comprising a broader definition of victim. According to Article 67-A (1)(a), a victim is "(...) *any person who has suffered damage, in particular an attack on his or her physical or mental integrity, emotional or moral damage, or property damage, directly caused by action or omission, in connection with the **commission of a crime.***" – any crime.

¹⁵ Interviewee 2.

Article 67-A(1)(b), in turn, includes the definition of “**especially vulnerable victims**” (*vítima especialmente vulnerável*)¹⁶, which are those victims whose **vulnerability** results from age, health status, disability, and from the fact that the type, degree, and duration of victimisation resulted in serious psychological or social damages with severe consequences. These are some of the criteria provided by the Directive in Article 22 regarding the individual assessment of victims¹⁷.

Complying with Article 2(2)(b) of the Directive, Article 67-A(1)(ii) establishes that **family members** of a person whose death was a direct consequence of a criminal offence are also victims. Article 67-A(2), then, establishes the list of persons who can indeed be considered a victim in these cases: the not judicially separated surviving spouse, the person who was living with the victim under analogous terms to marriage (non-marital partner), as well as lineal descendants and ascendants. The attribution of the victim status to family members depends on whether that person suffered harm as a result of the victim’s death and is excluded in case these persons were the offender.

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 Portugal, Article 3 of the Directive is transposed in Article 12 of the Victims’ Statute¹⁸. According to some professionals, there have been some efforts among law enforcement authorities in order to improve communication with victims¹⁹. Nevertheless, there is still no established procedure to assess victims’ communication needs and the adaptability of the communication according to these needs depends on the diligence of the police officer or other authority contacting with the victim.

Victims who are immediately perceived by authorities as particularly vulnerable victims - for example, children, elderly, migrants, among others - are indeed treated in a different manner. In these cases, police and judicial authorities have a tendency to make extra efforts to guarantee that victims understand the information given to him/her. A good practice was identified in relation to older persons victims of crime. In these cases, police officers normally call or pay a home visit to the victim, in order to ensure that the victim understood the information provided to him/her at the police station when the complaint was presented²⁰. Moreover, survey respondents

¹⁸ Article 12(1) states that the necessary measures should be taken to guarantee that victims understand and are understood from the first contact and during all other contacts with the competent authorities in the criminal procedure. Paragraph 2 states that communication with the victim shall be exercised in a simple and accessible manner, taking into account personal characteristics of the victim, namely their maturity and literacy, as well as any limitation or alteration of their physical or mental functions that might affect the victim’s capacity to understand or be understood. Paragraph 3 declares that in case the victim, taking into account the impact of the crime committed, requires assistance to understand or be understood, the victim may be accompanied by a person of their choice for the first contact with the competent authorities, if this does not prejudice the criminal procedure. Paragraph 4 refers to the rules of the Code of Criminal Procedure regarding the nomination of an interpreter.

¹⁹ Interviewee 1.

²⁰ Interviewee 3.

¹⁶ The literal or word-for-word translation of the term “vítima especialmente vulnerável” (Article 67-A(1)(b)) is “especially vulnerable victim”. This term will be used throughout the present report as well as the term “particularly vulnerable victim”.

¹⁷ For further information on the legal definition of particularly vulnerable victims, see below the section related to Article 22 of Directive 2012/29/EU.

confirmed that the communication from authorities to victims is sometimes adapted to some groups of particularly vulnerable victims – children, people who do not speak nor understand Portuguese and illiterate people, for example.

It is important to note that even though this especial attention and care is given to some particularly vulnerable victims, the fact that there is no systematic assessment of victims' communication is problematic. Some victims' special communication needs might not be considered because they are not immediately or easily identified, for example, illiteracy, hearing, speaking and/or visual impairments and intellectual disabilities. This is confirmed by survey results which indicate that information is only rarely or never adapted to, for example, people with intellectual disabilities.

Information on victims' rights is provided through a copy of the Victims' Statute²¹ and, sometimes, also orally. However, this information is not adapted to victims' communications needs. Besides some leaflets, produced by the police authorities and (more often) by non-governmental organisations, which are available at the police stations, this information is standardised and not adapted to victims' communication needs.

Moreover, besides adaptation of information, for victims with special communication needs, access to translation and interpretation services assumes great importance. In Portugal, there are practical gaps in guaranteeing access to this type of services, compromising the effective exercise of the right to understand and be understood, particularly for victims who do not speak or understand Portuguese or have special communications needs, for example, victims with hearing or speaking impairments²².

In respect to victims' **right to be accompanied** by a person of their choice, there is indeed a legal right guaranteed by Article 12(3) of the Victims' Statute. However, this possibility is limited to the first contact with the authorities – which becomes problematic in guaranteeing the right to protection²³. The purpose of this article is to assist the victim in understanding the information conveyed but, in practice, victims are not allowed to be accompanied in all cases which frustrates their legal right. This is confirmed by survey results which indicate that victims are usually not allowed to be accompanied in their first contact with authorities.

Communication with victims and, particularly, with victims who have special communication needs requires clarity, calmness and patience, which is often lacking among law enforcement and judicial authorities. There is, indeed, a growing sensibility on the importance of adequate communication with victims but, in practical terms, this was not yet translated into serious efforts in producing guidelines on an assessment procedure and investments in specialised training regarding communication with victims.

²¹ See commentary on Article 4.

²² See commentary on Article 7.

²³ See commentary on Articles 20, 22 and 23.

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.

Portuguese legislation was silent on law enforcement and judicial authorities' duty of providing information to victims of crime, even after the entry into force of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings. Only in 2010, Article 247 was added to the CPP²⁴. Nevertheless, this provision was still incomplete in light of the Directive.

In 2015, with the entry into force of Law no. 130/2015, Article 4 of the Directive was transposed into Article 11 of the Victims' Statute. Hence, with exception of paragraphs i) and j)²⁵, Portuguese law guarantees access to all information mentioned in Article 4(1) of the Directive. In fact, the scope of Article 11 of the Statute is broader than Article 4(2) of the Directive, since it comprises, as well, the content of the rights foreseen in Articles 5, 6 and 7 of the Directive. Moreover, Article 4(2) of the Directive was also transposed into Article 11(2) of the Victims' Statute.

²⁴ This Article establishes the duty of the Public prosecutor's Office to inform the victim about his/her rights and available victim support services. According to this provision, victims must be specifically informed about: the regimes governing complaints and legal support - Article 247(2); the possibility to request compensation from the State in relation to violent crimes and domestic violence – Article 247(3); the support services available - Article 247(3);, in cases of recognised danger of the offender, all judicial decisions concerning his/her status - Article 247(4).

²⁵ Paragraph i) relates to information on the contact details for communications about the case and paragraph j) relates to information on available restorative justice services.

The Victims' Statute created some confusion in its relationship with Article 247 of the CPP, regarding communication, registration and the acknowledgement of the complaint. Whereas Article 247 of the CPP determines a very restrict list of information which the public prosecutor should provide to victims, Article 11 of the Victims' Statute presents a much more extensive list. This is, again, one example of how the diffusion of victims' rights through different legal instruments can negatively impact victims' enjoyment of their legal rights. One can easily foresee a situation where a less diligent prosecutor would provide only limited information to victims and argue that he/she complied with his/her obligation under Article 247 of the CPP, neglecting Article 11 of the Victims' Statute.

In practice, throughout the country, when presenting a complaint victims are, first, informed of their rights orally and, afterwards, they receive a copy of the Victims' Statute²⁶. The information transmitted orally is supposedly adapted according to the victims' personal circumstances and especial vulnerability, if there is one²⁷.

Even though victims are given a copy of the Victims' Statute and that information is, sometimes, transmitted orally, which is a commendable effort, the truth is that there is no assurance that all victims understand this information. In fact, the Victims' Statute copies are only available in Portuguese, which means that victims who do not speak nor understand Portuguese do not receive adapted information²⁸. Additionally, the Victims' Statute is a rather long legislative instrument and its language is not appropriate to all victims. Therefore, information should be provided in a simpler and more accessible manner, for example, through leaflets containing a list and small description of victims' rights. Complete information is, of course, preferable, but the fact that victims are given a copy of the law means that most of them feel overwhelmed and insecure about the information he/she is receiving which results in no information being transmitted at all.

As mentioned above, information is also provided to victims through leaflets or brochures, usually developed and disseminated by NGOs. An example is the materials developed and produced in the context of project Infovictims. This project, co-financed by the European Commission and implemented by the Portuguese Association for Victim Support (*Associação Portuguesa de Apoio à Vítima, hereinafter APAV*) and organisations from other Member States, had the objective to create informative tools for victims of crime using simple and accessible language. The materials produced consist on a website with broad information on victims' rights and on the functioning of criminal proceedings and brochures, leaflets and posters focused on victims' rights. In Portugal, these materials were widely accepted and disseminated by other stakeholders and it is very common to find the Infovictims posters and brochures in police stations, prosecutors' offices and in all court buildings.

²⁶ Interviewee 3.

²⁷ Interviewee 3.

²⁸ See commentary on Articles 5 and 7.

Even though the information on these and other leaflets is, usually, simpler and adapted to different groups of victims, there is still no assurance that victims understand the information provided. The delivery of a copy of the Victims' Statute or an informative leaflet does not exempt law enforcement and judicial authorities from their obligation to provide detailed, complete and relevant information and to ensure that victims understood such information. Currently, this is, as described above, dependant on the professionals' good will and diligence and there are no systematic inquiries or studies on whether the information provided to victims and the way this information is presented is effective.

Law no. 34/2004²⁹ on the access to law and courts establishes a regime of free legal advice which consists on technical support provided by lawyers in relation to specific legal issues and cases. Through the Portuguese Bar Association, lawyers can volunteer to be part of a list of lawyers who provide these legal consults as well as legal aid³⁰. The beneficiary, for example a victim, requests a legal advice to the Social Security Institute (*Instituto da Segurança Social, ISS*) and, if certain criteria are met, a lawyer from the Portuguese Bar Association's list is assigned to him/her. The assigned lawyer will not be the legal representative of the beneficiary but he/she will hear the facts of the case and any question that the beneficiary might have in order to provide advice on how the beneficiary should proceed. These legal advice consults are an opportunity to provide victims information about their rights and the course of criminal proceedings, thus, justifying the awareness raising and training of lawyers on these matters³¹.

Although the Directive places the obligation to provide information to victims on States' authorities, in Portugal NGOs play a prominent role. In fact, victim support and other organisations are the entities that usually provide information to victims, be it directly or through the materials they produce as part of awareness raising campaigns or other projects.

²⁹ See commentary on Article 13.

³⁰ See commentary on Article 13.

³¹ See commentary on Article 25.

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 Portugal, Article 5 of the Directive is transposed in Article 11(3) of the Victims' Statute. It guarantees, when submitting a complaint, the right to assistance free of charge and to translation of the written confirmation of the complaint in a language that the victim understands. The right to request such confirmation was already established, prior to the transposition of the Victims' Directive, in Article 247 of the CPP.

Article 247(7) of the CPP states that when the complaint is presented by the victim, the acknowledgement of the complaint – containing description of the essential facts of the crime – must be delivered to the victim regardless of his/her request. Most victims do not know they have the legal right to receive a confirmation of the complaint. This is, some argue, due to the fact that there is a perpetuation of a relationship between Public Administration services and the individual in which the latter must trust the former and, therefore, there is no need to ask for written confirmation of any procedure³². Moreover, it seems that many law enforcement agents are also unaware of their duty to provide the official acknowledgment of the complaint. In fact, the number of complaints regarding the refusal by police officers of delivery of the acknowledgment was so significant that, in 2015, the Justice Ombudsman issued a Recommendation³³ to the Ministry of Internal Administration (*Ministério da Administração Interna, hereinafter MAI*) suggesting that law enforcement authorities are instructed to provide the acknowledgment of the complaint to victims and other people who report a crime, in the latter case, if requested.

³² Interviewee 1.

³³ Recommendation no. 1/A/2015. Available at: https://www.provedor-jus.pt/?action=5&idc=67&idi=15551#_ftn1.

This right is reaffirmed by Article 14(3) of Law no. 112/2009 on the prevention of domestic violence and the protection of its victims, which establishes that victims of **domestic violence** shall be given an acknowledgement of the complaint, **independently from their request**.

In what concerns victims who do not understand nor speak Portuguese, their **rights when making a complaint are often restricted** due to lack of translation and interpretation services and the fact that, in most police stations, law enforcement agents have limited foreign languages knowledge³⁴.

As already explained, when presenting a complaint, all victims are given a copy of the Victims' Statute. The **text is written only in Portuguese** so it is transmitted orally, if necessary, taking into account the characteristics of the victim (people with disabilities, LGBTI, minorities, foreigners, women, elders)³⁵. Moreover, the information is translated, also orally, into other languages when the police officers have sufficient knowledge of these languages which, as already mentioned, happens rarely, especially in rural areas³⁶.

In Lisbon and Oporto, victims who do not speak Portuguese are usually directed to so-called Tourism Police Stations. At these stations, police officers have knowledge in English, French, Italian and German. Even though this is a significant improvement to the situation prior to the creation of the Tourism Police Stations, several problems persist. In the first place, the number of languages in which the police officers have knowledge on is still very limited. The catalogue of available languages is quite adequate to ensure communication with tourist victims, because most of them speak English and those who do not, usually speak one of the other languages spoken by police officers. However, these languages do not match the need of the immigrant population³⁷. Secondly, there are only two Tourism Police Stations in the entire country which means that tourist or immigrants who do not speak Portuguese will have difficulties in contacting the police and when making a complaint in all other areas of the country³⁸.

To overcome these problems, efforts are being made to translate the Victims' Statute into English, French and German, in order to provide a translated copy to foreign victims when they present a complaint³⁹. This effort is welcomed but it should be noted that the Victims' Statute entered into force in 2015 and that its translation into these (and other languages) should have been done, through initiative from the Government and not by police authorities.

³⁴ See commentary on Article 7.

³⁵ See commentary on Article 3.

³⁶ Interviewee 3.

³⁷ For example, data from 2016 indicates that there are 34.428 immigrants from Ukraine, 30.429 from Romania, 21.953 from China, 7.142 from India and 5.829 from Nepal, among others, to whom communication with law enforcement might not be possible because there is no knowledge on these languages in police stations. Data available at: <https://www.pordata.pt/Portugal/Popula%C3%A7%C3%A3o+estrangeira+com+estatuto+legal+de+residente+total+e+por+algumas+nacionalidades-24>.

³⁸ APAV (2015), Para um Estatuto da Vítima em Portugal: direitos mínimos das vítimas de todos os crimes – Contributo da APAV para a transposição da Directiva da UE sobre direitos, apoio e proteção das vítimas, pp. 89-91. Retrieved from: https://apav.pt/apav_v3/images/pdf/APAV_Directiva.pdf.

³⁹ Interviewee 3.

Sometimes, in an effort to ensure that victims understand their rights and other type of information given to them when they present a complaint, police officers resort to phone interpreters or call someone from the victim's community who can serve as an interpreter. This informal solution is used because the formal means available, for example, resorting to the translation services of the Foreigner and Border Services (*Serviço de Estrangeiros e Fronteiras, hereinafter SEF*), are paid by the victim⁴⁰. Additionally, undocumented migrants if they present a complaint, often fear engaging with SEF due to fear of deportation.

Besides the lack of appropriate translation services, there is one other problem impairing victims' rights when making a complaint: **cultural barriers**. For example, some immigrants victims of domestic violence come from countries where such kind of violence is more widely accepted. This becomes problematic to police officers who try to explain the victim that he/she does not have to keep being victimised. The lack of cultural interpreters is also a problem in these and similar situations⁴¹.

40 Interviewee 3.

41 Interviewee 3.

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 Article 11 of the Victims' Statute. Article 11(5) of the Statute also refers that it is permitted to the victim to consult the legal procedure and obtain copies of procedural documents in the same circumstances as it is permitted to the offended (Articles 86 and 89 of CPP).

According to Article 11(6) of the Statute, without prejudice to legal confidentiality⁴², victims shall receive, at their request, information regarding: a decision not to charge the defendant; a decision to temporarily suspend the legal procedure; a decision to charge the defendant; place and date of the trial, and the procedural situation of the defendant⁴³; and the court's final judgement. This Article guarantees the right to be informed but **only upon the victim's request**. This means that while the Directive prescribes that victims must be notified of their right to be informed, the Portuguese legislation still turns a blind eye to this matter, putting the burden of seeking information about the case solely on the victims. This is illustrated by Article 11(7) of the Victims' Statute which determines that victims may declare that they wish to be notified of all decisions rendered during the criminal proceedings.

42 As a rule, criminal proceedings are public - Article 86(1) of the CPP. Nevertheless, during the investigation phase, the pre-trial judge or the public prosecutor may, if they consider that publicity would jeopardise the rights of the parties, declare legal confidentiality.

43 For example, if he/she is under custody, if he/she has been charged, released or has escaped prison.

Nonetheless, the transposition of the Directive into the Portuguese legal framework brought some improvements in what concerns victims' right to receive information about their case.

Complementarily, Article 11(8) refers that information provided regarding the decisions to charge the defendant, not to charge him/her and the final judgement, shall include a justification or a summary of such justification.

Moreover, Article 11(9) foresees that other types of information are given to the victim – particularly when the defendant is admittedly dangerous - namely the application of restrictive measures to the defendant. Additionally, Article 11(10) mentions that the victim should be informed, without undue delay, of the release or evasion of the detained, accused, or convicted person. Finally, Article 11(11) states that victims shall have the possibility to opt for not receiving information except if it is mandatory according to the CPP.

An important issue related to the right in question here is whether the notion of "roles in the proceedings" limits, in any way, the victims' access to information. Before the entry into force of the Victims' Statute, the access to information by the victims was limited to his/her role in the proceedings. For example, Article 313 of the CPP predicts the notification of the victim of the trial hearing date only if they are an assisting party to the Public prosecutor. The victim would also be notified of the time and place of the trial in the cases where they were a witness, but not in other circumstances. Article 11(6)(b) now obliges the competent authorities to inform victims even in cases where they are neither an assisting party to the Prosecutor nor a witness in the criminal proceedings. The consultation of the procedure by the victim does not require that he/she intervenes in the proceedings in a role other than victim. The role of the victim in the proceedings might be limitative, for example, in the ability to request re-opening of the pre-trial phase or to request an appeal⁴⁴, but it is not restrictive in what concerns the right to information⁴⁵.

In practice when victims of domestic violence and sexual offences present a complaint, they are informed by competent authorities of their rights, including the right to receive information regarding the proceedings. In some cases, victims are given a telephone contact in order to call in case they want to obtain information about the status of their case⁴⁶. This is not, however, the case for victims of other crimes.

Regarding the provision of information on the release of the detainee, the courts must attach to the proceedings the decision which determined it. Since this decision must be attached to the case documents, the victim can access it, however it is questionable whether all victims are directly informed of the defendant's release or escape from detention. Nevertheless, some divisions of the Public Prosecutor's Office have the common practice to inform the victims if

⁴⁴ See Basic Overview of the Legal Framework.

⁴⁵ Interviewee 2.

⁴⁶ Interviewee 2.

there is reason to believe that the court failed to do so⁴⁷.

Finally, it has been identified that, overall, victims in the criminal proceedings do not have easy access to information on the legal procedure, especially non-resident victims from other Member State⁴⁸.

⁴⁷ Interviewee 2.

⁴⁸ Interviewee 1. See commentary on Article 17.

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 was not subject to any transposition into Portuguese law. However, Articles 92 and 93 of the CPP already mentioned the appointment of an interpreter free of charge, in cases where those intervening in the proceedings do not speak nor understand Portuguese or have hearing/speaking impairments.

Article 92(2) establishes that when someone participating in the criminal proceedings does not speak nor understand Portuguese, a translator is appointed regardless of whether the other interveners speak or understand his/her language. This regime is, however, a general one and specific legal provisions on safeguarding victims' right to translation do not exist. The translation of documents is also only generally prescribed in article 92(1). The interpretation of this article tends to be unclear regarding the documents which have to be translated and, within these, which ones may be translated orally and which ones need to be translated in writing⁴⁹.

Article 93 of the CPP, prescribes that when the victim has a **hearing impairment**, an interpreter is nominated in order to communicate with the victim through sign language. In case the **victim is mute**, questions shall be posed orally and replied in written form.

In situations where the assistance of an interpreter is mandatory and no one is nominated, the procedural act⁵⁰ in question is considered null and may be repeated when necessary⁵¹.

49 APAV (2015), Para um Estatuto da Vítima em Portugal: direitos mínimos das vítimas de todos os crimes – Contributo da APAV para a transposição da Directiva da UE sobre direitos, apoio e proteção das vítimas, p. 91. Retrieved from: https://apav.pt/apav_v3/images/pdf/APAV_Directiva.pdf.

50 Procedural act is a legal act performed by the subjects of the proceedings destined to produce effects in the criminal proceedings within which they are practiced.

51 Articles 120(2)(c), 120(3)(a) and Article 122 of the CPP.

Although Portugal is obliged to grant these services in light of the Victims' Directive, as well as Directive 2010/64/UE on the right to interpretation and translation in criminal proceedings, in practice there is a huge **lack of interpreters and translators** which constitutes one of the most problematic obstacle to access justice⁵².

When interpretation and translation services are indeed resorted to, the payment received by the interpreters and translators is not attractive, which means that only a few of these professionals are available to provide such services⁵³.

The main causes of the lack of interpretation and translation services is the **lack of State funds** and the **inexistence of an official list of certified and qualified interpreters and translators** whose services would be available, upon request, for law enforcement, judicial authorities and courts.

Especially in a time where the number of immigrants and tourists, particularly in city areas, is increasing, the availability of and accessibility to quality interpretation and translation services, in the first contact with the authorities and during all criminal proceedings, is crucial to guarantee that victims understand and properly participate in those proceedings. To fill in the gap of an official certified list, interpretation and translation services are arranged through an informal list which comprises contacts of private interpreters and translators, collected via personal connections of police officers and judicial staff, which circulates – also informally – between police stations and the different units of the Public Prosecutor's Office⁵⁴.

Other difficulty found is that, even when translation services are provided or in case the official list of interpreters and translators is created and made available, the police, the prosecutor and the judge are not the only entities with whom the victim contacts with during and because of the criminal proceedings. This means that, to guarantee that victims understand and participate in the proceedings, interpretation and translation services must also be ensured in other places and situations, for example during forensic medical examinations⁵⁵.

Some steps could be taken to improve the situation and guarantee the rights of victims who do not understand nor speak Portuguese. First and foremost, the creation of a list enumerating the documents which must be translated is essential to clarify the interpretation of Article 92(1) but, more importantly, to harmonise the practice of law enforcement and judicial authorities, as well

52 Sousa, F. (2017), Mais estrangeiros em tribunal obrigam a criar bolsa de intérpretes, Diário de Notícias. Retrieved from: <https://www.dn.pt/portugal/interior/mais-estrangeiros-em-tribunal-obrigam-a-criar-bolsa-de-intepretes-7994760.html>.

53 APAV (2015), Para um Estatuto da Vítima em Portugal: direitos mínimos das vítimas de todos os crimes – Contributo da APAV para a transposição da Directiva da UE sobre direitos, apoio e proteção das vítimas, p. 91. Retrieved from: https://apav.pt/apav_v3/images/pdf/APAV_Directiva.pdf.

54 Interviewee 2.

55 Interviewee 1.

as courts, in all areas of the country⁵⁶. Secondly, similarly to what already happens in relation to defendants, some forms which need to be filled in by victims must be translated⁵⁷, taking into account an evaluation of national needs to identify the languages which are necessary and considering the different regional specificities. Thirdly, the example and procedures of the Phone Mobile Service (*Serviço de Tradução Telefónica, hereinafter STT*)⁵⁸ provided by the High Commissioner for Migrations (*Alto Comissariado para as Migrações, hereinafter ACM*) could be used to create a centralised and specialised video call service which would allow immediate access to translators by the police and judicial authorities.

⁵⁶ APAV has suggested, for example, the addition of a new article in the CPP with such a list. See APAV (2015), Para um Estatuto da Vítima em Portugal: direitos mínimos das vítimas de todos os crimes – Contributo da APAV para a transposição da Directiva da UE sobre direitos, apoio e proteção das vítimas, p. 91. Retrieved from: https://apav.pt/apav_v3/images/pdf/APAV_Directiva.pdf.

⁵⁷ For example the form for reporting a crime, the application form for providing statements for future memory, the application form for legal aid, the application form for reimbursement of expenses, the form to inform of exit from the country. See Ibid, p. 89.

⁵⁸ The STT was created by the ACM to help immigrants face the language barriers they often encounter in their daily lives. This service consists in a conference call between the immigrant, the translator and an operator which guarantees the good quality of the call and the translation service. The service is available free of charge - the customer only pays the phone call - every working day, between 9am and 7pm, through the Migrant Support Line - 808 257 257. For more information and list of available languages: <https://www.acm.gov.pt/-/servico-de-traducao-telefonica>.

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.

The Victims' Statute does not transpose Article 8 of the Directive, however, it mentions victim support services in some instances. First, Article 11(1)(a) and (b) refer to victims' right to be informed about available support services and the type of support they may benefit from. Second, Article 15(3), dedicated to the right to protection, establishes that the public prosecutor, during the investigation phase, and the judge can determine that the victims is in need for psychosocial support.

Currently, the Public Prosecutor Office's Department of Investigation and Penal Action (*Departamento de Investigação e Ação Penal, DIAP*) has an office for information and victim support (*Gabinetes de Informação e Apoio à Vítima, GIAV*) in Lisbon, available to victims of domestic violence and sexual abuse. In these offices, psychology students, as part of an internship, render psychological support to victims, make risk assessment evaluations, accompany victims to court hearings and provide the necessary technical advice to Prosecutors⁵⁹. This is, clearly, without sufficient territorial coverage and only destined to victims of certain crimes, leaving out most victims of crime.

Even though this office is available, there are clearly both legal and practical gaps in the provision of victim support services by the State and such gaps are filled through private initiative.

⁵⁹ Interviewee 2.

The Portuguese Association for Victim Support (*Associação Portuguesa de Apoio à Vítima*, hereinafter APAV) is the only non-profit and non-governmental organisation (NGO) which provides support free of charge to victims of *all* types of crime, their family and friends. APAV provides legal, psychological, and social support and its services (*Serviços de Proximidade*) are comprised victim support offices (*Gabinetes de Apoio à Vítima*, hereinafter GAV) and four specialised networks which offer specialised services: the Support Unit for Migrant and Discrimination Victims (*Unidade de Apoio à Vítima Migrante e de Discriminação*, UAVMD)⁶⁰, the National Network of Shelters for Women and Children Victims of Violence⁶¹, the Network for Support of Family and Friends of Homicide Victims (*Rede de Apoio a Familiares e Amigos de Vítimas de Homicídio*, RAFAVH)⁶² and Network of Specialised Support to Children and Youngsters Victims of Sexual Violence (*Rede de Apoio Especializado a Crianças e Jovens Vítimas de Violência Sexual*, CARE).

In what concerns the visibility of its support services to victims, besides the communication of such services that APAV does itself, a number of referral partnerships are in place, namely with police forces, such as the Public Security Police (*Polícia de Segurança Pública*, PSP), the National Republican Guard (*Guarda Nacional Republicana*, GNR), and the Judiciary Police (*Polícia Judiciária*, PJ), as well as other NGOs, for example, ILGA Portugal – an organisation devoted to the protection of LGBTI rights. Although the referral system is still not automatic, there have been some referral experiences between the police and APAV. Despite APAV's permanent proactivity, these experiments are of very limited dimension and directed towards a very small number of victims⁶³.

In what concerns accessibility and territorial coverage, as mentioned above, APAV has 18 victim support offices located throughout the country, and this number has been growing each year. Victims can look for support in one of these offices during weekdays. Their opening hours vary but most of them are open from 10am to 6pm. In 2017, these offices registered 40.928 visits which resulted in 12.086 victim support proceedings from which 9.176 victims were identified⁶⁴.

In addition, APAV's Integrated System for Remote Support (*Sistema Integrado de Apoio à Distância*, hereinafter SIAD), available during weekdays from 9am to 9pm, and constituted by a free victim helpline, which has been working since May 2015, and which was extended to allow victims to look for support services through other platforms, such as Skype and Facebook. SIAD is a very important tool as it is accessible to more isolated victims who might not have the possibility to reach the support offices in person. It was built upon the collaboration of a group of highly trained and qualified volunteers who, guided by a detailed script, gather information about the victimisation, provide emotional support, develop a safety plan taking into account the victims'

60 This Support Unit has three different offices in Lisbon, Oporto and Azores.

61 Comprising two shelters: ALCIPE Shelter (Casa de Abrigo ALCIPE) and SOPHIA Shelter (Casa de Abrigo SOPHIA).

62 This Network emerged from project CARONTE – Support to Family and/or Friends of Victims of Homicide, financed by the European Commission and developed in partnership with Victim Support Scotland and Weisser Ring Austria. For further information: <https://apav.pt/publproj/index.php/43-projeto-caronte-apoio-a-familiares-e-amigos-de-vitimas-de-homicidio>.

63 APAV (2015), Para um Estatuto da Vítima em Portugal: direitos mínimos das vítimas de todos os crimes – Contributo da APAV para a transposição da Directiva da UE sobre direitos, apoio e proteção das vítimas, p. 43. Retrieved from: https://apav.pt/apav_v3/images/pdf/APAV_Directiva.pdf.

64 APAV (2008), APAV Statistics – Annual Report 2017. Retrieved from: https://www.apav.pt/apav_v3/images/pdf/Estatisticas-APAV-Relatorio-Anual-2017.pdf.

needs, and refer them to the nearest victim support offices or other services⁶⁵.

Among the 18 victim support offices, a new strategy to reach a higher number of people is being tested in Alentejo, in an inland region of Portugal, where people are more isolated and have more difficulties in resorting to public services. This office has a fixed base in Ponte de Sor, but it also has an itinerant component. At the fixed location there is a victim support worker always present and another victim support officer travels through 8 municipalities.

This system brings advantages and disadvantages. A positive aspect is the fact that victims have less travel costs when accessing victims support services and the fact that it becomes easier for victim support officers to work with local authorities and other services, articulating efforts more efficiently. However, sometimes, such relocations might be unnecessary, since victims do not resort to victim support services every day, particularly in person⁶⁶.

Due to its itinerant character, this victim support office depends on formal partnerships, such as the ones with town halls, police authorities, the Public Prosecutor's Office of the, child protection services, among others. In total, there are 29 formal partnerships. On the other hand, it also works with non-formal partners, such as local networks of social intervention, among others. Hence, the physical spaces where the victim support officer works when travelling to the different municipalities are usually provided by these partners⁶⁷.

The same happens with other GAVs which are located in facilities provided by partners such as Municipalities and law enforcement entities. Some GAVs work inside police stations, for example in Loulé, Oeiras, Portimão, and Tavira. This allows for a close relationship between police services and victim support services, which facilitates referrals.

APAV's funding is diversified and is generated from supplying training, counselling and consultancy services, and through donations and social/company sponsoring, annual contributions paid by members and cofunding from national and EU projects⁶⁸. However, the major source of APAV's funding comes from protocols established with the Government and several Ministries (the Ministry of Justice, the Ministry of Internal Affairs, the Ministry for the Social Security, the Ministry of Health and the Presidency of the Counsel of Ministries). These protocols comprise certain commitments to be fulfilled by APAV and, each year, an activity report is submitted to each Ministry, reporting on the activities APAV develops within the context of action of each protocol. This is one of the ways that the quality of services provided by APAV is guaranteed.

65 APAV (2015), Para um Estatuto da Vítima em Portugal: direitos mínimos das vítimas de todos os crimes – Contributo da APAV para a transposição da Directiva da UE sobre direitos, apoio e proteção das vítimas, p. 130-131. Retrieved from: https://apav.pt/apav_v3/images/pdf/APAV_Directiva.pdf.

66 Interviewee 6.

67 Some examples are town hall infrastructures, municipal libraries, social centres, child protection services infrastructures, buildings of old high schools and historical buildings where several municipal services also function.

68 European Union Agency for Fundamental Rights (FRA), Victims of crime in the EU: the extent and nature of support for victims, 2014, p.60.

Additionally, APAV has its own Quality Policy which aims at continuously improving the quality of its services. As part of this commitment, APAV has one Monitoring Unit that analyses the support proceedings and is responsible for creating and analysing the annual satisfaction surveys disseminated among beneficiaries. Moreover, at the headquarters in Lisbon, a Quality Management System was developed. This system comprises both internal and external evaluation of each proceeding and unit of the headquarters and an extension of the System to the different Support Offices is planned.

Besides APAV, there are two other non-governmental organisations that provide support services to victims, particularly to victims of domestic violence: Union of Women for Alternatives and Answers (*União de Mulheres Alternativa e Resposta*, Umar) and Association of Women Against Violence (*Associação de Mulheres Contra a Violência*, AMCV).

UMAR is a non-governmental organisation created in 1976, which aims at “awakening the feminist conscience in Portuguese society”⁶⁹. UMAR has service centres in Oporto and Setúbal which focus on psychosocial, psychotherapeutic and legal support, as well as career guidance. In addition, in emergency situations they offer accommodation to victims. The staff of these service centres receives regular training and carries out a series of activities, for example, participation in the working groups for implementation of the National Plans Against Domestic Violence, the setting up of awareness raising campaigns in schools and training activities for the police forces⁷⁰.

AMCV, created in 1992, has the purpose of supporting women and girls involved in situations of violence. Besides operating a shelter, AMCV has an “Anti-Violence Centre” (*Centro Anti-Violência*), which individually monitors victims of domestic violence. This centre provides different support services, such as a specialised phone helpline, career guidance, and legal and psychological support to women of all ages⁷¹.

Even though these and other organisations provide support services to victims, the existing network of victim support services and offices in Portugal does not cover the whole territory, which means that direct face-to-face support is not provided in some areas. Moreover, the package of information given to victims is not uniform. There is no assurance strategy to guarantee that victims, regardless of the place in the country where the crime is reported and of the authority with whom the victim gets in touch with, receive the same information and support⁷².

69 UMAR, <<http://www.umarfeminismos.org/index.php/quemsomos>>, last visited on 17/11/2017, 15:41.

70 UMAR, Dossier Dados Globais (2010), p. 6. Retrieved from: http://www.umarfeminismos.org/images/stories/pdf2/dossier_dados_globais_VD2010.pdf.

71 AMCV, <<http://www.amcv.org.pt/pt/amcv-mulheres/servicos/centro-anti-violencia/atendimento-e-acompanhamento-individual>>, last visited on 17/11/2017, 15:46.

72 APAV (2016), IVOR Report – Implementing Victim-oriented Reform of the Criminal Justice System in the European Union, p. 130. Retrieved from: <https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot-WebVersion.pdf>

ARTICLE 9 - SUPPORT FROM VICTIM SUPPORT SERVICES

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

In what concerns victims’ access to support services in Portugal, it is possible, from the outset, to draw two conclusions. First, not all victims of crime are redirected to a general support service provider, the main reason being that the existent support services do not cover sufficiently the entire territory, as mentioned above. Secondly, there is a lack of specialised support services in most of the country’s areas. This gap is addressed by some general support service providers, such as APAV, who have established specialised services for victims.

As for general support services, a victim coming into one of the victim support offices is welcomed by one victim support worker and a first approach is made in a quiet and private room. This first meeting between the victim and the victim support worker is destined to collect information about the victimisation and the victim him/herself, to identify the victim’s main needs and draw a safety plan and, finally, to provide emotional support as well as practical information. After this first service, the support process can either end at this stage – if the victim wishes so or does not contact APAV anymore – or continue. Once the victim needs are assessed, and if the victim wishes to continue with the support process, an appointment for specialised support is made, including legal, psychological or social support, depending on the victims’ identified needs. Whenever there is an appointment with a victim or any other kind of contact is established with him/her (for example, phone call or email), all the information collected as well as actions taken

are registered in an internal online form which helps in the management of the victim support process and serves as basis for the statistical treatment of data.

The mandatory training for victim support officers at APAV includes one session dedicated to domestic violence where the crime of domestic violence, the stages of violence in the family, the impact the crime has on its victims, as well as specific needs of domestic violence victims, are addressed. This is very important and the inclusion of a session on domestic violence is necessitated by the fact that victims of domestic violence make up around 76% of the victims supported by APAV⁷³.

Additionally, as also mentioned above, APAV established three specialised networks. The Support Unit for Migrants and Discrimination Victims (UAMVD) is a sub-network specialised in providing support to migrants or non-Portuguese nationals residing in Portugal and who have been victims of crime. The purpose of this network is to respond to these groups and individuals' needs since, in view of their special vulnerability, they are often the targets of various types of crime and need specialist support.

UAMVD has also been specialising in specific crimes which, regardless of the victim's nationality, have a significant occurrence in Portugal, namely: trafficking in human beings, female genital mutilation, forced marriage, hate crimes and discriminatory violence.

The Network for Support of Family and Friends of Homicide Victims (RAFAVH). As its name indicates, provides specialised support, adapting APAV's intervention model described above to the specific needs of family members and friends of homicide victims, or to victims of attempted homicide.

The Network of Specialised Support to Children and Youngsters Victims of Sexual Violence (CARE) offers specialised support to children and young persons victims of sexual violence, and their families. Besides the emotional, psychological, legal and social support to victims, through CARE APAV works towards the recognition of the children's rights, the public awareness regarding sexual violence against children and young persons and for more effective and appropriate systematic response to the specific needs of these victims.

Finally APAV two of the shelters which constitute the National Network of Shelters for Women and Children Victims of Violence which provides two modalities of accommodation. When the victim is in a situation of extreme danger to life, she is referred to an **emergency accommodation** and is able to stay there for a maximum of 72 hours, during which there is a process of referral to other shelters or services that guarantee a longer stay and a continuous intervention adapted to the case. These emergency shelters have a maximum capacity of 15 beneficiaries, even though

73 APAV (2008), APAV Statistics – Annual Report 2017. Retrieved from: https://www.apav.pt/apav_v3/images/pdf/Estatisticas-APAV-Relatorio-Anual-2017.pdf.

it is well known that some of them have much more beneficiaries than that (sometimes rising to 40). The second modality is the **provisional and/or long-term accommodation** in a shelter, for a period of no more than 6 months, in which an inter-institutional partnership work will be carried out to answer the individual needs of the women and children.

According to Article 59 of Law no. 112/2009 on the prevention and protection of victims of domestic violence, the State has the duty to promote the creation and expansion, as well as support the functioning, of shelters to victims of domestic violence. The Regulatory Decree no. 1/2006, of January 25, amended by the Regulatory Decree no. 2/2018, of January 24, introduced into the Portuguese legal system a set of technical standards regarding shelters for victims of domestic violence, with the aim of reconciling their functioning, establishing minimum opening and operating conditions and ensuring the quality of the services provided by the 39 shelters existent in the country.

In Portugal, there is also a network of Accommodation and Protection Centers for victims of trafficking in human beings (*Centros de Acolhimento e Proteção, CAP*), two for women and their children and one for men and their children. They are managed by APAV, the Association for Family Planning (*Associação para o Planeamento Familiar, APF*) and Saúde em Português.

Regarding referral to support services, it has been stated that the copy of the Victims' Statute delivered to victims of crime contains contacts of organisations providing victim support services. This information is also provided orally. In such cases, police officers comply with the information duty, but not with actual referral⁷⁴. If the victim is an elder or a victim of domestic violence, referral to victim support services is actually done if the victims wishes to. Sometimes, referral to other kinds of services is also made but, again, this depends on the good will and diligence of the police officers⁷⁵.

74 Interviewee 3.

75 Ibid.

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.

Victims' right to be heard, established by Article 10 of the Directive, was transposed into Article 67-A(5) of the CPP. This Article grants victims the right to cooperate with the police and judicial authorities by providing information and evidence.

The Victims' Statute introduced other amendments to the CPP specifically related to the right in question here. The first one of these modifications concerns the removal or replacement of any coercive measure previously applied to the offender. In such circumstances, Article 212(4) of the CPP now establishes that the victim is granted the right to be heard when necessary even if they are not an assisting party to the public prosecutor.

The second adjustment made to the CPP concerns the pre-trial phase. Article 292(2) of the CPP determines that in this phase of the proceedings, the pre-trial judge can inquire both the defendant and the victim – again, even if they are not an assisting party to the public prosecutor – by own initiative or by their request, whenever necessary.

The final amendment relates to the violation by the convicted person of the suspended sentence⁷⁶. Article 495(2) of the CPP now obliges the court to hear the victim, when necessary, before deciding whether the conditions for applying the provisional suspension of the sentence were breached.

In conclusion, the moment the victim files a formal complaint, he/she has the opportunity to transmit the maximum of relevant elements and to indicate evidence to the authority that receives the complaint. Afterwards, during the investigation phase, the victim will be called by the police or, in some cases, by a public prosecutor, to testify, being able to provide for additional information that was not mentioned before. If the offender is charged, the victim will be called once again to, in the trial phase, testify.

⁷⁶ See Basic Overview of the Legal Framework.

A possible restriction of victim's right to be heard, considering the amendments mentioned above, might be that in all three cases the **court has some discretion in deciding on whether or not to hear the victim**. This has the potential to create inequalities in the treatment of similar situations.

In what concerns the questioning of **child victims** or child witnesses, the right of child victims to be heard is provided in Article 22(1) of the Victims' Statute which establishes, in conformity with the Directive, that the child's age and maturity must be taken into account. Some positive advancements were made in the sensitivity with which professionals of the criminal justice system, particularly police officers, deal with child victims. It was observed that prosecutors and most police officers try to collect evidence in order to avoid the need to obtain the child's testimony. Only in cases where evidence cannot be collected by other means, the police and prosecutors question child victims. When this happens, they are granted all their rights and, if they are victims of sexual abuse, the authorities apply Article 271 of the CPP⁷⁷. This rule foresees a system called "statement for future memory" which can be applied in certain situations, among them the circumstance of a sexual crime committed against a minor, where victims are heard in the investigative phase as if they were to be heard in the final hearing in a more informal scenario. This hearing happens in a smaller room where the parties to the procedure are present, namely the judge, the defendant's lawyer, the prosecutor and the victim support worker accompanying the child victim or his/her lawyer if there was a need to assign one. The recording of the child's enquiry in this more informal and supposedly less stressful environment can be used as evidence in trial, thus avoiding a stressful experience for the child.

Regarding whether the testimony of the victim when being inquired is taken into account and considered important by the court, research shows that, in the trial phase, such testimonies are extremely relevant. However, a judge must always be careful when assessing victims' testimonies. One needs to be impartial and assess if the information provided is credible⁷⁸.

⁷⁷ See Basic Overview of the Legal Framework.

⁷⁸ Interviewee 4.

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.

In Portugal, this article was not transposed into national law because the options available in the event of a decision not to prosecute were already established in Articles 278 and 287(1)(b) of the CPP.

Regarding the **investigation phase**, according to Article 278(1), when the public prosecutor decides to close the investigations – due to lack of evidence on the commission of a crime by the suspect –, the victim may request a **hierarchical intervention**. Upon this request, or on his/her own initiative, the prosecutor's hierarchical superior may order the presentation of charges against the suspect or the continuation of the investigations.

Furthermore, according to Article 287 of the CPP, if the public prosecutor decides not to prosecute at the end of the investigation phase, the **victim, if he/she is an assisting party to the prosecutor**, has the possibility to **request the opening of the pre-trial phase**⁷⁹. However, this is only possible if the proceedings do not depend upon private prosecution because if they do, the assisting party to the prosecutor is obliged to present charges against the defendant independently from the prosecutor's decision⁸⁰.

Nevertheless, it is important to note that the two above mentioned mechanisms are **alternative** to each other, which means the victim may only resort to one of them.

⁷⁹ See above Basic Overview of the Legal Framework.

⁸⁰ See above Basic Overview of the Legal Framework.

The **pre-trial phase** ends with a discussion (known as the pre-trial discussion), coordinated by the pre-trial judge, in which the public prosecutor, the defendant and his/her lawyer, the victim and his/her lawyer participate. In order to participate in this discussion, the victim needs to be constituted assisting party to the public prosecutor. At the end of the discussion, the pre-trial judge decides whether to confirm or not the decision of the public prosecutor made during the investigation-phase. If the judge decides so, the defendant goes to trial. This decision cannot be subjected to appeal, according to Article 310(1) CPP. However, if the pre-trial judge decides to close the case, the defendant does not go to trial. This decision may be subjected to appeal, according to Article 310(3) CPP.

Therefore, there is a possibility to contradict the decision not to prosecute. However, in practice, jurisprudence shows that courts might not be willing to re-open the investigation phase and open the pre-trial phase, which in practice frustrates victims' right to review a decision not to prosecute⁸¹. Moreover, there is a tendency, within the criminal justice system, not to modify decisions already issued, which might be dangerous, wrong, unfair and even illegal, when there is new evidence that might contribute to change the ruling⁸².

⁸¹ Interviewee 1.

⁸² Interviewee 1.

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.

The Victims' Statute is completely silent on restorative justice services. Nevertheless, prior to the transposition of the Directive, Law no. 21/2007 created a regime of criminal mediation (*Sistema de Mediação Penal, SMP*). According to its Article 3, public prosecutors may refer a case to mediation at any moment of the investigation phase, in case there is evidence that the crime actually occurred, that the suspect is the author of the crime, and that the public prosecutor considers that mediation might adequately serve the case's prevention requirements. Then, a mediator shall be designated, to whom essential information about the defendant and the victim is provided, together with a brief description of the case. Nevertheless, according to Article 3(2), the victim and the defendant are also able to request for mediation, if there was no previous initiative from the public prosecutor. In such cases, the public prosecutor shall proceed as described above. According to Article 3(5), the mediator shall contact the defendant and the victim in order to obtain their free and informed consents regarding participation in the mediation.

Article 4 refers to the informality and flexibility of the mediation procedure. Moreover, it refers to the role of the mediator as promotor of an agreement between the defendant and the victim and facilitator of the communication between them. Article 5(1) foresees that, in case an agreement is not reached, or the mediation is not concluded within three months, the public prosecutor must be informed. In such cases, the criminal proceedings continue.

Regarding the agreement, as mentioned in Article 6(1), the content may be freely determined by the defendant and the victim, although it may not involve deprivation of liberty, duties which might offend the defendant's dignity or which compliance might extend for more than six months.

However, the scope of application of this practice is limited. It is only possible to resort to criminal mediation when certain crimes are committed and, at the outset, some circumstances are always excluded. These circumstances include the commission of crimes sanctioned with a

prison sentence higher than five years by law; the commission of crimes against sexual liberty and self-determination, e.g. rape, child sex abuse, child pornography, etc.; the commission of the crimes of embezzlement, corruption, and influence peddling; the perpetrator being under 16 years of age; and, finally, the criminal proceedings being of special nature – summary procedure (*processo sumário*) or simplified procedure (*processo sumaríssimo*).

Thus, the criminal mediation regime aims to deal with small and medium criminality, which means that it is only accessible to victims of crimes whose situation may be framed within the strict criteria provided in the law. However, even when it is possible to resort to criminal mediation, not all the safeguards mentioned in Article 12 of the Directive are contemplated in Law no. 21/2007. This law omits the safeguard that restorative justice services might only be used if they are in the interest of the victim – Article 12(1)(a) – and when the offender acknowledges the basic facts of the case – Article 12(1)(c).

Although the mediation system described exists in the Portuguese legal framework, this restorative justice mechanism is not used⁸³. After an experimental period, in which the system worked in four different districts and was applied to a great number of cases, apparently there have been no cases since 2011. Hence the Portuguese State does not comply with the duty of facilitating the reference of procedures to existing restorative justice services, as foreseen in the Directive.

Even during the experimental period, mediators had a very passive role in the process, not being able to suggest solutions to the problem presented. Moreover, judges, prosecutors and lawyers did not appreciate mediation. These are some reasons pointed to explain why mediation does not work in Portugal⁸⁴.

83 APAV (2015), Para um Estatuto da Vítima em Portugal: direitos mínimos das vítimas de todos os crimes – Contributo da APAV para a transposição da Directiva da UE sobre direitos, apoio e proteção das vítimas, p. 36. Retrieved from:

https://apav.pt/apav_v3/images/pdf/APAV_Directiva.pdf.

84 Interviewee 1.

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 access to justice and courts is a Constitutional right protected by Article 20 of the Constitution of the Portuguese Republic (*Constituição da República Portuguesa, CRP*) which establishes that the access to justice cannot be denied for reason of financial hardship. This constitutional right is effected by **Law no. 34/2004, on the access to law and courts**, to which Article 13 of the Victims' Statute – the transposition of Article 13 of the Directive – refers to⁸⁵.

This regime is a general one and, unlike in other countries, there is no special legal aid regime for victims. The legal protection foreseen in Law no. 34/2004 is applicable to every Portuguese national, EU citizens, as well as foreigners and stateless people with a valid resident permit in an EU Member State⁸⁶. The right to legal protection of foreigners without a valid residence permit is recognised if the same right is recognised and afforded to Portuguese nationals by the law of such States⁸⁷.

This legal protection comprises two types of support to be provided by the State: legal advice and legal aid. As mentioned above, **legal advice** consists on technical support provided by lawyers in relation to specific legal issues and cases. In turn, **legal aid** covers different categories: exemption from judicial fees and other eventual expenses resulting from the proceedings; appointment of and payment to a lawyer; allocation of an Implementing Agent.

The purpose of Law no. 34/2004 is to ensure that no one is hindered or prevented from exercising their rights, namely the right to access to justice, because of their social or cultural condition, insufficient economic means and knowledge/education. Therefore, the right to legal advice and legal aid is dependent on certain circumstances, namely the financial situation of the applicant for legal advice and/or aid. In order to benefit from this right, the interested person needs to demonstrate that they are in a situation of economic insufficiency. For the purpose of this

85 Article 13 of the Victims' Statute reads as follows: "The State ensures, free of charge in the cases established by Law no. 34/2004, of 29 July, amended by Law no. 47/2007, of 28 August, that the victim has access to legal advice and, if necessary, subsequent legal aid."

86 Article 7(1) of Law no. 34/2004.

87 Article 7(2) of Law no. 34/2004.

report, it is not pertinent to describe the criteria established by Law no. 34/2004⁸⁸ for assessing whether the applicant is in a situation of financial hardship which allows him/her to receive legal protection. It is, nonetheless, important to note that these criteria are very strict. Consequently, only people in circumstances of extreme financial need can benefit from legal aid.

As a consequence, many citizens, by not fulfilling the legal criteria, decide not to continue with criminal proceedings because they do not possess sufficient financial means to support legal costs. The withdrawal from criminal proceedings, or the reluctance to initiate them, is increased because, in Portugal, as said above, judicial proceedings are very lengthy and there is a generalized disbelief in the judicial system. Therefore, people often consider that the legal costs they potentially would have to support do not worth the wait and hardships they will find until the proceedings are over⁸⁹. As a result, the constitutional right to access to justice is hindered⁹⁰.

According to Article 25 of Law no. 112/2009, related to the prevention of domestic violence, legal aid should be provided as a matter of urgent nature to victims of domestic violence. However, since there is no special regime regarding the attribution of legal aid to victims of domestic violence – the regime of Law 34/2004 applies – the administrative process of guaranteeing legal aid is, in the end, as lengthy as for other victims.

Besides the right to legal aid, prescribed by Article 13 of the Victims' Statute and Article 25 of Law no. 112/2009, victims of domestic violence are also exempted from paying legal costs, according to Article 4(1)(z) of the Litigation Costs Regulation. The same applies to victims of female genital mutilation, slavery, trafficking in human beings, sexual assault and rape⁹¹.

Law n.º 34/2004 is destined to all parties in the proceeding, meaning that **both defendants and victims have the right to apply to legal advice and legal aid**.

The request for legal protection is made to and analysed by the Social Security Institute (*Instituto da Segurança Social, ISS*). Here, victims face a recurrent obstacle: the time that the ISS takes to decide on the requests for legal protection is highly variable – some cases are decided in weeks, others take months with no apparent criterion – and often lengthy which constitutes another hindrance to the exercise of the right to access justice.

88 According to article 8(1) of Law no. 34/2004 which establishes the legal regime of access to courts, a person is in a situation of economic insufficiency if he/she is not, objectively, in conditions to bear the normal costs of criminal proceedings, taking into consideration his/her income, assets and expenditure.

89 Interviewee 1.

90 Interviewee 1 and APAV (2015), Para um Estatuto da Vítima em Portugal: direitos mínimos das vítimas de todos os crimes – Contributo da APAV para a transposição da Directiva da UE sobre direitos, apoio e proteção das vítimas, p. 65. Retrieved from: https://apav.pt/apav_v3/images/pdf/APAV_Directiva.pdf.

91 Article 4(1)(aa), Decree-Law n.º 34/2008, on the Litigation Costs Regulation.

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.

Article 14 of the Directive is transposed into Article 14 of the Victims' Statute, which states that the State should promote the possibility of the victim who intervenes in the criminal proceedings to be reimbursed of expenses resulting from such intervention. This Article directly refers to the Portuguese regime of reimbursement, which is established both in the Code of Criminal Procedure and in Decree-Law no. 34/2008, on the Litigation Costs Regulation.

Article 317(4) of the CPP establishes the victim's right to be reimbursed in cases where they played the role of witness in the criminal proceedings. The reimbursement of expenses for victims who are witnesses in the criminal proceedings take into account the distance they travel and the time they spend, but they are fixed at around 7 to 13 euros (€) for each time they have to present themselves in court⁹².

In what concerns victims who constitute themselves as assisting parties to the public prosecutor, the Portuguese regime of judicial fees predicts that they are supported by the losing part. However, this means that the reimbursement of expenses is deferred to a later moment in the criminal proceedings and there are situations of non-conviction and statute of limitation in which the victim will not be reimbursed⁹³.

In practice the reimbursement of expenses take a very long time. In conclusion, some people

⁹² APAV, http://www.infovítimas.pt/pt/005_direitos/paginas/005_009.html, last visited on 17/11/2017, 15:52.

⁹³ APAV (2015), Para um Estatuto da Vítima em Portugal: direitos mínimos das vítimas de todos os crimes – Contributo da APAV para a transposição da Directiva da UE sobre direitos, apoio e proteção das vítimas, p. 69. Retrieved from: https://apav.pt/apav_v3/images/pdf/APAV_Directiva.pdf.

decide not to carry on with criminal proceedings, because this implies costs and sometimes traveling, without having the opportunity to actually speak before the court, due to the possibility of the hearing being delayed. Nonetheless, there are tools which are being used in order to avoid the dislocation of the victim to court when participating in the criminal procedure. For example, judges may use video conference to hear the victim, but this does not happen very often⁹⁴

⁹⁴ Interviewee 1.

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.

In Portugal, the right to the return of property is transposed in Article 16(3) of the Victims' Statute. This states that the victim's property seized during criminal procedure should be immediately examined and returned⁹⁵. However, if such property has probative value for the proceedings or is susceptible of being declared lost in favor of the State, the property cannot be returned⁹⁶.

Before the transposition of the Directive, such right was already established in Article 186 of the CPP and Article 21(3) of Law no. 112/2009, regarding prevention of domestic violence. Article 186(1) states that when it is no longer necessary to keep property for the purpose of proof, the seized property shall be returned, during or after the criminal proceedings⁹⁷. Additionally, the article mentions that people to whom property is to be returned to, shall be notified to collect it within a period of time of 90 days, after which the deposit costs will be supported by the victim. In any case, if the person does not collect the property within a year counting from the notification onwards, such property is considered lost in favor of the State.

Most of the times, victims and other parties involved in the criminal proceedings do not request for the return of objects, except if they are of great sentimental or pecuniary value. However, when they do, the property is usually returned during the investigation phase⁹⁸. If the object in question has probative value, since criminal proceedings tend to be very lengthy, it can take months or even years for it to be returned. In fact, there is no average time for courts to return victims' property and the truth is that there is not a fast and efficient response for every case⁹⁹.

⁹⁵ Police and judicial authorities which seize objects during criminal investigations, store them in a safe deposit, so their state and condition is preserved. Interviewee 4.

⁹⁶ Article 109 of the CP established that objects that have been used in the commission of a criminal offence and are susceptible to endanger safety and public order or the risk that they will be used for such purposes is high, are declared lost in favour of the State.

⁹⁷ If the victim considers that the property is not returned in a reasonable period of time, he/she may request the return of property in writing. APAV, http://www.infovitimas.pt/pt/005_direitos/paginas/005_010.html, last visited on 17/11/2017, 15:53.

⁹⁸ Interviewee 4.

⁹⁹ 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.

Prior to the transposition of the Directive, the Portuguese legal framework established a regime of compensation from the offender in Articles 71 to 84 of the CPP. According to this regime, the request for compensation must be made within the criminal proceedings and can only be made separately, in a civil court, in certain situations.

Regarding **formal requirements to access compensation**, the injured party can always choose to be represented by a lawyer. However, legal representation becomes mandatory in cases where the value of the compensation's request is higher than 5.000€.

Although Article 16(2) of the Directive was not transposed at all into the Victims' Statute, Article 16(1) is transcribed *verbatim* into Article 16(1) of the Statute, stating that it is recognised the **right** of the victim to obtain, within a reasonable period of time, a **decision regarding a compensation from the author of the crime**. Additionally, Article 16(2) of the Statute foresees a novelty when referring to Article 82-A of the CPP. This provision foresees that, when a civil compensation was not requested within the criminal proceedings or in a separate civil proceeding, the court, in case of conviction, may arbitrate an amount in order to repair harm suffered by the victim, when particular protection needs so require. This norm applies only to victims with particular protection needs but it is very important, allowing judges to circumvent situations where victims did not request for a compensation in a civil court due to lack of information and/or support, disbelief in the judicial system or the fact that they do not wish to prolong the proceedings and their contact with the offender¹⁰⁰. However, it is not common practice of judges to resort to the discretionary power of applying Article 82-A¹⁰¹.

¹⁰⁰ Interviewee 1.

¹⁰¹ Interviewee 4.

It is important to highlight the fact that Article 21 of Law 112/2009 on prevention and protection of victims of domestic violence establishes that Article 82-A of the CPP should always be applied in the context to domestic violence cases, except when the victim expressly opposes to it. This provision apparently assumes that, in cases of domestic violence, victims are always in need for special protection which makes the application of Article 82-A of the CPP and the decision on compensation for damages suffered mandatory, contrary to the rule in criminal proceedings concerning other crimes.

Finally, there is another mechanism victims might resort to: **compensation by the State**, which will be described only briefly since it is not the aim of the Directive's Article in question in this section.

Currently, Law no. 104/2009 predicts that the advance payment by the State in case of violent crimes, i.e., when the victim suffers serious damages to the physical or mental health that result from acts of violence, is due to the victims when certain requirements are met altogether, according to Article 2(1): (a) the damage must have caused a permanent disability, a temporary and absolute disability to work during at least 30 days or death; (b) the crime must have caused a significant disorder on the quality of life of the victim or, in case of death, of the person who makes the request; (c) and there must have been no reparation of the damage after the sentence related to Articles 71 to 84 of the CPP or if it is reasonable to believe that the offender and civilly liable will not repair the damage, without being possible to obtain an effective and sufficient reparation from other source. Child victims or victims of crimes against sexual freedom and auto-determination may benefit from this regime even if the first requirement is not met and if exceptional and duly reason circumstances advise it.

This law also provides, in Article 2(3), that this right to obtain an advanced payment of compensation prevails even when the identity of the author of the crime is not known, or, for some reason, it is not possible to accuse or convict this person. Finally, according to Article 2(6), child victims or victims of crimes against sexual liberty and self-determination might benefit from this regime even if the first requirement is not met, if exceptional and duly justified circumstances so recommend.

This law, in Article 5, also provides for the possibility of an advance payment by the State of the compensation to victims of domestic violence (Article 152 CP) who, in consequence of the crime committed, are living in a situation of serious economic deprivation.

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 Article 19 of the Victims' Statute. Article 19(1) establishes that the possibility to report the crime to national authorities is granted to **Portuguese and EU citizens residing in Portugal, victims of crimes committed in other Member States** in case it was not possible to do it in the Member State in which the crime was committed. National authorities must immediately communicate this occurrence to the competent authorities of

the territory where the crime was committed. Article 19(2) states that the transmission of the complaint shall shortly be communicated to the victim who presented it¹⁰².

Additionally, Article 19(3) refers that **citizens resident in other EU Member States, victims of crimes committed in Portugal**, have the right to have their testimony taken in writing immediately after reporting the crime, to avoid that, in cases where they are not staying a long time in the country, they leave without their testimony being collected. These victims also have the right to resort to hearings through video and teleconference in order to provide testimony for a future hearing in court.

Regarding the possibility to make a statement immediately after reporting a crime, before the transposition of the Directive, the CPP already established that if a victim is leaving the country, preventing him/her from attending the trial, he/she can give his/her testimony in the presence of a judge, a prosecutor and the defendant's lawyer, during the investigation stage. Such statement can subsequently be used as evidence in trial, thus avoiding the victim/witness having to return to Portugal. This mechanism is called "statement for future memory", established by in Article 271(1) of the CPP¹⁰³.

However, it is important to understand if this mechanism can be used when the offender is not yet identified, which becomes important for victims who leave the country. The answer to this question is not completely clear. Nevertheless, the majority of opinion considers that it is possible, as long as a defender for the yet to be identified offender is nominated¹⁰⁴.

In Portugal, there is also an obligation to enable the hearing of a victim during the trial phase by means of video or teleconference, as foreseen in Article 4 of the CPP in further reference to Article 502(4) of the CPP as well. Article 502(4) allows for the use of these mechanisms once the victim/witness is abroad and needs to testify and when these technical means are available in the country where the victim resides. Quite often, some say, the biggest problem is not the availability of means but the reluctance of and difficult to reconcile schedules with the authorities in the other State¹⁰⁵.

102 Additionally, Article 154-A of the Law 144/99, on International Judicial Co-operation in Criminal Matters states the following: "1 – Criminal police bodies and judicial authorities receive reports and complaints about the commission of criminal offences which had been committed on the territory of another Member State of the European Union against Portuguese residents; 2 – The Public prosecutor shall, without delay, send the reports and complaints received in accordance with paragraph 1 above to the competent authority of the Member State on the territory of which the offence was committed, except where Portuguese courts are competent to try the offence; 3 – The Public prosecutor receives from the competent authorities of Member States of the European Union any reports and complaints regarding criminal offences committed on Portuguese territory against residents of another Member State, for the purposes of prosecution"

103 APAV (2016), IVOR Report – Implementing Victim-oriented Reform of the Criminal Justice System in the European Union, p. 145. Retrieved from:

<https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot-WebVersion.pdf>.

104 APAV (2015), Para um Estatuto da Vítima em Portugal: direitos mínimos das vítimas de todos os crimes – Contributo da APAV para a transposição da Directiva da UE sobre direitos, apoio e proteção das vítimas, p. 86. Retrieved from: https://apav.pt/apav_v3/images/pdf/APAV_Directiva.pdf.

105 Interviewee 3.

It should be mentioned that all these mechanisms depend on translation and interpretation services in case the victim does not speak or understand Portuguese¹⁰⁶.

In what concerns the treatment given by national authorities to victims who are Portuguese nationals to victims who are nationals of other EU Member State, the opinions somehow depart. While law enforcement agents and Public prosecutors have claimed that there is no difference in treatment but that the biggest problem is, indeed, the lack of interpreters and translators¹⁰⁷, lawyers usually have a different view. Besides the poor communication established between victims and competent authorities and the obvious impairment on the right to information caused by the lack of interpreters and translators, foreign victims face many obstacles in accompanying the proceedings and getting information on their status¹⁰⁸.

Regarding cooperation among Member States' authorities, in more serious cases, cooperation is usually very efficient. However, in simple or less serious cases, the same does not happen and, in what concerns these situations, judicial cooperation between the authorities in the EU Member States still needs to improve greatly¹⁰⁹.

Finally, it is important to mention the situation of undocumented migrants who fall victim to crime. If an undocumented migrant reports a crime to a law enforcement or judicial authority, this authority is required to communicate the irregular migration situation of the victim to SEF which, in turn, immediately starts investigations and proceedings in order to decide on the eventual deportation¹¹⁰. Even though this is the major reason why undocumented migrants do not report crimes, this can actually accelerate SEF's decision in relation to their case, because when a migrant was victim of a crime, his/her process within SEF is prioritized. As what happens with criminal proceedings, investigations and proceedings directed by SEF tend to be very long. The fact that their case has priority can be – if the decision is favourable and a residence permit is issued – beneficial to victims¹¹¹.

As already mentioned above, there are two tourist police stations, one in Lisbon and another in Oporto. There, a victim is able to know his/her rights and to reach support in different languages (English, French, Italian and German). It is intended to extend translation and interpretation services in order to allow for assisting victims in more languages¹¹².

106 See commentary on Article 7.

107 Interviewees 2 and 3.

108 Interviewee 1.

109 Interviewee 1.

110 Interviewee 3.

111 Interviewee 3.

112 Interviewee 3.

APAV also provides support to tourists victims. In this sense, it has participated in a project called *May I help you?*, co-financed by the European Commission, and with the participation of national partners (PSP and the Commission for the Protection of Victims of Crimes) and international partners (Oficines d'atenció a la víctima del delicte – Generalitat de Catalunya and I(T)AS – Irish Tourist Assistance Service). This project had the objective of improving information and support provided to people who are victims of crimes out of the Member State where they reside. The project resulted in a website¹¹³ and in the elaboration of brochures in order to disseminate information to the public in general and to professionals who directly contact with victims.

113 <http://apav.pt/mihy/>, last visited on 30/11/2017, 12:35.

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 victim's right to protection, is transposed into the Victims' Statute by its Article 15(1). This norm establishes victims and their family members' **right to an adequate level of protection** when the competent authorities find that there is danger of intimidation, retaliation, repeat victimisation, or a strong indication that the victims' privacy might be disturbed.

Moreover, Article 15(2) determines that **contact between the suspect/accused and the victim** and his/her family members must be avoided in situations in which it is necessary to have these people present at the same time for the completion of procedural acts. In this line of reasoning, Article 23 of the Victims' Statute prescribes that when the inquiry of victims with specific protection needs implies the presence of the defendant, the questioning can be done through **video or phone conference**¹¹⁴. While some argue that police officers, prosecutors, court staff and others are used to take **other measures** to avoid the contact between the victim and the aggressor and these measures, for example, taking the victim outside by the backdoor of the building or through the garage, are a part of their daily routine¹¹⁵; others state that only a few professionals in courts are aware that such protection measures must be adopted¹¹⁶. In the end, the implementation of these measures depends on the training of certain professionals. Therefore, some consider that there is a **lack of training** and lack of understanding regarding victimisation, leading to neglect when it comes to the implementation of protection measures.

Article 15(3) also foresees that the judge or the public prosecutor, in the investigation phase, are able to determine that **psychosocial support** may be provided to the victim, as long as the victim consents.

114 See commentary on Article 19.

115 Interviewee 2.

116 Interviewee 4.

In what concerns the victims' family members, research indicates that their protection needs are only taken into account when they become victims as well, for example, when the perpetrator begins threatening the victim's family members personally¹¹⁷.

Prior to the transposition of the Directive, the Portuguese criminal legal framework already predicted some **restrictive measures** which can be **applied to the defendant** by either the police or the judge, according to Articles 196 to 202 of the CPP. These measures can be determined when the defendant escapes or there is danger of escape, danger of disturbance of the investigation, danger of continued criminal activity and danger of disturbance of public order¹¹⁸.

Although these are restrictive measures applied to the defendant, they end up reflecting as a protective measure to the victim and his/her family members as well¹¹⁹. Such restrictive measures are the following:

- Statement of Identity and Residence – a measure that obliges the defendant not to change his or her residency neither to leave it for longer than 5 days without making an official communication to the competent authority providing the new residency or place where he/she might be found;
- Obligation to periodically appear before the competent authority (usually the police station in his/her area of residency)
- Suspension of professional activity and other rights, such as parental responsibilities and management of property
- Prohibition or imposition of conduct, for example:
 - Prohibition of staying in the place where the crime was committed or the victim, his/her family members or other persons against whom a new crime can be committed live;
 - Prohibition of travelling abroad without authorisation;
 - Prohibition of contacting with certain persons or visit certain places;
 - Prohibition of acquiring or using, as well as obligation to surrender, any weapon or object in his or her possession that may facilitate the commission of a new crime;
- Obligation to stay in his/her residence with or without electronic monitoring; and
- Pre-trial detention.

The determination of these restrictive measures is conditioned by the principles of necessity,

117 Interviewee 4.

118 Article 204º, CPP.

119 Interviewee 2.

adequacy and proportionality. According to the CPP, the measure to be determined must be necessary, adequate to the precautionary demands of the specific case and proportional to the gravity of the case. The pre-trial detention and the obligation to stay inside the house are measures of last resort when all other measures are considered to be insufficient. Hence, Article 204 determines that no restrictive measure, with exception of the statement of identity and residence, may be applied if certain conditions are not met, such as: (a) escape or risk of escape; (b) risk of disturbing the course of the investigation phase or the pre-trial phase and, namely, risk to the acquisition, conservation or accuracy of evidence; or (c) risk, regarding the nature of the circumstances of the crime or the accused's personality, that the accused might continue with the criminal activity or significantly disturbs public order and tranquillity.

When **victims are witnesses** in the criminal proceedings, they are protected by Law no. 93/1999 on Witnesses' Protection which is focused mainly on measures to be taken within the criminal procedures, such as the non-disclosure of the witness's identity. Other measures of protection are guaranteed **to victims of domestic violence** in Law no. 112/2009 concerning the prevention of domestic violence and the protection of its victims, among others, the determination by competent authorities of the victim's necessity of receiving psychosocial support in person or remotely and avoidance of contact between the victim and the defendant, which will be analysed closely next. Protection measures are supposed to result from the individual evaluation to assess victims' specific protection needs¹²⁰.

Thus, there are both protection measures and restrictive measure available in theory. However, although the response after the complaint should be fast, professionals of the criminal justice system often do not understand this urgency and necessary measures are not always applied or applied as expeditiously as they should¹²¹.

Certain areas of Portugal, such as the islands of Azores and Madeira and the interior of the territory, are not covered by the adequate network which allows for a fast, efficient and protective response. It all depends, again, on the good will of certain professionals¹²².

120 Interviewee 1. See commentary on Article 22.

121 Interviewee 1.

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 Portugal, Article 19 of the Directive is not fully transposed. Article 15(2) of the Victims' Statute transposes the Article 19(1) of the Directive, however there is a total omission on Article 19(2)¹²³.

There are, nonetheless, **special regimes** that must be taken into account. The first is Article 352 of the CPP referring that the court must order the **offender to be kept outside the hearing room** while the victim/witness is giving him/her testimony, if there are reasons to believe the presence of the offender would prevent the person from telling the truth or if he/she is under 16 years and there are reasons to believe that the presence of the offender will significantly harm the child. However, this provision may only be put into practice during the trial phase and it is only based on the *rationale* of preserving proof rather than protecting the victim's interests¹²⁴.

The second special regime is contained in **Law no. 93/99, regarding witnesses' protection**. Articles 4, 5 and 29(b) establish that the victim/witness may provide his/her testimony through "occultation means" (occultation of image or distortion of voice) or teleconference, namely from another location inside the court's building.

123 APAV, APAV's Legal Opinion related to Law Proposal n° 343/XII amending the Code of Criminal Procedure and approving the Victims' Statute, transposing 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 (Parecer da APAV relativo à Proposta de Lei n.º 343/XII que procede à 23.ª alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva n.º 2012/29/UE, do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro n.º 2001/220/JAI, do Conselho, de 15 de março de 2001), 2015, p. 9. Available at: https://apav.pt/apav_v3/images/pdf/parecer_APAV_prop_lei_343_XII_transposicao_Directiva.pdf.

124 APAV (2015), Para um Estatuto da Vítima em Portugal: direitos mínimos das vítimas de todos os crimes – Contributo da APAV para a transposição da Diretiva da UE sobre direitos, apoio e proteção das vítimas, p. 96. Retrieved from: https://apav.pt/apav_v3/images/pdf/APAV_Directiva.pdf.

The third special regime arises from **Law no. 112/2009, regarding prevention of domestic violence**. Article 20(2) of this Law states that the contact between the victim of domestic violence and the offender must be avoided in all places which imply the presence in joint proceedings, namely in court buildings.

Nevertheless, the right to avoid the perpetrator is not duly guaranteed in all circumstances¹²⁵. For instance, there are victims who are not accompanied to trial hearings and who are not familiar with the court building or the proceedings. They are more easily confronted with the perpetrator in these situations. Moreover, there are also many situations in which, during trial, the victim is in front of the perpetrator and they are not facing each other. Here, not only the right to avoid contact with the offender is not being guaranteed, but victims are also put in a very uncomfortable, humiliating and often frightening position¹²⁶.

On the other hand, as described above, some argue that many, if not most, professionals are careful to avoid the contact between the victim and the perpetrator. Given the ambivalent evidence collected, as well as differences in practices, it would appear that the right of the victim to avoid contact with the perpetrator is not uniformly respected in Portugal.

125 Interviewee 1.

126 Interviewee 1.

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.

Victims' **right to be accompanied** by their legal representative was already in place in the CPP, particularly in Articles 70(3) and 132(4). On the contrary, victims' right to be accompanied by a person of their choice is not accounted for. It is true that Article 12(3) of the Victims' Statute foresees that victims might be accompanied by a person of their own choice. However, this provision only relates to victims' first contacts with authorities. Moreover, the reason behind this possibility is to allow for the victim to have some assistance in order to understand information given at the moment of the first contact, and not to guarantee his/her right to protection. The transposition of Article 20 of the Directive is, therefore, incomplete.

In what concerns the amount of **time between** the moment a **crime is reported and an interview of the victim** takes place, **there is no general rule**. Nevertheless, it is possible to find some special rules in Portuguese law, for example Article 28 of the Law 112/2009 on domestic violence, which states that the criminal proceedings regarding this crime have urgent nature and, consequently, should be prompt. This means that the deadlines for procedural acts to be enacted in the proceedings do not stop to be counted during judicial vacations.

Additionally, the Law on Criminal Policy (Law no. 96/2017), which defines the objectives, priorities and guidelines for the criminal policy in 2017-2019, establishes that some crimes are of priority investigation. This means that investigations on these crimes must be prioritised over crimes which are not considered of priority investigation. Besides domestic violence, other crimes like terrorism, crimes against sexual freedom and self-determination, trafficking in human beings, crimes against physical integrity of Law Enforcement Officers, theft and robbery of households,

cybercrime, violent crimes in school context, extortion, corruption, money laundering, and tax crimes committed against the social security and the public health system, are also priority investigation crimes.

In such cases, police officers and prosecutors follow the guidelines and actually prioritise these crimes. In what concerns domestic violence, there are so many cases that it is not possible to, in fact, prioritise all of them. For this reason, the results of the risk assessment evaluation – done when the victim reports the crime – is taken into account. The results of this evaluation grade each case as of low risk, medium risk and high risk. Considering the level of risk, the authorities assign an order to the cases which will be followed in investigations and judicial acts¹²⁷.

When witnesses are victims who are considered especially vulnerable, Law on Witness Protection establishes that their statement must be collected by the authorities as soon as possible after the commission of the crime. Article 28(2) of the same law additionally mentions that during the investigations the repetition of the questioning of the witness must be avoided.

Regarding unnecessary inquiries, normally victims are inquired more than one time during criminal investigations¹²⁸, although there is an increasing effort among police officers and prosecutors to avoid unnecessary repetitions of victims' questioning¹²⁹. The old practice of questioning the victim several times is disappearing and there is more and more effort in ensuring a complete and thorough first inquiry so that the victim does not need to be questioned again in the course of the investigations. Nevertheless it still happens that victims are heard more than once, highlighting that this can still be caused by the crime and the victimisation themselves. For example, in a case where a person is a victim of stalking, he or she have the tendency to, after reporting the crime, go to the police station each time a new event of stalking occurs. In these cases, the police officers have, of course, to take the victim's testimony regarding the new facts related to the crime already reported¹³⁰. Additionally, when statements for future memory are taken, this happens in an early stage of the proceedings where the victim is still confused and in distress and before the authorities have a complete understanding of the situation, not allowing for a detailed and careful inquiry and creating the need to inquire the victim more times afterwards¹³¹.

127 Interviewee 2.
128 Interviewee 1.
129 Interviewee 2.
130 Interviewee 2.
131 Interviewee 4.

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.

Although Article 21(2) of the Victims' Directive has no correspondence in Portuguese national law, Article 21(1) was transposed into Article 15(1) of the Victims' Statute¹³².

In what concerns the protection of privacy, Article 88(2)(c) of the CPP states that **media is not authorised to publish**, by any means, the **identity of victims** of crimes of human trafficking, sexual crimes, crimes against honor or the reserve of private life, except if the victim expressly agrees on the revelation of his/her identity or if the crime was practiced through the media¹³³. If this disposition is violated, the person commits a crime of disobedience, punished under Article 348 of the CP. This Article has **limited scope** and provides protection only to victims of certain crimes. Its scope should be extended to victims of all crimes.

Moreover, according to Article 87 of the CPP, there is a possibility to **restrict the free attendance by the public** to court hearings. On its own initiative or after request by the public prosecutor, the defendant or the assisting party to the public prosecutor, the judge may decide to restrict attendance by the public or decide that the procedural act, or only part of it, takes place with exclusion of publicity. Such decision by the judge must be justified in a way that it is possible to presume that the publicity would cause serious harm to peoples' dignity, to public moral, or the normal course of the act. Additionally, procedural acts occur, usually, with the exclusion of publicity in case the criminal procedure relates to a crime of trafficking in human beings, or to a crime against sexual liberty and self-determination¹³⁴.

¹³² Article 15(1) of the Statute establishes that an adequate level of protection, namely in what concerns the victim's safety and privacy, must be afforded to the victim and his/her family in cases where the competent authorities consider that a significant threat of retaliation and of repeat victimisation exists or that there are strong indications that the victim's privacy might be disturbed.

¹³³ The CP prescribes a number of crimes which can be committed through the media, namely, libel (Article 180), insult (Article 181), offences to the memory of the deceased (Article 185), offence to an entity, service or corporate entity (Article 187), attacks on privacy (Article 192), breach of mail and telecommunications (Article 193), among others.

¹³⁴ Article 87 (2) and (3) of the CPP.

Furthermore, there is a **special regime** under Law no. 147/99, on the protection of children and young persons in danger¹³⁵ which establishes that if information on children or young persons is disclosed by the media, they cannot identify nor broadcast elements, sounds or images which allow the concrete identification of these victims¹³⁶. Violation of this prohibition is also qualified as a crime of disobedience.

In what concerns **written documents** which contain the victim's identification, some of the information can be hidden depending on the crime committed and on the victim's personal circumstances. Additionally, there is, among law enforcement authorities, different levels of access to this information. This means that, in some more particularly serious cases or where the victim's privacy needs to be especially protected, only some professionals (usually belonging to higher ranks) have access to full information on the victims' identity¹³⁷.

Concerning the **transmission of information to other entities**, the sharing of information between law enforcement authorities and the Public Prosecutor's Office is automatic because the latter is the authority responsible for the investigation phase¹³⁸. When there is referral from the police forces to victim support services, for example, the victim is asked to sign a document authorising the sharing of data. If the victim does not provide his/her consent, then no referral is made¹³⁹.

Despite the legal provision of victims' privacy protection and the different procedures adopted by law enforcement authorities, **in practice**, however, **victims' privacy is often difficult to protect**. The most striking example is lack of privacy in police stations. The majority of police stations have a special room destined for victims' inquiries, in order for other people not to listen to the victim's statement¹⁴⁰. However, in some police stations such a room does not exist and victims report the crime, describing all its facts, in the station's entry hall, whilst surrounded by many police officers and other people present at the moment¹⁴¹. In these situations, it is clear that victims' privacy is not taken into account and, consequently, not protected.

¹³⁵ Article 5 of Law no.147/99 establishes that this law is applicable to persons under 18 years old – children – but also to persons under 21, who request the continuation of the intervention of the National Commission for the Protection of Children and Young Persons' Rights, and to persons under 25 when there is educational or training processes in progress.

¹³⁶ Article 90 of Law no. 147/99.

¹³⁷ Interviewee 3.

¹³⁸ See Basic Overview of the Legal Framework.

¹³⁹ Interviewee 3.

¹⁴⁰ Interviewee 3.

¹⁴¹ Interviewee 1.

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.

According to the Directorate-General for Justice and Consumers of the European Commission, the procedures for the implementation of Article 22 of the Directive must be determined by each Member State's national law. Nevertheless, in the Guidance Document related to the transposition and implementation of Directive, it is clarified that the **individual assessment of victims entails a two-step procedure** (which can be combined)¹⁴².

In Portugal, the individual assessment of victims is mentioned in Articles 20 and 21 of the Victims' Statute. The **first step**¹⁴³ is dealt with by Article 20(1) of the Statute which states that, once a complaint is lodged, the competent authorities can, after making an individual assessment of the victims, determine whether or not they are considered a **"especially vulnerable victim"** as defined in Article 67-A(1)(b) of the CPP¹⁴⁴. The **second step**¹⁴⁵ is mentioned in Article 21(1) of the Victims' Statute which provides that, when acquiring the status of a particularly vulnerable victim, an individual assessment of the victim must be done in order to establish whether he/she should benefit from **special protection measures**¹⁴⁶.

142 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.

143 According to the DG JUSTICE GUIDANCE DOCUMENT, the first step of the individual assessment of victims is to "(...) determine whether a victim has specific protection needs against the criteria listed in paragraph 2 [of Article 22 of the Directive 2012/29/EU] (the personal characteristics of the victim, the type or nature of the crime, the relationship between the victim and the offender and the circumstances of the crime) (...)".

144 Article 67 - A of the Code of Criminal Procedure states the following: "Especially vulnerable victim, a victim whose special weakness is due, in particular, to his or her age, health or disability, as well as the fact that the type, degree and duration of the victimisation have resulted in injuries with serious consequences in their psychological equilibrium or in the conditions of their social integration".

145 The DG JUSTICE GUIDANCE DOCUMENT establishes that if a victim has specific protection needs, the authorities must "(...) determine if special protection measures should be applied, and what these should be (as listed in Article 23 and 24 for children)."

146 See commentary on Article 23.

In what concerns the **elements** that should be taken into account, as per the Directive, in the individual assessment of victims, Article 67 – A(1)(b) of the CPP does consider the victim's age, health status and disability. However, other possibly relevant characteristics, such as gender, gender identity or gender expression, residency status, communication difficulties and relationship with the offender, are left out. Additionally, the type, nature and duration of the crime are, in accordance with Article 67-A, only taken into account when they have resulted in serious physical or psychological harm. This is clearly a restriction in relation to the Directive which only mentions, in Article 22(3), considerable harm independently of its nature¹⁴⁷.

Moreover, contrary to what the Directive prescribes in Article 22(3), neither the CPP nor the Victims' Statute make special mention to victims of crimes with bias or discriminatory motives, victims in close relationship with the offender, victims of terrorism, organised crime, human trafficking, gender-based violence, sexual violence, exploitation and hate crimes.

In relation to presumptions of vulnerability, there is also some considerable divergence between the Directive and Portuguese law. First of all, contrary to Article 22(4) of the Directive, Portuguese law does not establish a presumption regarding child victims' special needs. Nevertheless, it is a common practice of law enforcement authorities to always consider them to be particularly vulnerable victims¹⁴⁸. Moreover, Article 67-A(3) of the CPP establishes that victims of violent crimes¹⁴⁹ are presumed to be particularly vulnerable. This is also contrary to the Victims' Directive: as explained, the purpose of the individual assessment should be to make an individual evaluation of the victim's needs and not to classify *a priori as victims with specific protection needs a group of victims with certain characteristics or victims of a certain type of crimes*¹⁵⁰.

Other issues arise with the legal implementation of Article 22 of the Directive in Portugal and, again, they are related with the **fragmentation of the regimes** of victims' rights and protection. In fact, particularly vulnerable victims are also defined in two other laws, namely the already

147 APAV, APAV's Legal Opinion related to Law Proposal n.º 343/XII amending the Code of Criminal Procedure and approving the Victims' Statute, transposing 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 (Parecer da APAV relativo à Proposta de Lei n.º 343/XII que procede à 23.ª alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva n.º 2012/29/UE, do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro n.º 2001/220/JAI, do Conselho, de 15 de março de 2001), 2015, p. 12. Available at: https://apav.pt/apav_v3/images/pdf/parecer_APAV_prop_lei_343_XII_transposicao_Directiva.pdf.

148 Interviewee 3.

149 According to 1(j) and (l) of the CPP, violent crimes and particularly violent crimes are conducts punished with imprisonment sentence of 5 years or over, in the first case, and 8 years or over in the latter.

150 APAV, APAV's Legal Opinion related to Law Proposal n.º 343/XII amending the Code of Criminal Procedure and approving the Victims' Statute, transposing 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 (Parecer da APAV relativo à Proposta de Lei n.º 343/XII que procede à 23.ª alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva n.º 2012/29/UE, do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro n.º 2001/220/JAI, do Conselho, de 15 de março de 2001), 2015, p. 11. Available at: https://apav.pt/apav_v3/images/pdf/parecer_APAV_prop_lei_343_XII_transposicao_Directiva.pdf.

mentioned Law no. 93/1999 on Witnesses' Protection¹⁵¹ and Law no. 112/2009 concerning the prevention of domestic violence and the protection of its victims¹⁵². Instead of choosing to combine the transposition of the Victim's Directive with the already existent regime for witness with special protection needs, the Portuguese legislator decided to create a set of rules regarding the protection of these victims in yet another law, jeopardising coherent implementation of the norms¹⁵³.

In more practical terms, the fact that the two-step procedure of the individual assessment of victims seems to be embodied in the law, there are no further consolidation of the norms and no guidelines on how and by whom the individual assessment must be done. This results, inevitably in inconsistencies. This is clear when some professionals consider that no individual assessment of victim's needs is made at all and that, instead, police officers only perform a risk assessment of repeat victimisation which is not the same¹⁵⁴. This is confirmed by survey respondents which consider that individual assessment of victims is rarely made while risk assessment is conducted more often.

What happens in practice is that police officers, when first contacting with victims, try to grasp the concrete impact of the crime in the victim's life, the victim's personal circumstances (for example, living conditions, employment status and prior victimisations) and the existence of a support network of family and friends¹⁵⁵. However, and in the absence of clear uniform guidelines and of special training for police officers who perform this duty, first, there is no assurance that this so-called individual assessment is performed in relation to all victims. Secondly, there are recurrent inaccuracies and, sometimes, discrimination. For example, a women victim of domestic violence or an older person victim of theft are usually considered victims with specific protection needs even though, in their concrete circumstances, they might not need to be; while an adult man victim of physical assault will most probably never be considered as a particularly vulnerable victim even though, for example, he is being threaten continuously and in in risk of being assaulted again.

151 Article 26(2) of Law no. 93/99 establishes the following: "The special vulnerability of the witness may result, in particular, from his or her very advanced age, health status or the fact that he or she has to testify against a person of the family or closed social group in which he or she is placed in a condition of subordination or addiction."

152 The definition of "especially vulnerable victim" in Article 2(b) of the Law on domestic violence is worded in a slightly different way than the CPP's definition but, in essence, it incorporates the same elements.

153 APAV, APAV's Legal Opinion related to Law Proposal no. 343/XII amending the Code of Criminal Procedure and approving the Victims' Statute, transposing 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 (Parecer da APAV relativo à Proposta de Lei n.º 343/XII que procede à 23.ª alteração ao Código de Processo Penal e aprova o Estatuto da Vítima, transpondo a Diretiva n.º 2012/29/UE, do Parlamento Europeu e do Conselho, de 25 de outubro de 2012, que estabelece normas relativas aos direitos, ao apoio e à proteção das vítimas da criminalidade e que substitui a Decisão-Quadro n.º 2001/220/JAI, do Conselho, de 15 de março de 2001), 2015, p. 8. Available at: https://apav.pt/apav_v3/images/pdf/parecer_APAV_prop_lei_343_XII_transposicao_Directiva.pdf.

154 Interviewee 1 and 2.

155 Interviewee 3.

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.

In Portugal, the measures foreseen in Article 23 of the Directive are, yet again, quite dispersed in the different laws related to victims' protection.

Article 21(2) of the Victims' Statute lists the protection measures which should be applied when a victim is considered a particularly vulnerable victim: (a) all **inquiries** of the victim shall be **carried out by the same person**; (b) **inquiries** of victims of sexual violence, gender-based violence or violence in intimate relationships, shall be done **by a person** of the same sex of the victim, unless it is performed by the judge or by a public prosecutor; (c) measures for **avoiding visual contact** between victims and the offender shall be taken¹⁵⁶; (d) victims shall be able to provide **statements for future memory**¹⁵⁷; and (d) **exclusion of publicity** of court hearings, according to Article 87 CPP, shall be available¹⁵⁸. In this list, the protection measure prescribed in Article 23(2)(b) of the Victims' Directive - interviews with the victim being carried out by or through professionals trained for that purpose - is not included.

Moreover, Article 17 of the Victims' Statute and Article 22(1) of Law no. 112/2009 on domestic violence prescribe, in accordance with Article 23(2)(a) of the Victims' Directive, that victims shall be heard and inquired in an **informal and private environment**. In turn, Article 138 of the CPP¹⁵⁹ already embodied the protection measure of Article 23(3)(c) of the Directive - avoid unnecessary questioning concerning the victim's private life not related to the criminal offence.

Besides the Victims' Statute and the CPP, other laws contain protection measures for victims with special protection needs. Article 27 of the **Law no. 93/99, on witness' protection** provides that the prosecutor, the pre-trial judge or the trial judge shall designate a social worker or another person especially qualified for the purpose to ensure the court accompaniment or psychological support for the victim. Moreover, Article 28 establishes that the statements or declarations given by the witnesses at the investigation phase shall take place with **minimum delay** after the crime occurs. Finally, Article 29 states that the judge may **guarantee that the witness never enters in contact with the offender** by hearing the witness through occultation means or teleconference¹⁶⁰.

¹⁵⁶ Article 23 of the Victims' Statute refers to the resort to videoconference or teleconference to obtain statements and declarations made by victims with special protection needs. According to this Article, when the offender needs to be present, these technological tools should be provided to enable the victim to make statements and declarations while avoiding any contact with the offender. During the investigation phase of the criminal procedure, the use of these tools must be requested by the public prosecutor, the judge or the victim and are determined by the Public prosecutor. During the pre-trial and judgment phases, the tools must be requested by the Public prosecutor, by the judge or by the victim and are determined by the court. The same measure is prescribed in Article 32 of Law no. 112/2009, on the protection of victims of domestic violence.

¹⁵⁷ See above the commentary on Articles 10 and 17. Article 24 of the Victims' Statute refers that, upon a victim's or Public prosecutor's request, the judge might proceed with the questioning of the victim during the investigation phase by resorting to the tool of statement for future memory, referred in Article 271 of the CPP. Article 271(4) establishes a special situation where a sexual crime was committed against a minor, in these cases, the statement shall be provided in a private and informal environment, in order to guarantee the spontaneity and sincerity of the answers. The same measure is prescribed in Article 33 of Law n 112/2009, on the protection of victims of domestic violence.

¹⁵⁸ See above the commentary on Article 21.

¹⁵⁹ Article 138(3) of the CPP states that the inquiry of the victim/witness shall focus only on the necessary elements for the identification of the witness, his/her relationship with the other parties to the proceedings, as well as on any circumstances relevant to the evaluation of the witness credibility of the testimony.

¹⁶⁰ See commentary on Article 19.

Moreover, Articles 32 and 33 of **Law no. 112/2009, on the prevention of domestic violence and the protection and assistance of its victims**, provide for the application of the same measures as Articles 23 and 24 of the Victims' Statute, respectively.

This is a clear example of the patchwork legal framework regarding victims' rights currently existing in Portugal¹⁶¹. The entry into force of Law no. 130/2015 and, consequently, of the Victims' Statute, indeed, added to the list of available protection measures some of the measures prescribed in the Victims' Directive which were, at the time, not foreseen by the Portuguese law. However, considering that there were already some protection measures destined to victims with special protection needs in other legal instruments, namely the CPP and the laws mentioned above, it resulted in the fragmentation of the legal regime and one has to go back and forward between all these laws when trying to understand which measures are available and which should be applied in the specific case.

In practice, when the case concerns a crime of domestic violence, law enforcement and judicial authorities are quite sensitive to the application of the protection measures described above. For example, some professionals say that victims of domestic violence do not wait in the police stations or courts' public waiting room, to avoid an encounter between them and the perpetrator, and that it is a common practice to ask victims to enter/leave through the building's back door¹⁶². In fact, in relation to victims of domestic violence there has been significant improvements and efforts to guarantee more protection to victims, however, the same careful procedures and measures are not always applied to other victims with special protection needs, for example, the elderly, children, persons with disabilities, migrants, victims of hate crimes, and so on¹⁶³.

¹⁶¹ See commentary on Article 2.

¹⁶² Interviewee 3.

¹⁶³ 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 was transposed into Article 22 of the Victims' Statute. Article 22(1) foresees that age and maturity of the child shall be taken into account. Article 22(2) states that, if there is no conflict of interests, the child may be accompanied, while testifying, by his/her parents, legal representative or by who has his/her guardianship; while Article 22(3) requires that an attorney is appointed if there is conflict of interests between the child and the parents or the legal representative or when the child with adequate maturity so requires. Regarding the protection of privacy of the child victim, Article 22(5) determines that information allowing for the identification of the child cannot be disclosed to the public¹⁶⁴.

Finally, Article 22(6) declares that when the age of the child is unknown and there are reasons to believe that the victim is a child, the victim shall be presumed as being a child. In practice, however, such presumption is not applied because many judiciary authorities believe it would work against the author of the crime in terms of reprehensibility of the conduct¹⁶⁵.

As for the mechanisms used in order to **obtain the testimony of a child victim**, when a sexual

¹⁶⁴ See commentary on Article 21, reference to Law no. 147/99.

¹⁶⁵ Interviewee 4.

crime is committed against a minor, the mechanism of **statements for future memory** is always used, in accordance with Article 271 of the CPP¹⁶⁶. Besides this, there is no official mechanism other than the **videoconference and audio recording**, although video conference is preferred due to the visual component, which is essential. Nevertheless, not all prosecutors' offices and courts have the necessary equipment available due to budgetary restrictions which is an unacceptable violation of children's rights.

Some commendable efforts are being made within law enforcement authorities in order to better accommodate child victims' needs. For example, many police stations across the country now have rooms with toys for children, food, dippers and appropriate facilities to change and clean the babies, in order to make their time at the police stations a less traumatising experience. Additionally, the child victim is usually accompanied or stays – when his/her mother, father or legal representative are providing information of being interrogated – with a police officer who is dressed like a civilian and, when needed, they are always transported in a civilian car.

Inquiring a child victim requires specific skills, especially patience, sensitivity, thoughtfulness, and open questions. However, this is an area where great improvement is needed. Many professionals, especially prosecutors, lawyers and judges lack the adequate skills to properly communicate with children. They often act in a very formal manner before the child which automatically makes the child very uncomfortable and, most often, uncooperative. Moreover, there is usually not enough sensitivity regarding the child's maturity and these professionals, during inquiries and especially during trial hearings, pose inconvenient and inappropriate questions to the child¹⁶⁷.

This is the result of **lack of specialised training** within the judiciary system and of the generalised idea, among judicial professionals, that the criminal proceedings must strictly follow the procedural law – in what is still a very defendant's rights oriented view – independently of whether the victim is a child.

There are, however, some measures being tested in order to improve the way and conditions in which child victims are asked to give their testimony of a crime. In Oporto, a pilot project is being implemented and it aims at making inquiries of child victims a quieter and less stressful experience for them. The inquiry takes place in a small room, where a very informal environment is created resorting to entertainment tools, such as toys, where only the child and a certified psychologist are present. It is the psychologist who inquires the child, with the direction of the judge and lawyers through a headset, who are in an attached room, from where they can directly supervise the inquiry through a one-way mirror¹⁶⁸. Many prosecutors and especially judges do not agree with this different practice and are reluctant to apply it because they declare that it is contrary to the CPP which establishes that the pre-trial judge and the trial judge are the authority

¹⁶⁶ See commentary on Article 10.

¹⁶⁷ Interviewee 2.

¹⁶⁸ Interviewee 2.

responsible for directing the pre-trial and trial hearings, respectively¹⁶⁹.

In order to provide simple, accurate, clear and useful information on the functioning of the criminal justice system to young persons, APAV promoted and implemented a project called ABC Justice (*ABC Justiça*)¹⁷⁰ which resulted in the creation of an interactive website and guidelines for the implementation of awareness raising session for children and young persons on the criminal proceedings and victims' rights.

ARTICLE 25 - TRAINING OF PRACTITIONERS

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

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

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

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

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

In Portugal, Article 25 was transposed into Article 28 of the Victims' Statute. It establishes that **police authorities and judicial professionals who might enter in contact with victims shall receive general and specialised training**, increasing their awareness regarding victims' needs and protection as well as promoting a non-discriminatory, respectful and professional handling of the cases. Moreover, this article mentions that the Center for Judicial Studies (*Centro de Estudos Judiciários, CEJ*) shall promote training activities with contents related to victimisation, in order to increase awareness of judges and public prosecutors regarding victims' rights. In practice, however, only recently the importance of the role of police officers and judicial authorities in avoiding secondary victimisation was recognised. Therefore, some efforts in order to improve trainings provided to professionals who have first contact with victims of crimes are being taken¹⁷¹.

¹⁶⁹ Articles 271(5), 301 and 322 of the CPP.

¹⁷⁰ http://abcjustica.pt/en/01_home/home.html.

¹⁷¹ APAV (2016), IVOR Report – Implementing Victim-oriented Reform of the Criminal Justice System in the European Union, p. 165. Retrieved from: <https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot-WebVersion.pdf>.

Some argue that law enforcement agents' official training approaches sufficiently the topic of victims' needs and rights. Indeed, for example, the curricula of the Police Training School comprises a course in communication and assistance. However this training must be reinforced and updated regularly¹⁷². Additionally, since it currently focus on domestic violence, the training should be expanded to embrace other types of crimes. Many NGOs provide training sessions for police forces but the fact is that these **trainings are not compulsory** and only **cover a small fraction of police officers** in need of such training¹⁷³. APAV, for example, provided training activities for a total of 383 law enforcement agents in 2017¹⁷⁴.

Regarding the training of **judicial professionals**, they are not obliged to attend training on victims' rights and needs as a part of their official education¹⁷⁵. CEJ holds a Continuous Training Plan (*Plano de Formação Contínua*)¹⁷⁶ in compliance with its mission and Article 28 of the Victims' Statute. The 2017-2018 programme of the Continuous Training Plan comprises one sole reference to victims in the context of one day conference on domestic and gender violence and female genital mutilation¹⁷⁷. Therefore, the training of judicial officers is clearly insufficient in what concerns victimology and victims' rights¹⁷⁸. Similarly, **lawyers** do not receive mandatory regular training regarding victims' rights and on how to deal with victims of crimes¹⁷⁹. Again, the role of NGOs is crucial in filling the gaps. By way of example, in 2017, APAV has promoted training sessions or other activities for 155 professionals working within the criminal justice system (public prosecutors, judges, judicial officers and lawyers).

As for the training of **victim support officers**, at APAV, all new victim support officers and volunteers are obliged to attend a training course in Support of Victims of Crime provided by APAV's own Training Centre. Each training includes 90 hours of theory (38 hours) and practice (52 hours) including, e.g. observations and practice under supervision¹⁸⁰.

172 Interviewee 3.

173 APAV (2016), IVOR Report – Implementing Victim-oriented Reform of the Criminal Justice System in the European Union, p. 166. Retrieved from:

<https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot-WebVersion.pdf>.

174 APAV, Activity Report: Training 2017.

175 APAV (2016), IVOR Report – Implementing Victim-oriented Reform of the Criminal Justice System in the European Union, p. 168. Retrieved from:

<https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot-WebVersion.pdf>.

176 The main objectives of the Continuous Training Plan is the update, intensification and specialisation of knowledge; the development of technical knowledge on European and international judicial cooperation; awareness for emerging social realities relevant for the exercise of legal professions; improvement of the knowledge on the social function of judicial officers; study and discuss deontology; and cultivate good practices. For further information: <http://www.cej.mj.pt/cej/forma-continua/forma-continua.php>.

177 The 2017-2018 programme of the Continuous Training Plan can be consulted at: http://www.cej.mj.pt/cej/forma-continua/fich-pdf/formacao_2017_18/Plano_FC_2017_2018_final.pdf.

178 Interviewee 2.

179 APAV (2016), IVOR Report – Implementing Victim-oriented Reform of the Criminal Justice System in the European Union, p. 169. Retrieved from:

<https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot-WebVersion.pdf>.

180 For further information on the training modules:

http://www.apav.pt/ivor/images/ivor/PDFs/Practice_sheets_on_Training.pdf.

APAV created its own Training Centre (*Centro de Formação*)¹⁸¹ in 2003, with the accreditation of the Directorate-General of Employment and Work Relations (*Direção-Geral do Emprego e das Relações de Trabalho, DGERT*), "(...) an entity responsible for defining and publishing the evaluation criteria for quality and the accreditation of training institutions in Portugal, which formally recognises the technical and pedagogical capacity of APAV to provide professional training"¹⁸². The Centre provides internal training – for staff and volunteers – and external training – for law enforcement and judicial authorities, the staff of other NGOs, students, health professional, social workers, among others¹⁸³. In 2017, the Training Centre was responsible for the organisation of trainings and other activities (for example, workshops, awareness raising sessions, seminars and e-learning courses) in which a total of 24.474 people participated.

Considering that, with the entry into force of the Victims' Statute and Article 67-A of the CPP, the paradigm of the criminal proceedings and criminal law in Portugal has changed – previously the focus of the law was mainly the defendant and his/her rights –, it is fundamental that the training of professionals on victims' rights improves significantly in relation to what is available now.

181 The Training Centre is coordinated centrally at the Head Office, in Lisbon, and has Training Offices spread across the country in Oporto, the Algarve and the Azores.

182 APAV (2016), IVOR Report – Implementing Victim-oriented Reform of the Criminal Justice System in the European Union, p. 171. Retrieved from:

<https://www.apav.pt/ivor/images/ivor/PDFs/IVOR-Repot-WebVersion.pdf>.

183 APAV, Activity Report: Training 2017.

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' Statute does not transpose Article 26 of the Directive. Nevertheless, currently, Portugal is a contracting party to a series of Conventions related to the right of victims, such as:

- Council of Europe:
 - European Convention on Mutual Assistance in Criminal Matters, April 1959 (in force in Portugal since December 1994)
 - European Convention on the Compensation of Victims of Violent Crimes, November 1983 (in force in Portugal since December 2001)
 - Convention on Cybercrime, November 2001 (in force in Portugal since July 2010)
 - Council of Europe Convention on Action against Trafficking in Human Beings, May 2005 (in force in Portugal since June 2008)
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, October 2007 (in force in Portugal since December 2012)

- United Nations
 - Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, December 1949 (into force in Portugal since September 1992)
 - United Nations Convention against Transnational Organised Crime, September 2003 (in force in Portugal since June 2004)
- European Union
 - Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, May 2000 (into force in Portugal since August 2008)
- Community of Portuguese Speaking Countries (*Comunidade dos Países de Língua Portuguesa, CPLP*):¹⁸⁴
 - Convention on Mutual Assistance in Criminal Matters between the Member States of the Community of Portuguese Speaking Countries, November 2005 (into force in Portugal since September 2008)

In what concerns **awareness raising**, the Portuguese Government has developed and implemented some campaigns with regard to specific groups of victims, for example children, or certain types of crimes, namely domestic violence. However, there was never a governmental initiative to disseminate an awareness raising campaign on victims' rights enshrined in the Directive or the Victim Statute. These types of campaigns have been developed by NGOs, particularly APAV¹⁸⁵.

Even though, by its own initiative, the Government has not developed any initiative related to awareness raising on victims' rights, it has proved, particularly through the Ministry of Justice and the Ministry of Internal Administration, willing to participate as partner in and co-finance several projects implemented by APAV and other organisations.

In what concerns the implementation of programmes destined to enhance the protection of victims, it is worth mentioning some projects implemented by the national Public Security Police (PSP) – which is dependent on the Ministry of Internal Administration – in cooperation with

¹⁸⁴ The Community of Portuguese Speaking Countries is constituted by Angola, Brazil, Cape Verde, East Timor, Equatorial Guinea, Guinea-Bissau, Mozambique, Portugal, and São Tomé and Príncipe, <https://www.cplp.org/id-2597.aspx>, last visited on 17/11/2017, 16:20.

¹⁸⁵ For example, projects Infovictims and Infovictims II which resulted in a website, a manual and a mobile app destined to inform victims of crimes and the public in general on how criminal proceedings work, on victims' rights and support services available. The project was co-financed by the Criminal Justice Support Programme of the European Commission – Directorate-General for Justice and involved the cooperation of different organisations which resulted in six adaptations of the project, namely in Austria, Czech Republic, Germany, Poland, Portugal, and Scotland. APAV, http://www.infovictims.pt/pt_en/001_home/001_infovictims.html, last visited on 17/11/2017, 16:21.

other entities, such as APAV. For example, “Espaço Júlia”, a multi-disciplinary space integrated in a hospital facility in Lisbon, to assist and support victims of domestic violence. Both police officers and social workers collaborate around the clock, 365 days a year. Professionals working here refer victims to APAV when necessary, and vice-versa. This project was repeated and “Casa da Maria” was created, this time integrated in a police station in Oeiras, with the purpose of providing support to victims of domestic violence and victims of violent crimes¹⁸⁶.

A second programme implemented by PSP is the “Significativo Azul”, which intends to raise awareness of people with disabilities towards their vulnerability to crimes and safety measures they can adopt. It focuses on supporting these people when they become victims of crimes, but most of all in preventing crimes against them, adapting communication and information for them¹⁸⁷.

Finally, another example of a programme implemented by PSP is “Apoio 65”. Acknowledging that Portuguese population is aging and the fact that elders constitute a particularly vulnerable group to crimes, the police raises awareness among them in order to prevent crime, increase their protection against criminal acts such as fraud and theft - two very common crimes committed against elders - and provide victim support services¹⁸⁸.

186 Interviewee 3.

187 Interviewee 3.

188 Interviewee 3.

GOOD PRACTICES

Throughout the development of this report, good practices have been identified regarding the practical implementation of the Victims’ Directive in Portugal. All of them seem transferable and possible to implement in other Member States.

Right to information

In what concerns victims’ right to information, project Infovictims is a particular good practice. Its results have been acknowledged by several professionals of the criminal justice system, by victims themselves and by the European Commission as a very important tool in the empowerment of victims by providing them with accessible, simple and complete information regarding their rights and the criminal proceedings. The project resulted in a website¹⁸⁹ and phone app, currently available and adapted to 6 different languages and country realities¹⁹⁰, which are highly accessible to victims and are also used by police officers and prosecutors when providing information to victims as mandated by Article 4 of the Victims’ Directive.

Statement for future memory

Concerning Article 10 of the Directive (right to be heard), researchers have identified that there has been a significant improvement in accommodating some victims’ special protection needs, particularly children, through the use of statements for future memory. This system allows for the victims to be heard in the **investigation phase** as if they were to be heard in the final hearing but in a **more informal scenario**. This hearing happens in a smaller room where the parties to the procedure are present, namely the judge, the defendant’s lawyer, the prosecutor and the victim support worker accompanying the victim or his/her lawyer if there is a need to assign one. The recording of the victim’s testimony in this more informal and supposedly less stressful environment can be used as evidence in trial, thus avoiding a stressful experience for him/her.

Child victims

Besides the possibility of resorting to the above mentioned mechanism, some techniques for taking the testimony of child victims are being tested in the area of Oporto. In these inquiries, only the child and a certified psychologist are present in the room – not a court room, but instead a child friendly room with toys and other entertainment tools for children. The psychologist inquires the child following the directions given by the judge and lawyers, who are supervising

189 http://www.infovictims.pt/pt_en/001_home/001_infovictims.html, last visited on 26/05/2018, 16:37.

190 Projects Infovictims I and II resulted in the creation of websites for Austria, Czech Republic, Germany Poland, Portugal and Scotland.

the inquiry in the next room through a one-way mirror and communicating with the psychologist through a headset.

Reduction of victims' costs

Regarding the Directive's Article 14 (right to reimbursement of expenses), it has been identified that some tools are being used in order to **avoid the dislocation of the victim** to court when participating in the criminal proceedings. For example, judges may use **video conference** to hear a victim who is located far away from the court and who would have to encounter great travel expenses to be present at the court hearing.

Avoiding contact with the offender

In relation to Article 18 (right to protection) and Article 19 (right to avoid contact between victim and offender) of the Victims' Directive, it has been identified that police officers, prosecutors and court staff are very much used to take measures to avoid the contact between the victim and the offender at police station, public prosecutors' offices and court buildings. These measures, for example, **taking the victim outside by the backdoor** of the building or through the garage and setting different dates/times for appointments, are a part of the daily routine of most professionals, especially in cases of domestic violence or when the victim is considered to be particularly vulnerable to repeat victimisation.

Prioritisation of certain sensitive cases

The **prioritisation** of investigation and prosecution of **domestic violence** cases – mandated by Law no. 96/2017 on Criminal Policy – has resulted in positive results, namely, faster action on the part of the criminal justice system in **determining and applying protection measures** to the victim, in ordering the application of **restrictive measures** to the defendant¹⁹¹ and in conducting the proceedings, especially when the result of the risk assessment conducted indicates that there is a high or extremely high risk of repeat victimisation, intimidation and retaliation as high.

Avoiding repetitive statements

Moreover, it has been reported that there is an increasing effort among police officers and prosecutors to avoid unnecessary repetitions of victims' inquiries. There is a bigger effort to ensure that a complete a thorough first inquiry is performed, making sure the victim does not need to be questioned again in the course of the investigations.

¹⁹¹ See commentary on Article 18.

Training of practitioners

Even though there is still a great deal of work to be done in what concerns the training of professionals of the criminal justice system in Portugal, it should be noted that there are more and more training opportunities available to them. APAV is frequently invited to instruct policemen on issues related to the protection of victims' rights and it has been implementing several projects which comprise training for practitioners on different matters related to victims' rights. Although no training on victims' needs, perspectives and rights is mandatory to neither police officers, prosecutors, lawyers nor judges, according to APAV's perception, there is an increasing number of professionals interested in receiving such trainings.

GAPS, CHALLENGES, AND RECOMMENDATIONS

Throughout the present research, some gaps and challenges regarding the practical implementation of the Victims' Directive in Portugal have been identified.

Communication with victims

One of the biggest shortcomings in the current functioning of the criminal justice system in the country is related to the communication with victims and the right to understand and be understood. As the present report clearly illustrates, professionals directly working with victims often **do not possess adequate communication skills** (clarity, patience, cultural sensibility and language skills). This is particularly significant when the victim does not speak nor understand Portuguese, due to the lack of interpretation and translation services, an issue dealt more in detail below, or when the case concerns a child victim, which reflects the **lack of specialised training** of professionals.

Even though some improvement has been registered, particularly in what concerns the training of police officers, the training received by professionals of the criminal justice system is considered to be insufficient in what regards victimology, victims' needs, rights and perspective. The curricular training of all these professionals should include **mandatory courses** on these topics to adequately prepare them to deal with victims who are, in most cases, a great part of the people they contact with professionally. Moreover, internal **regular training** opportunities must be organised and the practitioners' participation in **external trainings** must be encouraged at the hierarchical level to ensure that a victims' oriented approach is included in the academic and professional training of those who contact with victims of crime.

Right to information

In the course of the research, it was identified that, when filing a complaint, victims receive a copy of the Victims' Statute. According to police and judicial authorities this is the way victims are informed of their rights, in addition to the information provided to them orally. This is one way victims can receive information about their rights in the criminal proceedings. However, the Victims' Statute is a law and comprises, therefore, **very technical language** in a rather **long text**, compromising its accurate understanding by all victims.

Simpler and more accessible language should be used to communicate with victims, particularly when informing them of their rights, in order to guarantee that they fully acknowledge and understand the information that is crucial in the course of the criminal proceedings. As already happens in some police station, accessible and easy-to-understand information, such as the one available in the Infovictims website, leaflets and posters, should be provided to victims together with the copy of the Victims' Statute. Moreover, the **translation** of both the Victims' Statute and these additional sources of information in different languages – taking into consideration regional needs – is highly recommended as well as the **adaptation** of such materials to specific characteristics of different target groups, for example people with disabilities, older persons and children, allowing victims to understand more easily the information provided to them.

The research also identified that the copy of the Victims' Statute handed to victims when they present a complaint contains a list of available support services and that, sometimes, this information is also provided orally. Nevertheless, **merely listing the existing support services is not sufficient** to fulfil victims' rights to information. It is vital that authorities understand the mission and scope of action of different support services and other entities which victims might need to resort to, in order to explain clearly what kind of support victims can obtain from each of these services/entities. Additionally, police officers and public prosecutors should, instead of just informing victims, actually **refer situations to victim support services**, creating a real articulation between police/judicial authorities, victim support services and other public or private entities, such as health institutions, education services and social security.

Lack interpreters and translators

Other major gap in the fulfilment of victims' rights in Portugal is caused by the **lack of translators and interpreters**. There is also a **lack of funds** to guarantee that qualified professionals assist police and judicial authorities in the communication with victims who do not speak nor understand Portuguese. On one hand, this gap **compromises the exercise of many rights**, such as the right to translation and interpretation, right to information and the rights of victims resident in another Member State, and, on the other hand, constitutes what many professionals consider the main **obstacle to access justice**.

Until now, interpretation and translation services are arranged because there is an informal list comprising the contacts of particular interpreters and translators, which circulates between police stations and the different units of the Public Prosecutor's Office. To circumvent this problem, an increase of funds is necessary in order to create and secure an **official list of certified translators and interpreters** which would provide their services upon fair and reasonable payments, thus, guaranteeing around the clock and quality certified interpretation and translation services.

Moreover, to guarantee that victims who do not speak nor understand Portuguese fully

understand not only the information they are given but also the documents they receive or need to prepare to participate in the criminal proceedings, it is necessary that a **list of documents for mandatory translation** is created. This should not, however, impair victim to request, under a valid reason, the translation of a document which is not in this official list of documents.

Criminal mediation

According to the present research, the existent national system for criminal mediation is not used since 2011. Thus, the revision of the system for criminal mediation is recommended. Once the Directive's legal requirements are met and there is no valid reason that might advise against the resort to this system, professionals of the criminal justice system must be motivated to resort to criminal mediation. It is, thus, important to define and execute an information and awareness strategy close to the Public Prosecutors' Office, as the entity which refers the procedures to the system for criminal mediation, but also close to other actors who might have an important role to play in this matter, such as lawyers, judicial staff, and the public in general.

Still related to the matter of restorative justice, it becomes important to promote experimental programs of restorative justice in other phases of the criminal proceedings, namely in execution of sentences, in other types proceedings, for example in the educational guardianship proceedings, or in criminal proceedings related to other types of crime, such as serious crimes¹⁹².

Legal aid

Other gap identified in the fulfilment of victims' rights is related to the right to legal aid. In Portugal, in order to benefit from legal aid, the victim needs to demonstrate that they are in a situation of economic insufficiency. The criteria provided by the national law to assess such situation are very strict. Hence, many citizens decide not to proceed with criminal proceedings. Moreover, after requesting legal aid to the social security, the time for the attribution of legal aid varies deeply and, in some cases, victims have to wait for several months until they are awarded legal aid. As a result, the right to access to justice is restricted.

In order to improve this scenario, it is recommended that legal aid should be provided to victims of serious crimes, regardless of the economic situation, and that judicial fees should be reduced to 50% when a victim needs or desires to be constituted as assisting party to the public prosecutor¹⁹³.

192 APAV (2015), Para um Estatuto da Vítima em Portugal: direitos mínimos das vítimas de todos os crimes – Contributo da APAV para a transposição da Directiva da UE sobre direitos, apoio e proteção das vítimas, pp. 63. Retrieved from: https://apav.pt/apav_v3/images/pdf/APAV_Directiva.pdf.

193 APAV (2015), Para um Estatuto da Vítima em Portugal: direitos mínimos das vítimas de todos os crimes – Contributo da APAV para a transposição da Directiva da UE sobre direitos, apoio e proteção das vítimas, pp. 66-67. Retrieved from: https://apav.pt/apav_v3/images/pdf/APAV_Directiva.pdf.

Compensation from the offender and the State

As the research indicates, the right to obtain compensation from the offender is often not fulfilled. Even in cases where a compensation is awarded to victims, it is difficult to ensure that they receive it from the offender due to his/her economic situation.

As regard to the compensation from the State, in practice, the biggest challenge for victims, in this case for victims of violent crimes¹⁹⁴, is to obtain timely compensation from the Commission to the Protection of Victims of Crimes since the decisions of this Commission, besides being uneven, usually take a long time to be delivered.

In what concerns the compensation from the State, APAV has been, for long, recommending the creation of a national fund, constituted through the allocation of a percentage of the amount paid as judicial fees, fines or injunctions, and payments made by defendants as sentenced by the court. This fund would guarantee that more victims of crimes are effectively compensated by damages suffered resulting from the serious crimes.

Reimbursement of expenses and return of property

Similarly, research indicated that reimbursement of expenses as a result of participation in the criminal proceedings takes a very long time which, in some cases, deter, as well, victims and other witnesses from participating in the proceedings. Similarly, and due to the length of criminal proceedings, the return of property becomes a difficult question to solve. There is not a fast and efficient response for every case.

Right to protection

As explained above, many professionals, taking into consideration victims' risk of repeat victimisation, intimidation and retaliation, take measures to **avoid the contact between the victim and the offender**. However, these measures are restricted to the entering and exiting in police stations, public prosecutors' offices and court buildings. Therefore, it seems that the right to avoid the perpetrator is not duly guaranteed in all circumstances. For instance, many victims are not accompanied in court buildings and they are easily confronted with the perpetrator in these situations. Moreover, there are also many situations in which, during trial, the victim is sitting in front of the offender which means that they do not face the offender.

To avoid these kinds of situations and ensure that the participation in criminal proceedings is not a yet more traumatising experience to victims, it is recommended that more clear **logistic measures and procedural norms** are adopted and disseminated among professionals in order to allow for the victim and his/her family to avoid contact with the offender in every place or

194 See commentary on Article 16.

room where the criminal proceedings takes place, minimising the risk of secondary victimisation, intimidation and eventual retaliation.

As the present report demonstrates, **victims' privacy** is, in some cases, very **difficult to protect**. It has been reported that in some police stations, victims are not assisted in a separate room. On the contrary, they present the complaint and describe the crime in the common hall of the police station where they are surrounded by many police officers and other people present at the time, often, offenders. It is, thus, recommended that inquiries of every victim take place in previously adapted rooms, guaranteeing victims' privacy and creating a safe space where victims feel as comfortable as possible when describing the facts.

Still, in relation to the protection of privacy it is also recommended that Article 88(2)(c) which expressly prohibits publication, by the media, of the identity of victims of certain crimes, except for when they give their consent, is amended and not restricted to some victims.

Individual assessment of victims' needs

The research illustrates that, in practice, the individual assessment of victims' special protection needs is not done in the way it is foreseen in the Victims' Directive.

Article 67-A(1)(b) of the CPP provides a definition of "especially vulnerable victims" and it takes into account certain characteristics of the victim, such as age, health status and disability. However, there are a number of **problems with this definition** that reflect in the practical fulfilment of rights of victims with special protection needs. First, other relevant characteristics, such as gender identity or gender expression, residency status, communication difficulties and relationship with the offender, are left out by. Moreover, there is no legal obligation to render as particularly vulnerable victims in close relationship with the offender, victims of crimes with bias or discriminatory motives, terrorism, organised crime, human trafficking, gender-based violence, sexual violence, exploitation, and hate crimes.

Furthermore, the Victims' Statute establishes, in Article 20(1) that an individual assessment of the victim must be done but the **law is silent on how and by whom this assessment must be implemented** in practice. In fact, some professionals reported that there is no individual evaluation being done at all, only an evaluation of the risk danger to physical integrity and life of the victim.

On this matter, it is recommended that, first of all, **a scientifically tested tool for** carrying out individual assessments of victims is adopted. Moreover, **specific and detailed guidelines** on how to perform this individual assessment – following the suggestions of the European Commission's Directorate-General for Consumers and Justice - are issued and **training** on this issue is organised to all professionals who first contact with victims.

Training of professionals

Finally, the research demonstrated that there is **no mandatory training for professionals** working within the criminal justice system, namely, police officers, prosecutors and lawyers, on issues related to victimology and victims' protection, communication and support needs. It is clear that victim support organisations have a leading role in providing training services for these professionals but this does not exempt the State from its obligation to provide adequate training. Hence, it is recommended that every professional contacting with victims of crimes receives **regular training**, in extension and depth corresponding to the level of contact established with victims within the context of functions performed. This allows for the better understanding of crimes' impact on victims, of different ways to deal with this matter, of risks of victimisation, retaliation, secondary and repeated victimisation and on ways to avoid these situations. It is also essential for these professionals to gain better understanding and awareness of victims' needs and to learn how to treat victims with respect, professionalism and in a non-discriminatory manner, how to provide information and how to refer victims to the most adequate support services.

CONCLUSION

The present national report, completed within the context of project VOciare, aimed at assessing the practical implementation of the Victims' Directive in Portugal, through a desk research complemented by the collection of surveys and the conduction of interviews with different groups of stakeholders working in the criminal justice system – police officers, prosecutors, lawyers and victim support officers. The present report analysed both the transposition of the Victims' Directive into national law as well as the practical implementation of each of the rights established in the same Directive, identifying good practices and shortcomings.

As the research showed, there are some imperfections in the transposition of the Victims' Directive into Portuguese law enacted by Law no. 130/2015 which amended the CPP and approved the Victims' Statute. Even though this law has added a definition of victim to the CPP and, thus, institutionalising the victim as a party to the criminal proceedings, the Victims' Statute came to increase the number of scattered laws related to victims' rights and protection. The result is, therefore, a patchwork legal framework instead of a consolidated and unified set of rules, which makes it more difficult to guarantee victims' rights in practice.

As for the practical fulfilment of victims' rights, even though some improvements have been made and some efforts are being implemented in order to better accommodate victims' needs in the criminal justice system, some challenges have been identified.

The respect for victims' rights is still highly dependent on individual professionals' diligence and good will, showing that concrete universal guidelines are missing. This greatly jeopardises victims' guarantees due to the lack of specialised mandatory training of police officers, prosecutors, lawyers and judges on topics related to victims' rights, needs and protection.

Major gaps were identified with the provision of information to victims, particularly victims with special communications needs (which are not properly assessed at the first contact with victims) and victims who do not speak nor understand Portuguese. For the latter group of victims, the right to interpretation and translation is constantly not guaranteed which was noted by most professionals involved in the research as one of the major gaps of the criminal justice system.

Furthermore, the individual assessment of victims' special protection needs is not undertaken as envisaged in the Directive since the law does not properly materialise how and by whom the individual assessment must be done and further regulations or guidelines are inexistent. Professionals first contacting with victims assess their particular vulnerability taking into consideration some of the victim's personal characteristics and the circumstances in which the crime occurred but this is

based on personal experience and sensibility instead of clear instructions and indicators, which leaves space for the discretionary evaluation of the victim's situation. In practice this results in the attribution of the status of particularly vulnerable victim to a restricted group of victims – victims of domestic violence, older persons, people with disabilities and children victims of crime. These victims are, most likely, in need of special protection due to their probable vulnerability, however, this means that no true individual assessment is made and that other victims belonging to different groups or being victims of different crimes which might still need special protection – due to the added risk of secondary or repeated victimisation, retaliation and intimidation – are almost automatically left out.

In what concerns victim support services, these are guaranteed by non-governmental organisations and not by the State and the referral of victims to these services by law enforcement and judicial authorities depends on good relations established by the support services with these entities since, in fact, there is no official, automatic and national referral system.

Finally, it should be highlighted that, as in many other areas and issues, victims living in rural and/or interior areas of the country do not receive the same treatment and support. This is caused by the allocation of fewer resources to these areas, being it either financial and human resources, transportation networks, facilities and services or training opportunities for professionals. The outcome is, inevitably, an inconsistency in the enjoyment of victims' rights in comparison to victims living in city and highly populated areas.

In the face of these and other challenges identified in the course of the present research, it is recommended that **more resources** are allocated to the protection of victims to guarantee, for example, the creation of an **official interpreters and translators list; adequate rooms for interviewing victims** in all police stations; availability of **hardware for videoconference** in all court rooms; commitment to more **raising awareness campaigns** on victims' needs and rights to the general public; and **more training opportunities** in order to change the paradigm of the criminal justice system, emphasising victims' needs and cultivate a human rights, non-discriminatory approach by all professionals who contact with victims.

In conclusion, the transposition of the Victims' Directive is not enough for guaranteeing victims' rights. The gaps and challenges identified in the practical implementation of the Directive in Portugal must be taken seriously as they impair the enjoyment of rights of people who have already suffered from crime and, not rarely, highly traumatising experiences. Finally, some good practices were also highlighted and must be applauded as well as encouraged.

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CPLP website: <https://www.cplp.org/id-2597.aspx>

APPENDIX 1 – CONTACT LIST OF INTERVIEWED PROFESSIONALS

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2	Maria Fernanda Alves	Public Prosecutor's Office		
3	Maria Aurora Dantier	Public Security Police (PSP)		
4	Maria José Matos	Judge		
5	Cláudia Meira	Victim Support Officer and manager of APAV's helpline system		
6	Alexandra Gaio	Victim Support Officer and manager of the victim support office in Alentejo		
7	Dolores Cabrita	Victim Support Officer and manager of the victim support office in Algarve		



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