

# VOCIARE

## SYNTHESIS REPORT



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



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of Rights in Europe

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### **DISCLAIMER**

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

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

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 Given its scope and ambition, authors are aware that some elements may be inaccurate or out of date.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

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# EXECUTIVE SUMMARY

It is estimated that 75 million people fall victim to crime each year in the European Union. After a crime occurs, its victims present different needs. The 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, also known as the Victims' Rights Directive, was adopted to improve the Member States' response to these needs and to ensure that victims across European borders enjoy their rights and have equal access to support services. As the European Commission stated, "[i]mproving the rights, support, protection and participation of victims in criminal proceedings is a Commission priority."

Project VOCIARE: Victims of Crime Implementation Analysis of Rights in Europe aimed at studying the practical implementation of the Victims' Directive at the national level, and to assess whether its implementation has been contributing to this priority.

The present Synthesis Report compiles information from a total of 26 National Reports<sup>1</sup> and presents the main findings of these joint and European-wide research effort.

**Article 2 – Definitions:** All Member States with the exception of Bulgaria – where the definition can be drawn from the Supreme Court's case law - have a legal definition of *victim*. In some Member States define the term *victim* under the auspices of other terms like *injured party* or *offended person*. Nonetheless, it seems that the concept of victim "as a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence"<sup>2</sup> is established in all Member States. Concerns arise, though, in relation to the definition of family members who can be considered as victims. Not all Member States include in the legal definition of family members all persons envisaged in the Directive<sup>3</sup>, precluding the excluded persons of enjoying the rights set forth in the Directive and national legislation.

**Article 3 – Right to understand and be understood:** Even though there some commendable efforts have been made for making information available to victims of crime, it is possible to conclude that written communications are often standardised and, in the case of some Member States, they comprise integral copies of legal provisions. Article 3 places on States' competent authorities an obligation not only to make information available to victims but also to ensure

1 Austria; Belgium; Bulgaria; Cyprus; Czech Republic; Germany; Estonia; Greece; Spain; Finland; France; Croatia; Hungary; Ireland; Italy; Lithuania; Luxembourg; Latvia; Malta; Netherlands; Poland; Portugal; Romania; Sweden; Slovenia; Slovakia.

2 Victims' Right Directive, Article 2(1)(a)(i).

3 Victims' Right Directive, Article 2(1)(a)(ii).

that they adequately understand the information provided. Not all victims have the same communication skills and most of them do not have sufficient legal knowledge on the functioning of criminal proceedings and on their rights. Member States often fail in adapting information provided, both orally and in written form, to individual victims' communication needs. Alongside adaptation and use of different and innovative means for providing information, allowing victims to be accompanied by a person of their choice when they first come into contact with the competent authorities is also a vehicle for guaranteeing victims' right to understand and be understood foreseen by the Directive. In a few Member States, this right is legally provided for and even mandatory. However, in other Member States, victims are not aware of this right and the fact that they can be accompanied. Additionally, in some cases, law enforcement authorities are reluctant to allow the presence of a person of the victim's choice, justifying denial of this right on concerns that the victims' statement would be impaired. Often times, the presence of a person in whom the victim trusts not only helps the victim to feel more comfortable and calm but also allows information to be better retained and, sometimes, interpreted so that the victim can fully understand it.

**Article 4 - Right to receive information from the first contact with the competent authority:**

Even in Member States where all aspects of information listed under Article 4 of the Directive are included in national laws' obligation to inform victims, victims are not always fully informed. As mentioned, complying with the obligation to provide information to victims does not only include making information available. States' authorities must ensure that victims' effectively understand the information provided to them. This implicates the use of simple language; the adaptation of the language used according to the victims' communication needs; the provision of information through different (and innovative) means; and follow-up with victims to ensure they understood the information initially provided to them.

**Article 5 – Rights of victims when making a complaint:** According to the Directive, when filling a criminal complaint, victims have the right to receive an acknowledgment of the complaint. In many Member States the delivery to the victim of the acknowledgment depends on the victims' request which, considering victims' lack of knowledge on this right, often hampers the practical enjoyment of this right. Additionally, the Directive establishes that victims have the right to file a criminal complaint in a language they understand. The research indicated that Member States' authorities often struggle and fail to ensure the necessary linguistic assistance is provided in order to enable victims to present a criminal complaint in a language they understand.

**Article 6 – Right to receive information about their case:** Often times, the obligation to provide information to the victim on their case throughout the criminal proceedings, as established by the Directive, is seen by Member States' competent authorities as an extra burden and they fail to adopt a pro-active role. Moreover, in most Member States there are no simple and agile

mechanisms of communication with the victim which allow a timely provision of certain types of information which, if not provided in time, might put the victims' safety in risk.

**Article 7 – Right to interpretation and translation:** The lack of qualified interpreters and translators seems to be a cross border difficulty in guaranteeing victims' right to interpretation and translation. The roots of this difficulty seem to be the lack of nation-wide network or register of certified interpreters and translators in the majority of Member States. Linked to this is the lack of State funding for the establishment of such registers. Often times the insufficient investment on training of interpreters and translators on criminal legal matters and the lack of quality control of interpretation and translation in the instances these services are provided, jeopardise victims' rights and their due participation in the proceedings.

**Article 8 – Right to access victim support services:** Access to victim support services is a more complex issue than it might appear at the face of the Directive. Accessibility is a complex problem, in particular when it is driven by victims' needs, as it should be, based on Article 8. Needs of different groups of victims will be different, and particularly when looking into needs of particularly vulnerable groups of victims with particular accessibility requirements – such as victims with disabilities, children or migrants, the complexity of these issues becomes obvious. Moreover, to access victim support services, is not just about setting up a single victim support organisation which deals with victims' needs in isolation from the entire environment they operate in. Rather, victim support is just one important part of an entire victim-centered system consisting of different elements, including societal services, justice and law enforcement and even businesses.

There is a significant concern of the professionals surveyed regarding the quality and presence of victim support services in their countries and importantly, an overwhelming majority of professionals (98.25%) believe that further funding for victim support services is needed to be made available in their countries.

**Article 9 – Support from victim support services:** The Directive is clear regarding the need to ensure that there are different types of generic and specialist services made available to victims. Generic services should be available for all victims of all crimes and should, in line with the minimum requirements of Article 9, ensure that victims are referred to specialist services whenever needed. These specialist services will depend on the type of victim, type of crime, type of service and, in many cases, will actually involve several aspects or require engagement of multiple actors to ensure support to victims.

**Article 10 – Right to be heard:** Victims' right to be heard must be guaranteed without putting the victim in risk of repeat victimisation, intimidation and retaliation. Considering that in some



situations where the victim is heard in the proceedings, particularly during the trial hearing, he/she is forced to face the offender, the Directive foresees that, when justified, communication technologies must be used. These are not always used in many Member States because the budgetary and technical means available are often not sufficient. When the case concerns a child victim, his/her age and maturity must be taken into account. The research shows that the means used to assess this are not always adequate. Besides, even though important have been made in many Member States – for example, the creation of child-appropriate inquiry rooms – there is still a lack of specialised training on victims' particular needs.

**Article 11 – Rights in the event of a decision not to prosecute:** In some Member States the right to request the revision of a decision not to prosecute the offender is dependent on victims' role in the proceedings while in other Member States this right is dependent on the type of offence committed. In addition to these restrictions, there are Member States where very short deadlines apply which, in many cases, hampers victims to exercise this right.

**Article 12 – Right to safeguards in the context of restorative justice services:** Most Member States do not have any form of restorative justice mechanisms in place. In the few Member States where these mechanisms exist, there is a generalized lack of knowledge about them: what they are, how they function and in which circumstances can they be resorted to. This is true for victims but also for professionals of the criminal justice system who could often refer cases to restorative practices and inform victims on this possibility but they fail to do so.

**Article 13 – Right to legal aid:** Member States are free to establish the conditions for accessing legal aid. Most Member States have done this on the basis of economic insufficiency. Nevertheless, in many Member States the attribution of legal aid is an administrative procedure which is often slow. Additionally, there is a generalised lack of lawyers to provide legal aid either because either their remuneration is not attractive or because they are expected to do so on a pro bono basis.

**Article 14 – Right to reimbursement of expenses:** Not all Member States' legislation provides for the reimbursement of expenses as envisaged in the Directive, for example, in some Member States the reimbursement of loss of earnings is not contemplated by law or regulations. The procedures whereby expenses are reimbursed are also often delayed and in many situations relinquished to the end of the criminal proceeding which, in case of financial hardship of the victim, might discourage and jeopardise his/her active participation in the proceedings.

**Article 15 – Right to return of property:** The present research indicated that often times the return of property is a lengthy process. In most Member States, there is no systematic collection of data which allows to infer the average time in which property is returned and in other Member States there are no legal time limits for this return. Moreover, there are cases where the goods or

property are returned to the victims in conditions which show a lack stringent lack of sensitivity, for example, still containing blood stains.

**Article 16 – Right to a decision on compensation from the offender in the course of criminal proceedings:** In all Member States, except for Belgium and Greece, victims have the possibility to request for compensation from the offender within the criminal proceedings. Even where compensation from the offender can be requested within the criminal proceedings, it is often difficult to guarantee that victims indeed receive compensation in due time. Most of the times, this is caused by offenders' impossibility or refusal to pay compensation. The State often has a takes on a subsidiary role but in many Member States this is subject to strict requirements and conditions.

**Article 17 – Rights of victims resident in another Member State:** the guarantee of equal treatment and protection of cross border victims is one of the key issues of the Victims' Directive. Even though considerable advances have been made and Member States are taking measures to improve their action on cases where the victim of a crime committed in their territory has his/her residence in another Member State, some difficulties persist. The lack of interpreters and translators, mentioned above, jeopardises the quality of information provided to cross border victims and can, in some cases, difficult and even prevents taking the victims' statement immediately after the complaint is presented. Additionally, the use of communication technologies such as videoconferencing is sometimes prevented due to lack of resources. Moreover, the available platforms for cooperation and exchange of information between Member States is are not widely disseminated among Member States' front line competent authorities and there is a need for specialised training on cross border victims' particular needs.

**Article 18 – Right to protection:** The vast majority of Member States' national legislation foresees specific measures for the protection of victims' and their family members. However, the adequate protection of victims and their families is not achieved solely by the provision of protection measures in law. Appropriate protection requires fast action by States' competent authorities which must be trained to adequately evaluate the victims' protection needs. The perception of professionals is that, in some cases, victims and their family members are not adequately protected which indicates that the procedures assessing victims' protection needs, for determining protection measures in a timely manner and for re-evaluating the case (and adapt the protection measures during the course of the criminal proceedings), must be improved.

**Article 19 – Right to avoid contact between victim and offender:** This Article poses on Member States an obligation to create all necessary conditions to avoid, as much as possible face-to-face, contact between the victim and the offender during the criminal proceedings. In Most Member States facilities such as police stations, public prosecutors offices and court buildings, do not

have separate entrances nor waiting areas. Even though the setup of premises where procedural steps take place is important, the obligation posed by Article 19 goes beyond the infrastructure of such premises. Member States' authorities are also required to use other means to avoid contact between victims and their offenders, such as the resort to communication technologies which allow the victim to participate and testify in court without being physically present. These means are not always used in some Member States due to the above-mentioned lack of resources. There are also situations where, specifically during court hearings, the judge or judges demand the victim to be present arguing they can better interpret the victim's statement in person. This shows that there is a poignant need to invest in the renovation of the infrastructures of the criminal justice system and, at the same time, in training of professionals.

**Article 20 – Right to protection of victims during criminal investigations:** Article 20 of the Directive establishes a number of measures to guarantee that the interactions with States' competent authorities is as easy and as limited as possible, in order to avoid secondary victimisation. These measures are not always fully respected and put in practice by Member States either because of legislative restrictions or practical obstacles. To illustrate this latter case is the perception of professionals that, during the research, indicated that the excess of police workload prevents the interviews of victims to be conducted without delay. Moreover, due to the sometimes excessive formality of criminal proceedings, victims are interviewed or asked to provide their statement more times than it would actually be necessary, forcing them to re-live the crime over and over.

**Article 21 – Right to protection of privacy:** In relation to the protection of victims' privacy, the research indicated that although efforts have been made to encourage the self-regulation of the media in what concerns the broadcasting and reporting of crimes and/or criminal proceedings, there are situations where the victims' privacy is gravely disrespected. Moreover, in some Member States, measures for the protection of victims' privacy are restricted to specific groups of victims. Finally, the infrastructure police stations, public prosecutors' offices and court buildings is not adequate neither to avoid contact between the victim and the offender, as mentioned above, nor to ensure victims' privacy. It was reported that most police stations across the EU do not have, for example, private room where victims can present the criminal complaint which means this has to be done in the common service room where other people can see and hear the victim.

**Article 22 – Individual assessment of victims to identify specific protection needs:** As one of the most innovative and promising aspects of the Victims' Directive, the obligation posed on States' competent authorities to perform an individual assessment of victims' protection needs aims at preventing and addressing the risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender during criminal proceedings. Besides correct transposal of this obligation, Member States ought to setup national procedures that regulate and enable

the individual assessment. This has not been done in most Member States. In the absence of regulations, guidelines or other instruments which create clear and transparent procedures on how, when and by whom should this assessment be performed, the evaluation of victims' protection needs are very much left to individual professionals' (usually police officers) sensitivity and perception of the case.

**Article 23 - Right to protection of victims with specific protection needs during criminal proceedings:** The lack of procedures and/or guidelines on how to perform individual assessment of victims' needs inevitably hampers the adequate implementation of protection measures to victims who have specific protection needs. This was one of the chief difficulties identified throughout the research in relation to the practical implementation of Article 23 of the Victims' Directive. Moreover, it is possible to conclude that there is a general lack of awareness from professionals working within the criminal justice system in what concerns the importance of applying the protection measures prescribed by the Directive when victims' present specific protection needs. It is, therefore, imperative that models for the individual assessment of victims' needs are established and that, subsequently, professionals are trained on its importance and how to implement them in order to guarantee that all victims who are particularly at risk of secondary and repeat victimisation, of intimidation and of retaliation, are fully protected during the criminal proceedings.

**Article 24 – Right to protection of child victims during criminal proceedings:** In most Member States, there have been some improvements in the protection of child victims either from secondary and repeat victimisation, or from intimidation and retaliation. In several Member States, child-appropriate rooms have been setup, specialised procedures and training have been made available and there is, overall, a more considerate approach to children age and maturity. It is, however, possible to say that these measures have yet to be improved and strengthened. Constant specialised training must be pursued since all professionals should be aware of the particular needs of child victims.

**Article 25 – Training of practitioners:** Both general and specialised training of professionals on victims' rights, needs and protection are not provided in all Member States as a rule. Even though issues like victimology, rights' of victims and the protection of victims with specific protection needs are now included in the curricula of practitioners in some Member States, most of the training initiatives are provided by civil society organisations. In many Member States these organisations have been taken on States' obligation to provide training, sometimes with poor or no financing from the State at all.

**Article 26 – Cooperation and coordination of services:** This is another example where civil society organisations have been in the forefront of taking initiative. Indeed, efforts for raising awareness,

both among professionals and among the public, have been made by non-governmental organisations as well as initiative which allow the exchange of good practices. Victim Support organisations and other civil society organisations have, undoubtedly made considerable advances on the protection of victims and the promotion of their rights. Nevertheless, as mentioned above there are usually poorly financed and their efforts are not accompanied by matching or similar efforts on the Governmental front.

Project VOICIARE: Victims of Crime Implementation Analysis of Rights in Europe aimed at studying the current status of implementation of the Victims' Directive but, more importantly, on providing a mapping of common gaps which indicate the need for improvement in all Member States and which create space for cross border debate and exchange of best practices hoping that all actors comprehend that it is necessary to keep improving victims' enjoyment of their rights while they walk towards recovery.

# SECTION I - INTRODUCTION

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, 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 which aims to guarantee that all victims of crimes have access to information, support and protection. The Directive significantly changed the paradigm of criminal procedures and the manner in which victims are treated within the Member States of the European Union (EU), aiming at guaranteeing equal treatment across borders.

Member States were required to transpose the Victims' Directive into their national context and develop legislation and policies to allow victims to exercise rights enshrined in it until 16 November 2015. Nonetheless, according to a study of the European Parliamentary Research Service<sup>4</sup>, 25 out of 27 Member States (Denmark opted out) have officially transposed the Directive.

The transposition of EU law is of the utmost importance for guaranteeing the enjoyment and the uniformisation of rights across Europe. Even though some gaps are still found in relation to the transposition of the Directive, Member States should be commended by their legislative efforts and encouraged to enact policies which translate legislation into practice.

This must happen because, even when rights are established in national, European or international laws, if the adequate procedures and mechanisms for putting them into practice are lacking, victims will be precluded from enjoying their rights which will inevitably undermine their recovery process.

While few studies have been done regarding the transposition of the Victims' Directive into national legislation<sup>5</sup>, the state of the art regarding the practical implementation of the Directive at the national level has received less attention from both governments, victim support and human rights organisations, and academia.

Project VOCIARE: *Victims of Crime Implementation Analysis of Rights in Europe* aims at addressing this gap and providing evidence which allows for the assessment of practical implementation

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<sup>4</sup> EPRS – European Parliamentary Research Service. (2017). *The Victims' Rights Directive 2012/29/EU - European Implementation Assessment*. Brussels: European Union, p. 5.

<sup>5</sup> For example: EPRS – European Parliamentary Research Service. (2017). *The Victims' Rights Directive 2012/29/EU - European Implementation Assessment*. Brussels: European Union and IVOR Report: *Implementing Victim-Oriented Reform of the criminal justice system in the European Union*. Lisbon: APAV.

of the Victims' Directive in the EU. The project was funded through the Justice programme of European Commission, which ensured that practical implementation of the Directive in 26 Member States was analysed<sup>6</sup>.

The present Synthesis Report consists in a comparative analysis of the 26 National Reports produced during the course of the Project. Its purpose is to highlight the main trends and gaps identified during the research and, thereupon, provide recommendations. Ultimately, this report and the 26 National Reports can stand as a basis for a careful rethinking, at national and EU-level, of how are victims' rights being enacted (or not) and what can be done to improve their standing.

This report is divided into five main sections: the present section where an introduction to the topic and the purpose of the report is made; a section on the methodology of Project VOCRIARE is explained so the reader becomes familiar with the research process carried out by the researchers at national level; a section which comprises the synthesis, comparative and critical analyses of the practical implementation of Articles 2 to 26 of the Victims' Directive; a section where recommendations for further improving the legal and practical standing of victims are drawn; and, finally, a conclusion where a brief considerations regarding the achievements of this report and the Project are made.

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<sup>6</sup> Denmark was not included, due to the fact that they opted out from the application of the Victims' Rights Directive. The UK was not included as it does not participate in the Justice and Equality funding programme of the European Commission.

# SECTION II - HOW THE VICTIMS RIGHTS DIRECTIVE WORKS FOR VICTIMS OF CRIME IN PRACTICE

## 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.*

### UNDERSTANDING THE CONTENT OF ARTICLE 2 OF THE DIRECTIVE

Article 2 of the Victims' Directive defines concepts used throughout the text of the Directive which are relevant for the transposition and practical implementation of victims' rights. The definitions provided should be reflected in national legislation and policies pertinent for victims' rights and should be drawn, at the national level, in a precise and concise manner. For this purpose, it was recommended the transposition of the complete definitions into national law in order to avoid inadequacies<sup>7</sup>.

This article provides the definitions of *victim, family members, child and restorative justice*. As was already verified in the past, the definitions of victim in the Member States differ not just in wording but also in the elements that comprise them. Additionally, in some cases, different definitions which can apply to victims are found under the same national law (e.g. injured party

<sup>7</sup> European Commission, Directorate-General for Justice and Consumer Protection. 2013. 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, p. 11



and victim or injured party, civil party and victim)<sup>8</sup>.

In what concerns the definition on *family members*, in addition to a lack of precise definition in some Member States, the extent of rights guaranteed to family members is often unclear, for example, the rights foreseen under national law to unmarried partners and/or same-sex partners. In the majority of the Member States<sup>9</sup> the definition of *victim*, or any other term used to refer to it, has all the elements foreseen in Article 2 of the Victims' Directive. In some of these Member States<sup>10</sup> there is the definitions both of *victim* and *injured party* and these definitions are composed by different elements and linked to the enjoyment of different rights.

It should be noted that notion of victim, as defined by the directive is the one of content, and not of semantics. Some Member States<sup>11</sup> refer to this notion within meaning of the word as defined in Article 2, paragraph a(i). However, instead of victim, they use terms such as *injured party*, *civil party* or *the offended person*. As a matter of fact, all but two Member States – Bulgaria and France, have a clear definition of the notion of victim in their domestic legislation.

Understanding this notion as one of content, the main purpose of the present report is to identify whether Member States provide tools for determination of a victim in their respective legal systems, regardless of which specific term is used and so identified victims enjoy the full scope of rights guaranteed by the Directive.

## HOW THE DEFINITION OF A VICTIM WORKS IN PRACTICE?

Against this backdrop, in some Member States, the use of these different terms does not seem to impact the rights which are foreseen for victims of crime. In Finland and Italy, for example, the legal definition of *injured party* and *offended person*, respectively, contain all the elements foreseen in Article 2 of the Victims' Directive and, therefore, it is only the actual reference word which is different. In Romania, both these terms are used alternately and as synonyms and in the meaning of a victim.

In another group of Member States, however, there are multiple definitions in place. This is the case, for example, of Latvia where there are various definitions of victim. Nonetheless, there seems to be no interpretative conflict in understanding different meanings of different definitions in practice. This is due to the fact that one of the definitions, the one provided for in Section 95 of the Code of Procedure Law, establishes the definition of a *victim of criminal offence* for the

8 Associação Portuguesa de Apoio à Vítima – APAV. (2016). IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union. Lisbon: APAV, p. 115.

9 AT, HR, CY, CZ, EL, IE, BE, EE, ES, FI, IT, LT, LU, LV, MT, NL, PL, PT, RO and SI.

10 CZ, HR, HU and LU.

11 DE, FI, IT, HU, RO and SI

purposes of participation in the criminal proceedings. The second definition, contained in Section 250.45 of the Code of Procedure Law, defines who can be considered a victim in the context of violence between former or present spouses or other mutually related persons regardless for the purpose of applying protection measures which can be determined during civil proceedings even before criminal proceedings begin.

Yet, the existence of multiple definitions has showed to have repercussions on victims' enjoyment of rights. In Austria, for example, there are two different dispositive laws – the Code of Criminal Procedure and the Victim Compensation Act - which define the term *victim*. Other than the fact that the two definitions do not match each other completely, the definition provided by the Code Criminal Procedure creates additional groups of victims who are subsequently entitled to special rights. Another example is the case of Belgium, where the multiple definitions of *victim* raised interpretation issues which could lead different entities to adopt different understandings of victim. For example, an insurance company can endorse its own definition of a victim different from that of the government for compensation purposes. In Germany there is also no clear legal definition for *injured party* which has resulted in a limitation, particularly, of the concept of family members in comparison to the Victims' Directive. *Family members* are considered to be only the children, parents, siblings, spouses, or registered civil partners of the deceased victim.

Bulgaria is the only Member State which does not have a legal definition of *victim*, and where legislation does not provide for a route for victims, as understood by the Directive, to enjoy their rights. In the absence of such a legal determination, the definition of *victim* was drawn by the case-law of the Bulgarian Supreme Court. Disappointingly, however, the Supreme Court's understanding of the notion of victim is more restricted than the one set forth by the Directive: only close relatives and family members of the victim are entitled to seek compensation for non-pecuniary damage in case of death of the victim as a result of criminal offense<sup>12</sup>. Brothers, sisters and relatives of second degree were excluded, for instance.

Similarly, in France too there is no legal definition of victim. However, this lack of a definition has no impact on victims' enjoyment of rights. Namely, in France it is possible to infer, from legislation related to issues of compensation and liability, who is considered to be a victim under French law: any person who has suffered harm directly or indirectly from the commission of a crime or even any person involved in the event. This scope is apparently even broader than the definition under Article 2, giving larger scope of recognition and rights to victims.

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12 Supreme Court of Cassation, III staff of judges, 2017, case 637, Decision 169/24.11.2017.

# 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.*

## UNDERSTANDING THE CONTENT OF ARTICLE 3 OF THE DIRECTIVE

Article 3 of the Directive contains two main elements: communication safeguards which need to be put in place to make sure that victims indeed understand the implications of their involvement in criminal proceedings – which exists from the first contact and throughout the duration of criminal proceedings – and ensuring that they can be accompanied by a person of their choice at least in the first contact with the authorities.

### **The right to understand and be understood**

Article 3 of the Victims' Directive establishes so-called "communications safeguards", which are focused on a victim's ability to understand the proceedings. This norm determines that authorities must have a pro-active role in ensuring that victims genuinely understand and make themselves understood during the criminal proceedings. Therefore, as reinforced by recital 21 of the Directive, all information provided to victims must be presented in a simple and accessible language that they can understand, while special attention should be given to victims who may present special communication needs arising from a disability, such as hearing or speech impairments.

Comparative analysis indicates that most Member States put into place efforts to make the victims understand and be understood. These efforts are often seen through the development and delivery to victims of information materials (leaflets, handbooks, sheets etc.). Increasingly, official websites also provide content regarding criminal proceedings and victims' rights are

links to those websites are used as a communication tool to provide information to victims of crime regarding the layout of the criminal justice systems, what to expect in the proceedings and generally about the available rights and support.

Among these efforts to improve the communication with victims and to guarantee that they understand and are understood, it is worth mentioning a few promising practices.

In Austria, for example, authorities have been carrying out efforts to develop easy-to-read communications targeted to different groups with specific communications needs. A form is being tested for the provision of information to people with disabilities, even though the form is not yet consistently used throughout the country. Additionally, a website ([www.schreigegengewalt.at](http://www.schreigegengewalt.at)) provides information in sign language for women victims of violence in a close relationship and 705 staff members of the Federal Ministry of the Interior have received training on basic principles of communication with older persons and people suffering from dementia. At the police stations in Austria, child victims are interviewed by a specifically trained officer, who provides information in an age-appropriate manner.

In Finland, the content of a brochure named "If you become a victim of a crime" was used to create a video in sign language which is now available online.

In the Netherlands, information which is usually provided orally is often completed with educational videos and infographics. More notably, the identified difficulty of ensuring that victims with mental disabilities and literacy problems are effectively informed on their rights is being addressed by a working group composed by representatives from the prosecution service, police, victim support and other criminal justice agencies. The working group is currently developing adapted tools for these groups, including pictograms and audio recordings of written information.

Even though these and other efforts should be commended, some Member States do not get much beyond what is enshrined in the law and there are no practical measures in place to ensure that victims understand and are understood from their first contact with the authorities and during the criminal proceedings. Oftentimes, information is provided in a standardised way and the adaptation of information according to victims' communication needs is only assured when the victim is in contact with some of the few police officers who are experienced and skilled in communication with victims. This is clearly incidental and does not guarantee that all victims understand information and that they are properly understood.

Additionally, it is not rare that the competent authorities comply with their obligation of providing information to victims of crime by delivering leaflets or informative sheets created for the

purpose. However, this is not a guarantee that victims effectively understood the information provided as it is required by Article 3 of the Directive.

In the absence of a specific commitment of Member States, some non-governmental actors and victim support providers have taken upon themselves to develop programmes and sensitive approaches to different communication needs of certain groups of vulnerable victims. For example, Weisser Ring in Germany started a pilot project in 2017 to extend its services to deaf victims. The project's objectives are to develop a procedure for Weisser Ring's work when in contact with deaf victims through the preparation of guidelines and information materials. The project also aims at establishing a network with locally organised deaf associations and cooperate with these associations to provide better support to deaf victims through the adaptation of information to their communication needs. Similarly, APAV in Portugal is associated with the Portal for Deaf Citizens which provides different online services for deaf people. Deaf victims can contact APAV via this platform by using Skype<sup>13</sup>.

The following table presents the perception of professionals regarding the adaptation of communication according to victims' communication needs.

Groups of victims	Always	Often	Sometimes	Rarely	Never
Children	30,56%	<b>33,2%</b>	19,4%	14,1%	2,8%
People with hearing impairments	<b>33,1%</b>	24,3%	19,3%	17,8%	5,4%
People with intellectual disabilities	26,1%	22,7%	19,0%	22,9%	9,3%
Persons who do not speak the language in which the proceedings are conducted	<b>29,6%</b>	26,4%	24,2%	17,2%	2,6%
Illiterate people	<b>26,0%</b>	20,8%	18,0%	22,4%	12,8%
Blind and partially blind people	<b>30,0%</b>	21,3%	18,2%	18,8%	11,8%

**Figure 1:** Availability of information adapted to the needs of specific groups of victims

Despite of all the efforts of the governments and the non-governmental sector, research findings

<sup>13</sup> <http://www.portaldocidadaosurdo.pt/apav>.

indicate that much is left to be done to ensure full implementation of Article 3 of the Directive across the EU. As may be seen in the table above, many vulnerable groups are still far from fully enjoying the guarantees from this provision of the Directive. It is disappointing that the most vulnerable, like persons with disabilities, children or persons who don't speak the language of the proceedings (many of whom are asylum seekers or victims of human trafficking) are very likely not to be able to understand the criminal proceedings or fail to be understood throughout them, which is a prerequisite for a victim-centred criminal justice system.

### **The right to be accompanied by a person of choice**

Paragraph 3 of Article 3 establishes also the victim's right to be accompanied by a person of choice during the first contact with a competent authority. As the paragraph itself states and the DG Justice Guidance Document further clarifies, the intention of this provision is to "(...) to practically assist the victim and to provide moral support when reporting a crime" guaranteeing that the victims effectively understands and is understood in such situation.

In most Member States, this right is legally granted and even mandatory in certain situations. This is the case of Austria where in cases which involve victims or witnesses with disabilities or victims under 14 years of age, the presence of a trusted person is mandatory. Similarly, in Greece, if the victim is a child, then parental accompaniment is mandatory except, of course, where the parent(s) is/are reported to be the perpetrator(s).

In other States<sup>14</sup>, the right to be accompanied in the first contact with authorities is legally secured and the enjoyment of this right generally functions well in practice, at least in instances where the victim is aware of the right and has been given the opportunity to appoint the person of choice.

Nonetheless, in some Member States, even though victim's right to be accompanied by a person of choice is prescribed by law, difficulties in guaranteeing such right in practice were identified. These difficulties are mostly related to, on one hand, the victims' unfamiliarity with this right and, on the other hand, the reluctance of police authorities in allowing the presence of the accompanying person due to fears that the victim's statement might be impaired, or in some way altered, in the presence of this third person.

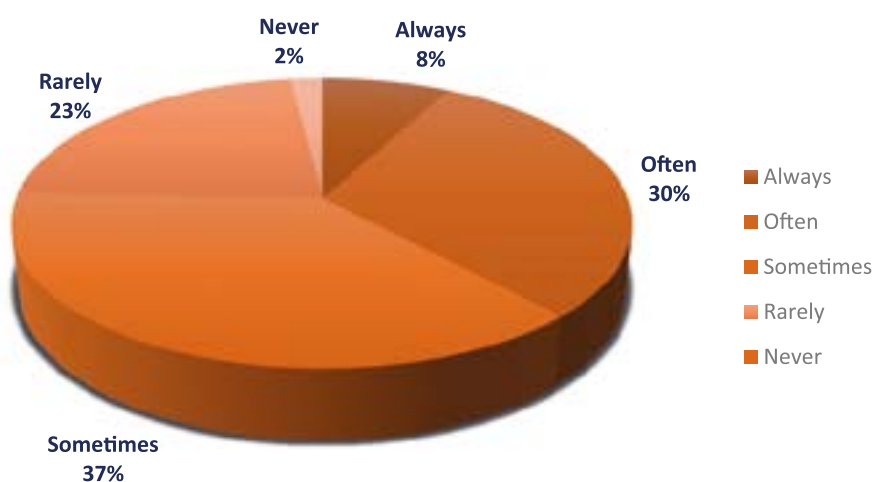
Thus, for example, in the Czech Republic victims are usually not informed of their right to be accompanied and, if they are, they receive this information from support services and not the authorities themselves. Similarly, in Slovenia, most victims are unaware of the possibility of being accompanied by a person of choice which is particularly frequent outside the capital and

<sup>14</sup> BE, CY, CZ, DE, EE, ES, FI, FR, HR, HU, IE, IT, LT, LU, MT, NL, PL, PT, SE, RO and SI

in more rural areas. In rare cases where the accompaniment is allowed, authorities usually only allow the presence of victim support or other NGOs workers and not family members or friends of the victim.

In Austria, however, the accompaniment by a person of the victim's choice is not excluded per se however, especially at police stations, victims or witnesses are often influenced so that they waive such right. In France, some police officers or constables sometimes refuse that victims are accompanied at the police station or gendarmeries when filing a complaint. This refusal is more common when the accompanying person is a professional, for example, a victim support worker, rather than a victim's family member or friend. In Sweden this right is limited to the first contacts with the police.

Lithuania and Romania are two particular cases in what concerns the right to be accompanied during the first contact with authorities. The provision of this right in a novelty in both legal frameworks introduced by the laws which transposed the Victims' Directive<sup>15</sup>. The novelty of these provisions result in a generalised lack of knowledge and a lack of understanding on the importance of this right which makes it virtually impossible for victims to enjoy it in practice. The research indicates that victims are not regularly given the opportunity to be accompanied by a person of their choice, as is required by Article 3 of the Directive. Only 6,2% of victim support professionals estimate that victims are always accompanied by a person of their choice.



**Figure 2:** Accompaniment of victims by a person of their choice

15 In LT: The law amending Articles 8, 9, 28, 43, 44, 128, 185, 186, 188, 214, 239, 272, 275, 276, 280, 283, 308 of the Code of the Criminal Procedure and its Annex and supplementing the Code with Articles 27-1, 36-2, 56-1, 186-1 (Lietuvos Respublikos baudžiamojo proceso kodekso 8, 9, 28, 43, 44, 128, 185, 186, 188, 214, 239, 272, 275, 276, 280, 283, 308 straipsnių ir priedo pakeitimo ir Kodekso papildymo 27-1, 36-2, 56-1, 186-1 straipsniais įstatymas), 17 December 2015, No XII-2194.

In RO: Law 98/2018 of May 2018, amending Law 211/2004.

## HOW THE RIGHT TO UNDERSTAND AND BE UNDERSTOOD WORKS IN PRACTICE?

The right to understand and be understood, in its both components – communication safeguards and accompaniment by a person of choice – seems to be of concern for most Member States and alongside with a more consistent and strong legislative provision of this right, there have been some efforts to improve communication with victims of crime. Nonetheless, much more could be done since it seems that often communication with victims is standardised and adapted to the victims' specific communications needs only rarely. Additionally, victims still do not know about their right to be accompanied by a person of choice, whilst on the part of authorities there are still some objections to allowing victims to be accompanied.



# 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.*

## UNDERSTANDING THE CONTENT OF ARTICLE 4 OF THE DIRECTIVE

The provision of information has been denoted as one of the most important needs of victims which is critical for their recovery from the victimisation<sup>16</sup>.

The rationale behind Article 4 of the Directive is that competent authorities of the Member States' should take a proactive attitude in the delivery of information to victims, rather than putting the onus of looking for the information on the victim themselves, by his/her own means<sup>17</sup>. Moreover, to effectively empower victims in the enjoyment of their rights within the criminal proceedings, the competent authorities must provide, at least, the information expressly enumerated in the Directive's Article 4 from their first contact with the victim. Although the authority most frequently establishing this first contact is a law enforcement agent (LEA), the term "competent authorities" is to be determined by national law<sup>18</sup>.

According to the European Commission, the principal requirement of Article 4 is that victims effectively understand the information given to them. This is, once more, related to the proactive role of the competent authorities emphasised during the analysis of Article 3. To ensure that victims effectively understand the information provided to them goes beyond the mere

<sup>16</sup> Associação Portuguesa de Apoio à Vítima – APAV. (2016), p. 47.

<sup>17</sup> European Commission. (2013), p. 13

<sup>18</sup> Ibid.

transposition of Article 4 into national legislation, as it obliges a combined effort from several actors (Government, judicial authorities, LEAs, victim support services and others) to establish a national-wide, complete and adequate information procedure. Furthermore, this also requires more than simply making information available from the first contact with victims. It calls demands warranties that victims actually comprehend all necessary information for the real enjoyment of their rights.

Even tough, as mentioned, the transposition of Article 4 into national legal frameworks is not sufficient to guarantee the correct implementation of this Article, it is the first step for doing so. In some Member States<sup>19</sup>, all elements of information to be provided to victims according to the Directive are foreseen in national law. While in other Member States<sup>20</sup> Article 4 was transposed only partially. The provision of Article 4 was not transposed at all in Belgium, where every police officer can decide individually what information to give to the victim, and in Slovenia where only the Domestic Violence Prevention Act prescribes the obligation to provide information to victims. This obligation is, however, significantly restricted since it refers only to information on available support services and remedies and applies strictly to victims of domestic violence.



**Figure 3:** Full transposition of Article 4 into national law

19 AT, CZ, EL, ES, EE, HR, IE, IT, LV, LU, MT, NL, SE and SK.

20 BG, CY, DE, FI, FR, HU, LT, PL, PT and RO.

## DIFFERENT MEANS TO PROVIDE INFORMATION

A vehicle to ensure that victims effectively understand the information given to them by the competent authorities is to transmit this information through different means<sup>21</sup>.

In most Member States<sup>22</sup>, information is provided both orally and in writing. In other Member States<sup>23</sup> information is only provided in writing and victims never, or only extremely rarely, receive explanations orally.



**Figure 4:** Member States where information is provided both in written and in oral form

21 European Commission. (2013), p. 14.

22 AT, BE, BG, CY, CZ, EL, FI, HR, HU, LV, LU, PL, PT, RO, SE and SI.

23 DE, ES, FR, IE, LT, MT, NL and SK.

The following graphic demonstrates professionals' perception regarding the means used to transmit information to victims.

Means of information provision	Always	Often	Sometimes	Rarely	Never
	%	%	%	%	%
Internet	6,7	18,0	26,0	<b>28,8</b>	20,6
Orally	35,5	<b>39,1</b>	16,6	6,7	2,0
Leaflets, brochures or similar	26,2	<b>41,5</b>	20,6	9,1	2,6
Video	3,6	8,5	14,2	28,1	<b>25,6</b>

**Figure 5:** Incidence of providing information to victims through using different means

Even though the oral and written provision of information is the preferred means of supplying information, the individual communications needs and personal circumstances of each victim must be duly accounted for and other means of providing information should be explored. Many Member States' authorities and victim support organisations created websites, brochures and leaflets to provide information on victims' rights and on the functioning of criminal proceedings. These efforts are commendable and necessary. However, it is important to note that posting information on the internet or delivering leaflets to victims is not yet sufficient as it does not, in itself, guarantee the victim understands the information. Additionally, these might also not be the appropriate means to convey information to some groups of people, for example, illiterate people, the elderly and people who do not understand the national language in cases where information is not available in other languages. For these and other groups of victims, for example children, interactive videos, use of interactive tools, pictograms or similar ways to confer important elements would likely be more efficient in guaranteeing the information is accepted and processed by the victim to ensure their understanding of their rights and support that is available.

## ENSURING EFFECTIVE COMMUNICATION WITH VICTIMS

Article 4 of the Victims' Directive establishes victims' right to receive information which means that victims must be granted effective access to information. However, what effective and access to information means might not be automatically understood and might be interpreted

differently in different Member States. Drawing on the DG Justice Guidance Document<sup>24</sup>, the present report presents the following indicators to be used as a measurement for compliance with the Directive's requirement that victims have effective access to and effectively understand information provided to them from their first contact with the competent authorities.

### **Simplicity of language**

Simple language is that which is clear and complete yet not too technical, i.e. does not use legal terms which are difficult to understand by a person who has no training in legal matters and practice.

### **Adaptation of language**

In order to be effectively understood by all victims, the language used to provide information must be adapted according with the victims' age, personal circumstances at the time the information is provided, communications needs and language. This means that different types of information must be given to different types of victims according to the criteria/characteristics mentioned above. E.g. an elderly person might be given printed leaflets using larger fonts and with an indication for services available to senior citizens. Similarly, victim who has come to report the crime for the first time will not be given information relevant for advanced stage of criminal proceedings, which can and should be provided in due course. The bottom line is that information should respond to victims' needs and should be supplemented and expanded as these needs change.

### **Diversity of means**

To ensure that all victims understand correctly the information provided to them, this information should be provided in a different range of ways/means. The oral provision of information is, of course, crucial. However, other means might be more suitable to guarantee that the victim comprehends information. For example, it might be easier to explain information to child victims and young people through the use of interactive tools (videos, websites, phone apps, games, etc.) than by explaining all information orally. During their first contact with the authorities, victims are often most vulnerable and their trauma is fresh. Nonetheless, the amount of information that needs to be delivered to the victim may be overwhelming. Therefore, it is often useful to deliver the victim with the most important information orally and follow this up with a leaflet, brochure or some other type of written information.

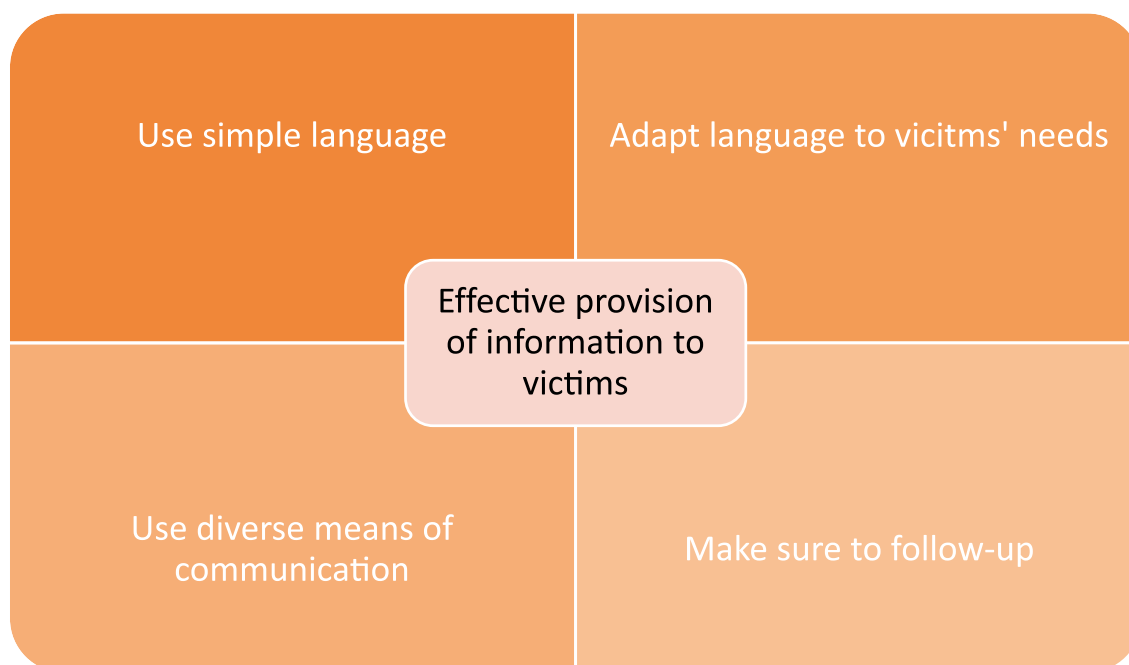
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24 European Commission, Directorate-General for Justice and Consumer Protection. 2013. DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

Lately, the information is more and more provided interactively – through the use of mobile apps, chat platforms and through peer-to-peer support. These tools may be particularly powerful in the attempt to adjust information to different victims’ needs.

### Follow-up

To make sure that victims received all the necessary information and that they indeed understood what was provided, follow up may be necessary. To that end, mechanisms should be in place that allow a second instance of contact with the victim. This will serve three main purposes: first, to ensure that the victim understood the information and provide answer to questions or clarify doubts that they have in relation to the information previously provided; second, to repeat and reaffirm the most important information; and, third, to provide additional information, factoring in the changed circumstances of the victim<sup>25</sup>.

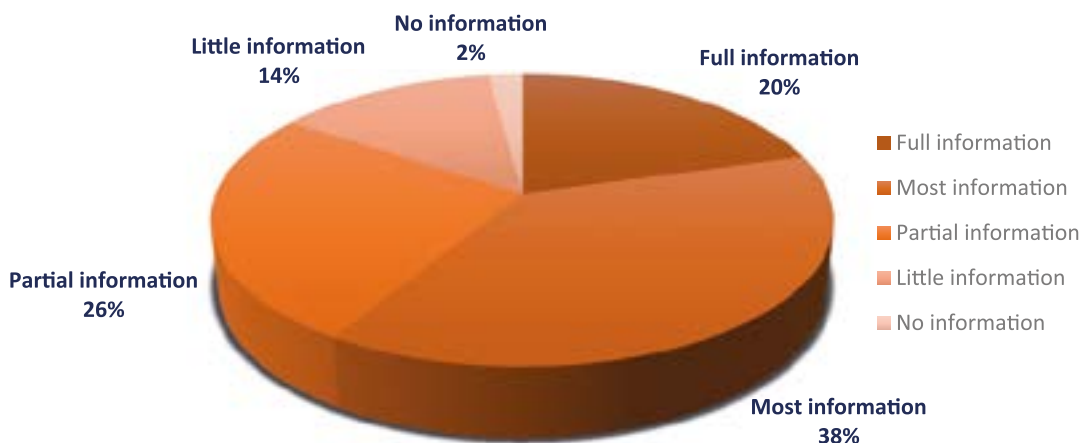


**Figure 6:** Indicators for compliance with Article 4 of the Directive

<sup>25</sup> This responds to the requirement from paragraph 2 of Article 4 of the Victims’ Directive which establishes that the extent and detail of information provided during the victim’s first contact with the authorities may vary according to victims’ specific needs and personal circumstances and the type or nature of the crime and that additional information or details can be provided at a later stage.

## HOW THE RIGHT TO RECEIVE INFORMATION WORKS IN PRACTICE?

As confirmed by the survey in 26 EU Member States, not all victims are receiving complete information, as already discussed above.



**Figure 7:** Information provided to the victim at first contact

The incomplete and/or inappropriate provision of information to victims is also often a significant cause for distress and dissatisfaction with the criminal justice system<sup>26</sup>. As such, Article 4 of the Victim's Directive is of utmost importance to ensure full enjoyment of victims' rights. Namely, the provision of information – and effective understanding thereof, as explained above in the section on Article 3 of the Victims' Directive – enumerated in Article 4 is the basis for the victims' sound knowledge on their rights and duties within the criminal proceedings and therefore results both in better judicial and outcomes as well as an effective enjoyment of victims' rights.

As research has repeatedly showed, information is often not being appropriately provided to victims<sup>27</sup> and many problems persist on this matter.

Several main common problems have been identified through this research. In an attempt to provide all relevant information to victims, authorities often provide very lengthy explanations, which contain a wide range of information. However, this amount, type and level of information might not always be adequate at first contact where victims are often in distress and not able to absorb and properly process all information.

As envisaged in Article 4(2) of the Directive, the specific needs and personal circumstances of the victim and the type or nature of the crime may justify that information to be provided is selected

<sup>26</sup> Ibid.

<sup>27</sup> APAV. (2016), p. 206.

and restricted to what is necessary comprehensible by the victim at a given point. In the Italian city of Tivoli, where all judicial authorities, lawyers and other professionals received appropriate training, competent authorities which first enter in contact with the victims perform a case-by-case assessment of the victims' needs and personal circumstances, as well as of the impact of the crime. This assessment is used to determine what information needs to be provided and to what extent this information is necessary in that and subsequent phases of the proceedings. The training of professionals was, however, restricted to Tivoli and not a national endeavour.

Other common challenge is the fact that information is often too hard to understand due to the extremely technical and legal nature of language used. This is the case with both the written materials and in the face-to-face communication with the authorities.

In addition, officials responsible to provide information are usually not properly trained on how to use simple and accessible language. In some Member States<sup>28</sup> the information provided in written form is actually a reproduction of the legal instruments establishing victims' rights. This is a clear impediment for most victims who are not trained in legal matters and have no familiarity with reading legislation and translating the legislative terminology into such terms in understanding clearly their rights and their role in the proceedings.

Often times, information provided is incomplete. As mentioned before, the instance where the first victim contacts with a competent authority might not be the appropriate time to provide all information necessary for the due course of the proceedings. However, in some Member States, the absence of procedures and guidance on how to give information to victims results in little to no information – even information which is extremely necessary in the initial stages of the proceedings – being provided. Moreover, as mentioned before, the Directive foresees that the competent authorities can, at a later occasion – for example, during a second on-site contact with the victim or by phone call at the initiative of the officer in charge, deliver further information

## PROMISING PRACTICES

### *An Garda Síochána Victim Information Leaflet*

In Ireland, a Victim Information leaflet is sent to victims by post after they present a criminal complaint. Although the leaflet is currently incomplete in light with Article 4 of the Directive, the leaflet is currently being revised. The revision will address the information deficiencies in the current leaflet and, once finished, the new version of the leaflet will undergo the Irish National Adult Literacy Agency (NALA) Plain English process and it will also be translated into 37 different languages.

<sup>28</sup> BG, PT, RO and SK.



which has not been initially given or effectively understood, or which is only relevant for later phases of the criminal proceedings.

Even though Article 4 of the Victims' Directive stipulates an instrumental right for victims of crime, it would appear that Member States still face several difficulties in ensuring that victims have effective access to information. However, the root of these problems might be that the scope and true meaning of Article's 4 obligations are often not interpreted in a victim-centred manner, but rather as a mere bureaucratic demand.

# 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.*

Article 5 of the Victims' Directive establishes a number of rights when victims' present a complaint to the competent authority. Those include: (1) the right to receive an acknowledgment of the complaint and (2) the right to present the criminal complaint in a language the victim speaks and understands.

## THE RIGHT TO RECEIVE AN ACKNOWLEDGMENT OF THE COMPLAINT

In what concerns the right to receive an acknowledgment of the complaint, recital 24 of the Directive further states that this document must include the basic elements of the crime, a file number and the time and place of filing the complaint. The document acknowledging the complaint can be used by the victim as an evidence that a criminal complaint was presented, for example, in civil proceedings or in insurance claims. Furthermore, this document and the administrative information it contains can be of help for the victim when contacting the competent authorities to ask for more information on the case and it is sort of a guarantee that the complaint is pursued by the authorities.

Prior to the adoption of the Victims' Rights Directive, evidence indicated that there was lack of procedures and commitment to ensure that victims are given proof of filing a complaint to the authorities. This simple act of recognition, which can also be a requirement for exercising some rights was, hence, introduced as a legal obligation by virtue of the Directive. However, as with the other rights stipulated in the Directive, this is only a minimum requirement<sup>29</sup>. The acknowledgement of receipt can be replaced or supplemented with a copy of the full complaint.

<sup>29</sup> European Commission (2013), p. 17.

As a matter of fact, in Member States where this has been in place prior to 2012, these practices remain compliant with the Directive. Notably, the legislation in Spain establishes that victims have the right to receive a dully certified copy of the complaint.

## HOW THE RIGHT TO RECEIVE ACKNOWLEDGEMENT WORKS IN PRACTICE?

Requirement to provide victims with the acknowledgement of their complaint may not be conditioned by their request to receive so and any such conditioning is contrary to the Directive. Obviously, when this requirement is built into the legislation, it strengthens their position and makes the issuing of such a document more likely. However, the research indicates that this is not how the right from Article 5 works for victims across the EU. In only a few Member States<sup>30</sup>, the law provides that victims have a right to receive the acknowledgement of the complaint regardless of their request.

On the contrary, some Member States' legislation<sup>31</sup> makes the delivery of the acknowledgement of the complaint dependent on the victim's request. In Bulgaria, the law does not provide for the delivery of a written acknowledgment of the complaint, and in practice, victims are only provided with a registration number. However, they still may receive an acknowledgment of receipt if they request so, particularly if some of their other rights are conditioned by such a document<sup>32</sup>.

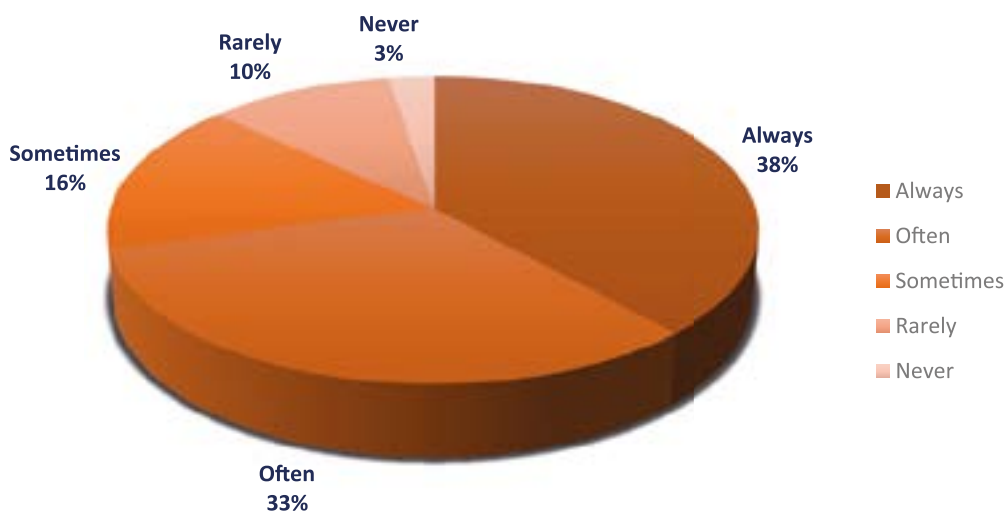
As showed by Figure 8, survey results indicate that only in one third of cases victims are systematically provided with a written acknowledgment of their complaint (35%). At the same time, it is of a great concern that almost a quarter of victims never (10%) or only sometimes (14%) receive this written acknowledgment, despite the direct obligation stemming from the Directive.

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30 AT, BE, CY, CZ, EE, FI, FR, HR, HU, IE, LU, LT, NL, PT, RO, SE, SI and SK.

31 DE, EL, IT, LT, LV and PL.

32 For example, when a personal document is stolen, the victim will receive acknowledgment of complaint which is required to obtain a replacement document.



**Figure 8:** Providing written acknowledgement of complaint

Even in Member States where there is a legal obligation for authorities to give victims a formal acknowledgement of the complaint (upon their request or not), several problems were identified through the course of the present research.

There are some countries where the procedure is not yet systematically established and, in some cases or areas, victims do not receive the formal acknowledgement of the complaint.

Furthermore, there seems to be a lack of knowledge, both on the authorities' side and on the victims' side, about this right. Consequently, when the authorities are unaware of this right, they are likely to fail to deliver the acknowledgement. At the same time, when victims are not aware of their right, they do not request the acknowledgement at all. This way, a vicious circle is being created and the only way out is awareness raising campaigns to inform the public and training to ensure that officials are capable to respond to the challenge.

In addition, previous reports<sup>33</sup> which indicated instances in which victims were being charged or threatened with costs when they insisted on receiving the acknowledgement of the complaint, seem to persist. This is an alarming example of not only secondary victimisation but possibly of the abuse of power, to the detriment of victims whose insist on the respect for their rights.

### **RIGHT TO PRESENT A CRIMINAL COMPLAINT IN A LANGUAGE THE VICTIM UNDERSTANDS**

The right to present one's criminal complaint in a language they understand, the Victims' Directive prescribes that victims have the right to free of charge linguistic assistance<sup>34</sup>. The European

<sup>33</sup> APAV. (2016), p. 206.

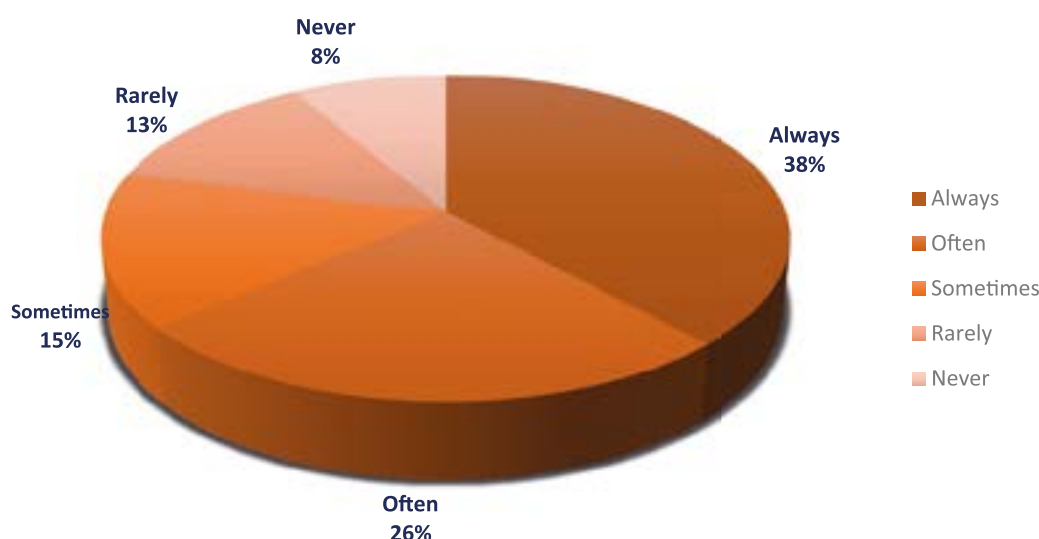
<sup>34</sup> European Commission (2013), p. 17.

Commission details that the linguistic assistance required at the stage of filing a criminal complaint is not as strict as it is in the scope of Article 7. At this stage, the linguistic assistance can be provided by a person who speaks a language the victim understands but who is not an official interpreter, for example, a police officer present at the station who speaks that specific language, a family member or a friend of the victim.

## HOW DOES THE RIGHT TO USE OWN LANGUAGE WORKS IN PRACTICE?

Even with this lower requirement to ensure compliance, many challenges persist in guaranteeing the linguistic assistance which would allow victims to report a crime in a language they understand, and which is different from the language of the competent authorities.

Figure 9 shows that 38% of professionals consulted for this research consider that victims are enabled to make a complaint in their own language. Yet, in a worrying number of cases, professionals consider that victims get to enjoy this right only sometimes or rarely, with more than 8% of professionals experiencing that victims never having this possibility.



**Figure 9:** Ability to make a complaint in one's own language

The right to linguistic assistance is enshrined in most Member States' national legislation<sup>35</sup>. Similarly, in Bulgaria competent authorities are obliged to appoint an interpreter when the victim/witness does not speak nor understands the official language. In Bulgaria however, the right to an interpreter is explicitly conditioned with the victim/witness having a status as a participant in the process. Therefore, only once they are granted this status in the proceedings, they can address the authorities in their own language. The first steps in the proceedings, therefore, are

<sup>35</sup> AT, CY, CZ, DE, EE, EL, ES, BE, FI, HR, HU, IE, IT, LT, LU, MT, NL, PL, PT, RO, SE and SI.

expected to be conducted in Bulgarian. Nevertheless, even in the absence of legal obligations to this effect, the Minister of the Interior approved standard forms for complaints, now available in 5 languages, with the goal of facilitating the reporting of foreign citizens.

In Slovakia, there is no specific provision in the legislation which establishes the right to file a criminal complaint in a foreign language, however in practice the authorities are obliged to ensure translation of criminal complaint filed in writing, or interpretation of criminal complaint filed orally. In France an interpreter should also be appointed in case the person does not speak a good level of French but in practice it seems that due to a shortage of available translators it does not always happen. In the absence of translators, police officers allow a person of choice for the victim to provide this type of support during the filing of the complaint.

Disappointingly, however, even when the right to linguistic assistance is provided by law, it is still possible to identify some gaps in practice. A common problem seems to be the difficulty in guaranteeing that interpreters are always available when a victim needs linguistic assistance to present a complaint. Even though Article 5 does not require this form of support to be provided by an official court-sworn interpreter, Member States still seem to be unable to secure that this assistance indeed exists in order for victims to exercise this right. This is particularly important when the victim only understands a language rarely used in a given country, as this is decreasing the chances that a police officer - or someone else in the police station - or other person from the community is able to provide linguistic assistance.

The fact that linguistic assistance can be, in the scope of Article 5, given by people who are not official certified interpreters, as explained above, loses States' obligation. This possibility also improves the likelihoods enjoyment of the right at hand but, on the other side, it can jeopardise the quality of the interpretation and, therefore, the linguistic assistance provided to victims. States have, as mentioned by the Commission itself<sup>36</sup>, to be vigilant of this fact by setting up mechanisms to assess the risk of biased interpretation and, perhaps, by guaranteeing a follow-up with the victims and inquire in relation to their satisfaction with the linguistic assistance provided and its quality.

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36 Ibid.

# 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.*

## UNDERSTANDING THE CONTENT OF THE RIGHT TO RECEIVE INFORMATION ABOUT THE CASE

Article 6 of the Directive came to existence with the aim of complementing the provisions on information to victims already established in the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (hereinafter, "the Framework Decision")<sup>37</sup>.

The right to receive information about their case during the course of criminal proceedings is important not only to ensure that victims have their place in the proceedings and are, according to their role, able to participate in them, but also to ensure victims' protection, for example, when the perpetrator is released. Furthermore, proper compliance with this requirement responds directly to the basic need of victims for respect, whereby their victimisation is acknowledged and taken into consideration, regardless of the course and the outcome of criminal proceedings

Often, even if the perpetrator is acquitted on procedural grounds, showing victims respect and recognising their suffering by other means can suffice. This is, therefore, a crucial right which should not be seen by the Member States' competent authorities as an extra burden but as a way to provide better protection to victims and secure better judicial outcomes as a result of victims' due involvement and participation in the proceedings. Only by its scrupulous implementation can victim-centred justice be achieved.

<sup>37</sup> Ibid. p. 18.

## Right to receive information about their case

Article 6 of the Directive establishes, first, that to exercise their right, victims must be informed of the possibility to request information about their case. There are, therefore two elements necessary to enjoy this right:

- The victim must receive information about this possibility
- The victim may choose to receive information about their case.

Additionally, victims can change their mind and at any moment require that information be provided or that the provision of information is suspended. After the provision of the information on their right to receive information about their case upon request, victims' wishes to receive or not to receive such information must be respected. Moreover, victim has the right to change their preference in this regard at any moment and towards any outcome – hence to stop receiving any further information, or to start receiving it (again).

What happens in most Member States is that the first element – the information about the right, is provided to victims during their first contact with the authorities. As discussed above, in relation to Article 4, often, this information is not adjusted to the actual needs and situation of the victim. As mentioned above, at this stage victims are often overwhelmed with information, while they are also in distress.

The first knowledge that they may, at later stages of the proceedings, request information on their case, is one that can be easily forgotten or not fully apprehended by the victim at such an early stage. Especially because this is a right and a possibility which may not be of particular importance for the victim at the moment when the complaint is being filed. Therefore, to just inform the victim that they can request to be informed about the relevant developments of their case at this early stage, does not seem to suffice. Authorities must use the suggested follow-up to<sup>38</sup> emphasise this particular right.

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38 See section on Article 4.



## IMPORTANCE OF REPEATING INFORMATION (A CASE STUDY)

*A victim of rape by a stranger is informed, at first contact with the authorities (as required by Article 4), that she has the right to receive information about her case. This is the point where the victim is very vulnerable and traumatised. She is expected to undergo a series of medical examinations and will most probably need intensive psychological support. This is also the point where she is told that in case the perpetrator is identified and apprehended and if criminal proceedings against her instigated, she may choose to be informed about the steps in her case.*

*This information is also very likely to go unnoticed.*

*Assuming that following this first information, the authorities are absolved of the obligation to repeat information to the victim may be detrimental for the victim's experience of the justice system. This understanding risks that the victim will not ask to be informed about any investigative steps and the first update about the case will be when she receives summons to give testimony at the court. This is the point where she will re-live her trauma and be revictimised.*

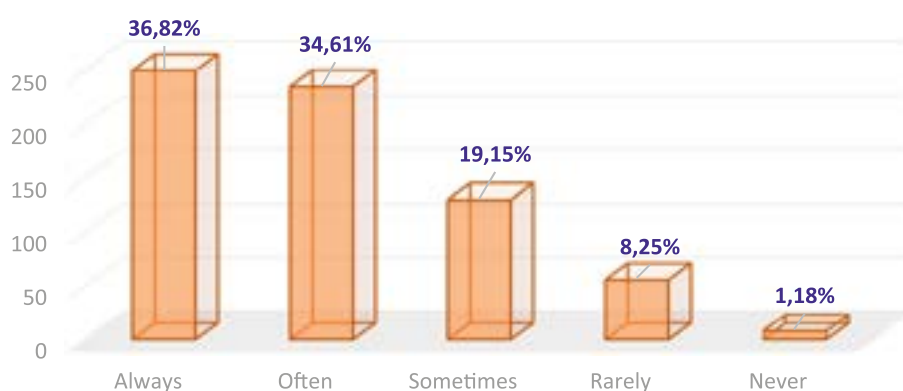
*Should the information still not be provided to her, since victims will not effectively know that the perpetrator was found not guilty or if she is convicted, she will not know about his/her release. Once the victims find out about such outcomes, she will again relive her trauma and be revictimised. Particularly should it happen that she runs into the perpetrator in the street.*

*This can all be avoided by making sure that information about the right to be informed about one's case is provided at a moment when the victim is beyond the first reaction to her traumatic experience and if the information is initially provided by default, leaving to the victim to opt out of receiving the information when she requires for it to stop.*

Most Member States' legislation does predict that victims ought to be informed of their right to receive information about their case. However, in practice, as the provision of other types of information fails, this also often fails.

The vast majority of Member States<sup>39</sup> have established an obligation to provide information to victims about their case which is in line with the Directive. Other Member States have not transposed Article 6 entirely or did not do so at all<sup>40</sup>.

Figure 10 indicates that, in the experience of less than 37% of professionals, victims always receive information about their cases when they do request. In an additional less than 35% this happens often. However, in the remaining almost 30% of cases have very little or no access to information about their case that they had requested.



**Figure 10:** Incidence of response to victims' request for information

A certain proportion of cases in which victims do not receive information are attributable to the absence or incorrectness of victims' contact details in the case files<sup>41</sup>. However, more concerning are the instances where victims do not receive information about their cases because mechanisms/ procedures which allow the provision of information at all and in time are completely absent<sup>42</sup>.

Furthermore, in many Member States the competent authorities often still fail to adopt a proactive role and victims themselves must insist on receiving the information. This results in a great discrepancy in the exercise of this right between victims who are represented by a lawyer or receive support from victim support services and those who do not have such support. For the former group of victims, it is normally easier to get information as they are being accompanied by people who better know victims' rights, the procedures adopted by the criminal authorities

39 AT, BE, CZ, EL, EE, ES, FI, FR, HU, IE, IT, LT, LV, MT, PT, RO, SE and SK.

40 CY, DE, LU, PL and SI.

41 As pointed out by the research on the Netherlands.

42 For example, CY and ES.

and exactly where to look/ask for information. In the latter cases, victims are often left alone to look for the information and are usually deprived from knowing what is happening in their case.

The appropriateness and good functioning of the procedures to provide information to victims about their cases is particularly important when victims request to be informed about the release or escape of the perpetrator from custody because, as explained above, the victim's safety might be at risk. Besides, it is also a basic element of legal system showing respect to the victim by letting them know what is happening with the proceedings that begun as a consequence of their own bad and often traumatic life experience. In many Member States, it was identified that this information is not provided in a timely manner. As shown in below, there is a great lack of knowledge on whether this information is readily made available for victims which indicates the lack of established procedures.

## GOOD PRACTICES

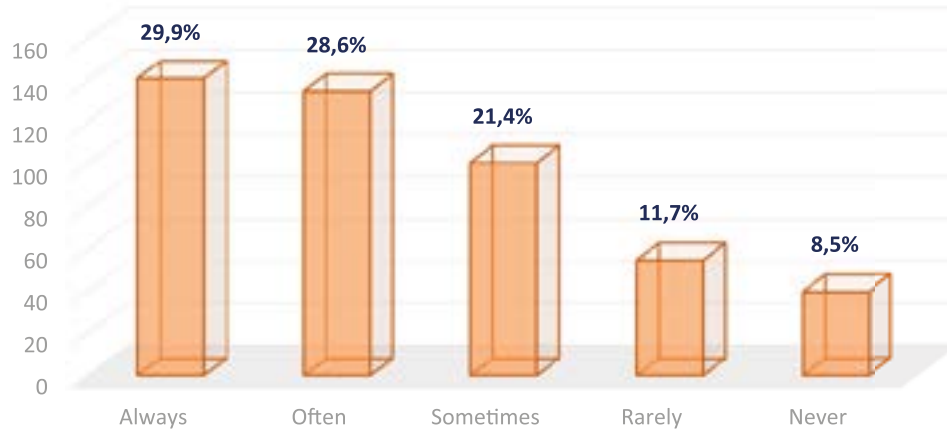
### *Victims Liaison Service*

The Irish Prison Service developed a sub-service, called Victim Liaison Service within which, when a crime victim so requests (by registering in the service), a Victim Liaison Officer provides information to the victim on any significant developments – e.g. temporary releases, parole board hearings, prison transfers, and expected release date. This type of information is built into the the management system.

The Victim Liaison Officer communicates with victims through a variety of methods including phone, text message, email, letter and skype.

This practice is in accordance with the European Commission as suggested regarding the involvement of plural authorities in the notifications of the escape or release of the offender. Often times, police do not have updated information and the prison services might be better informed and equipped to inform victims in a timely manner. Additionally, the possibility of victims being informed by text message or skype is also consonant with the Commission's guidelines which encourage the use of new technologies to contact with the victims.

## UPON REQUEST, ARE VICTIMS NOTIFIED OF THE RELEASE OR ESCAPE OF THE OFFENDER?



**Figure 11:** Frequency of notifying victims about the offender's release or escape

Even more than in relation to the general findings regarding the receipt of information, there is a large proportion of victims – more than 40%, who are never, rarely or only sometimes informed about the release or escape of the perpetrator, with only about 30% of professionals experience systemic compliance with this right in all cases when victims request to know about such circumstances in their case.

# 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.*

## UNDERSTANDING THE CONTENT OF THE RIGHT TO INTERPRETATION AND TRANSLATION

Recital 34 of the Victims' Directive explicitly recognises that justice cannot be achieved if the victims are not able to express themselves and provide evidence during the criminal proceedings in a manner which is understood by the competent authorities and vice versa. This right is directly reflecting the reality of the common market and increased mobility within the EU and from third countries. Knowing that only in 2017, 17 million EU nationals exercised intra-EU mobility<sup>43</sup>, with a further 2,7 million non-EU nationals entering the EU from third countries in the same year<sup>44</sup> accepting multilingualism is a reality that needed to be recognised in the legislative endeavour embodied in the Victims' Rights Directive. In response to this fundamental need, Article 7 of the Victims' Directive establishes the right to interpretation and translation for victims who do not speak or understand the official language used during criminal proceedings.

According to Article 7(1), a victim who does not speak or understand the language of the criminal proceedings should be provided with interpretation, free of charge, during any interview or court hearing, in accordance with his/her role in the proceedings. The European Commission explains that this is a right pertaining to victims who have a formal role in the proceedings and that interpretation must be provided upon the victim's request<sup>45</sup>.

43 Elena Fries-Tersch, Tugce Tugran, Agnieszka Markowska, Matthew Jones, 2018 Annual report on Intra-EU labour mobility, available at: <https://ec.europa.eu/social/BlobServlet?docId=19078&langId=en>

44 Eurostat, Migration and migration population statistics, available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php/Migration\\_and\\_migrant\\_population\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics)

45 European Commission (2013), p. 21.

Furthermore, the Commission explains that there is a link between Article 7(1) and Article 5(2) (Right of victims when making a complaint) even if they relate to different phases of the proceedings. Whilst Article 5(2) requires linguistic assistance to be provided at the moment of the presentation of the criminal complaint, Article 7(1) is applicable in the victims in later phases of proceedings. Apart from this obvious difference in timings of the two obligations, these two stipulations differ in substance. Namely, at the moment of presenting a complaint, the linguistic assistance might be offered by an informal interpreters without certification or internal staff with appropriate linguistic skills<sup>46</sup>. Nonetheless, at later stages of the proceedings, particularly during questioning and court hearings, interpretation must be provided by a formal interpreter recognised for their linguistic ability by the competent authorities of the State<sup>47</sup>.

These differences are drawn based on the need for the expedience at the initial stage which justifies informal and speedy access to facts and complaints on the one hand. On the other hand, the State has an obligation to ensure that evidence coming from the victim is correctly transferred to the court and the defence. At the same time, the victim needs to be sure to receive absolutely correct information during criminal proceedings, due to the potential impact of certain actions on victim's enjoyment of their rights. Hence, more formalised approach to the interpretation at a later stage of proceedings is absolutely necessary.

Article 7(3) establishes the right to receive translated copies of documents containing information essential to the exercise of their rights in criminal proceedings. The concept of "information essential to the exercise of their rights" is covered by the list in Article 6(1) and includes, as a minimum, any decision ending the criminal proceedings and, if the victim so requests, reasons or a brief summary of reasons for such decision.

It is important to note that, while the obligation to provide translation in criminal proceedings is limited to only certain elements of victims' participation in the proceedings, victim is absolutely free to avail themselves of linguistic support to participate and follow the remainder of the proceedings, if they wish so.

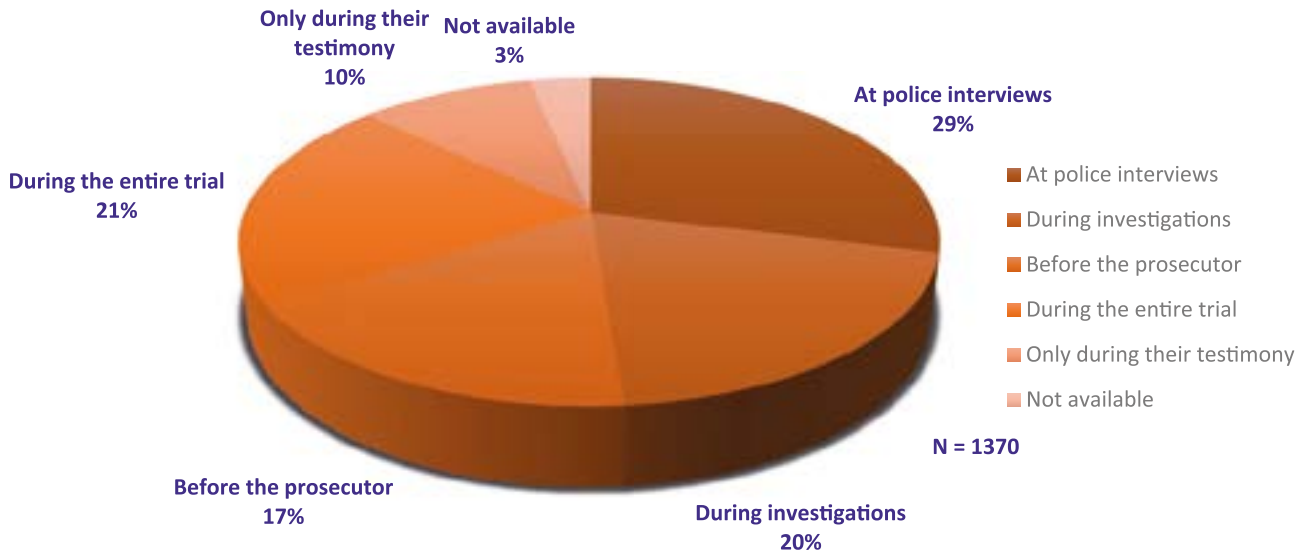
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46 See Section on Article 5.

47 Ibid.

## HOW RIGHT TO INTERPRETATION AND TRANSLATION WORKS IN PRACTICE?

The perception of the professionals inquired, demonstrated in the graphic below, indicates that even in cases where interpretation and translation services are available, the resort to them decreases as the criminal proceedings advance and only 19% of the respondents answered that interpretation services are available during the entire trial.



**Figure 12:** Availability of interpretation and translation

The national legal framework of all Member States foresees the right to interpretation and translation provided free of charge. Nevertheless, the practical guarantee of the enjoyment of this right for all victims of crime presents considerable challenges for the majority of Member States.

The research indicates that the lack of qualified and licensed interpreters and translators is one of the major problems in ensuring this right. Regarding interpretation, this problem is additionally complicated by the instances of the interpreters' lack of sensitivity for victims' needs and their specific vulnerabilities.

In your opinion, what are the main problems you can identify with ensuring the right to interpreting services?	%
Denial of the right to interpreting services	7,5
<b>Lack of availability of interpreters</b>	<b>29,5</b>
Poor quality of interpretation	8,8
Interpreting services available only under limited circumstances (conditional to active participation)	11,0
Interpreting services do not address victims' vulnerability (e.g.: woman victim of sexual violence with interpretation services by a male interpreter)	12,1
Risk of interpreter bias	8,7
Interpreting services are available but not free of charge	3,7
Interpreting services are provided in a language other than the victim's own language	5,5
False assumption that victims understand the language of the proceedings well enough	7,8
Interpreting services are not provided to avoid delays in proceedings	3,4
Other	2,2
Total	100

**Figure 13:** Problems arising in providing interpretation



In addition, there are major concerns regarding the fact that important information is not considered essential to be translated, together with other problems related to the translation provided to victims.

	%
<b>Information not being deemed essential for translation</b>	<b>12,0</b>
Denial of the right to translation	8,3
<b>Lack of availability of translators</b>	<b>18,8</b>
Poor quality of translations	8,4
Available but not in a timely manner	10,7
Restrictions in the documents with respect to their translatability	9,5
Risk of translator bias	5,8
Translations are available but not free of charge	4,5
Translations are provided in a language other than the victim's own language	4,3
False assumption that victims understand the language of the proceedings well enough	10,0
Essential documents are translated orally in a manner that, in practice, does not guarantee fulfilment of the victim's rights	5,0
Translation not provided to avoid delays in proceedings	2,0
Other	0,7

**Figure 14:** Problems arising in providing translation

A transversal problem seems to be the lack of interpreters and translators at several levels. In some Member States, research shows that it is particularly difficult to guarantee that interpretation and translation services are provided equally across the country. In particular, rural and sparsely populated regions are at risk of being deprived of an appropriate response and number of available interpreters and translators. At a different level, in some Member States it was noted that the lack of interpreters/translators is manifested in the lack of professionals who

can appropriately respond to victim's specific needs – depending on their cultural background and specific vulnerabilities. This is particularly visible in the disproportionately higher number of male professionals when compared to the number of their female colleagues. This can negatively impact female victims who might feel more comfortable contacting with professionals of the same sex, particularly in cases of gender based violence. When it comes to cultural background, however, some experiences indicate that sensitivity about different cultural backgrounds is particularly important for some victims. For example, providing translation to a victim of domestic violence by a member of the same tightly knit community can be counter-productive as victims would feel hesitant to share the most intimate details of their domestic life with someone who has easily gain access to their immediate surroundings.

At yet another level, the research demonstrated that when victims do not speak the language of the proceedings but speak and/or understand other language which is more commonly spoken in the country, the problems in providing interpretation and translation can be more easily overcome. Nonetheless, it is, expectedly, consistently difficult to provide interpretation and translation for victims who only speak and understand less commonly known languages and dialects.

In addition to these difficulties, in several Member States there is a considerable lack, or total absence, of specialised interpreters and translators, i.e. professionals who have not only linguistic knowledge and training but also in-depth understanding of the legal system and the ability to quickly adapt to both formal and informal speech.

Other chief shortcoming in the majority of the Member States is the fact that there are no formal procedures for the assessment of victims' communication needs<sup>48</sup>. To determine the victims' linguistic assistance needs, the competent authorities usually perform a rather informal and intuitive assessment which often times results in false assumptions that the victim sufficiently understands the language of the proceedings and in the subsequent denial of interpretation and translation.

In several Member States, the issue of the lack of funding has been raised during the research. Payments to interpreters or translations are, in several instances, considered either insufficient or not processed timely. In some cases, this lack of funding results in the assigned interpreter being the same for both the victim and the perpetrator. This is seen as jeopardising the translator's neutrality and risking the occurrence of conflicts of interest. Certainly, it may risk the loss of confidence the victim has in the interpreter.

Considering that interpreters and translators constitute a critical link in the communication between the victim and the authorities, it is necessary to guarantee the quality of these services.

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48 See section on Article 3

## GOOD PRACTICES

### *Register of Legal Interpreters*

Established in 2016 by the Finnish National Agency for Education, the Register of Legal Interpreters aims at helping people in Finland, including victims, to find an interpreter who is sufficiently qualified to act as an interpreter in legal matters.

The Register has currently 42 interpreters for 12 languages.

To address the increased need for competent interpreters, some Finnish universities and other educational institutions have developed, in cooperation with the Finnish National Agency for Education, training programs on legal interpreting. In 2015, a specialised vocational certificate in legal interpretation which is not tied to any particular languages was added into the Finnish education system.

The final common difficulty identified among different Member States is the lack of training for the different professionals of the criminal justice system in how to work with interpreters and translators and a lack of training of translators and interpreters to sensitise them regarding needs of victims.

# ARTICLE 8 - RIGHT TO ACCESS VICTIM SUPPORT SERVICES

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

Article 8 of the Victims' Directive establishes that "Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings."

The aim of this article is to ensure that, in all Member States, victims and their family members, where applicable, have access to information and support services in accordance with their needs, independently of whether or not they reported or decide to report the crime<sup>49</sup>.

The access to support services, an issue which lies at the heart of the Victims' Directive<sup>50</sup>, is considered to be critical in ensuring victims' rights<sup>51</sup>. The creation of victim support services is a growing phenomenon in Europe and whilst there are vast differences in the extent and capabilities of such services, the difficulties felt at the national level seem to be common.

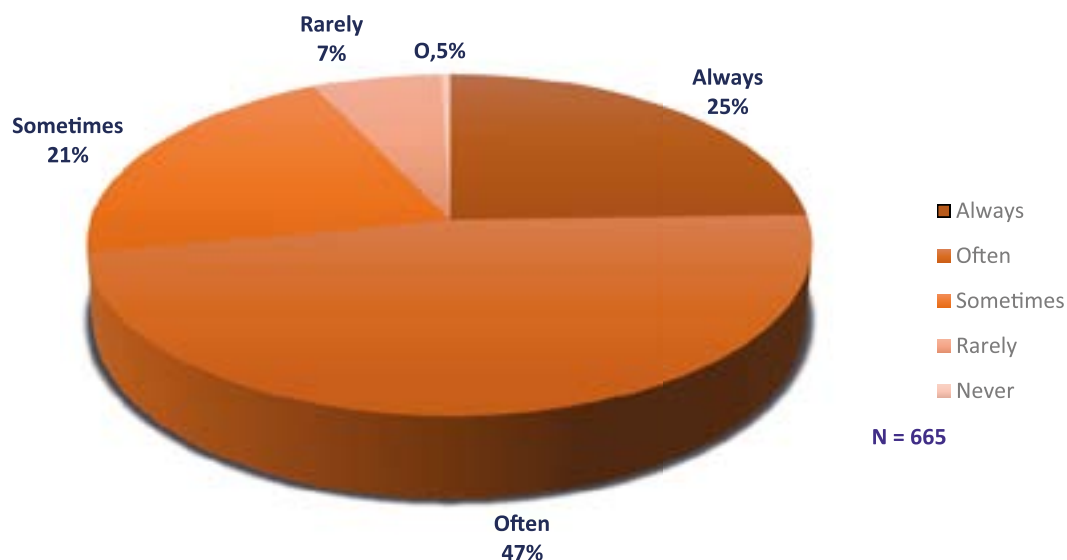
In particular, what is striking is that only one quarter of professionals sees victims always referred to victim support services by competent authorities, while another half is often referred. At least one in every four victims, however, is rarely or even never referred to victim support services.

49 European Agency for Fundamental Rights - FRA. (2014). Victims of crime in the EU: the extent and nature of support for victims. Luxembourg: Publications Office of the European Union, p. 34.

50 Associação Portuguesa de Apoio à Vítima - APAV. (2016), p. 43.

51 European Agency for Fundamental Rights - FRA. (2014), p. 25.

This worrying trend indicates that, despite an obligation from the Directive, a large proportion of victims still is not having access to services. This may be, in part, due to the lack of services, but in a number of examples, even when services exist, there is simply no expectation on the part of the competent authorities to systematically refer victims.



**Figure 15:** How often competent authorities refer victims to support services

The table below illustrates the perception of survey respondents on what needs to be improved in relation to victim support services. It is striking that almost 100% of respondents believe that more funding is needed to provide better support for victims (see Figure 16 below). Understanding that the sample of professionals was diverse, the homogeneity of their reply indicates that indeed victim support services are seriously under-funded and that more important investment could improve access to services for victims of crimes. Additional 40% also believe that more professional support providers will help improve services, which is, in a way, at least, also related to funding and the ability of service providers to employ adequately trained support staff in a competitive labour market.

	n	%
<b>More funding</b>	<b>744</b>	<b>96,25</b>
Better legislation	208	26,91
Better policies	225	29,11
More government involvement in providing offers of support	169	21,86
More involvement of non-governmental organisations in providing offers of support	123	15,91
Better geographical coverage	213	27,55
<b>More professionals</b>	<b>303</b>	<b>39,20</b>
More training offers	177	22,90
More volunteers	102	13,20
Quality standards for services	151	19,53
Better services for certain groups of victims (which – open question)	140	18,11
Do not know	29	3,75

**Figure 16:** What is needed to improve victim support services

Independently of the difficulties and shortcomings felt at the national level, establishing effective and comprehensive support services is a challenging task. The Directive establishes in Articles 8 and 9 what is expected from a victim support service much more clearly than the Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings<sup>52</sup>. Additionally, in its recital 37, the Directive stipulates that “[s]upport should be provided through a variety of means, without excessive formalities and through a sufficient geographical distribution (...)”.

However, the meaning of *access* to support services and *sufficient geographical coverage* is not clearly defined and is difficult to interpret. The substantial differences which exist in “(...) the extent and the service capability of victim support services in Member States”<sup>53</sup> are accentuated by these interpretation difficulties. Member States’ authorities or NGOs, aiming at either establishing or adapting their support services to the Directive’s requirements, often find themselves uncertain on how to do so in order to create a coherent and effective victim support service network.

Considering, first, the utmost importance of both Article 8 and 9 in the landscape of victims’ rights and, secondly, the above mentioned interpretation difficulties, this section of the report will first focus on presenting the comparative analysis of the existent support services in the EU

<sup>52</sup> Idem.

<sup>53</sup> Idem, p. 57.

Member States before presenting findings on how access to support could be better defined to support implementation of Articles 8 and 9.

## IMPLEMENTATION OF ARTICLE 8

As mentioned before and as reiterated by the European Commission, the central aim of Article 8, which is to be read jointly with Article 9, is to ensure victims and their family members have access to confidential support services free of charge<sup>54</sup>.

The research showed that not all Member States have established universal, free of charge victim support services. These services should offer a combination of generic and specialised support. The latter type of support should be available for victims who are particularly vulnerable or find themselves in circumstances which pose a particular high risk of harm<sup>55</sup>.

In most Member States (**AT, BE, CY, CZ, DE, EE, ES, FI, FR, HR, HU, IE, IT, MT, NL, PL, PT, SE, SI**), both generic and specialised support services are available. In the case of **IT**, there is no universal generic support service provider. Instead, the generic support to victims of crime is provided by different organisations at the regional and provincial level, even though a national coordination of generic assistance centres for victims is due to be established. It is also worth mentioning that, until recently, there were no generic support services in **LV** but, at the moment, an NGO is operating the 116 006 helpline<sup>56</sup>.

On the other hand, in some Member States (**BG, EL, LT, RO, SK**) only specialised support services are available. In **SK** a network of contact points for victims of crime – covering the entire country's territory – is expected to be introduced by the Ministry of the Interior in the following years. In what concerns the model of support services – both generic and specialised –, the Directive provides, Article 8 paragraph 4, that they can be established either by public entities or NGOs. In most Member States (**AT<sup>57</sup>, BE, BG, CY, CZ, DE, EL, EE, ES, FI, HU, LT, LU, LV, MT, PL, PT, RO, SE, SI, SK**), support services are provided by both the State and NGOs, whilst in others (**HR, IE, NL<sup>58</sup>**) support services are provided by NGOs.

Nonetheless, the mere establishment of generic and/or specialised support services might not mean that there is sufficiently available support service network in a given country, other factors, such as accessibility, comprehensiveness and quality of services must be taken into account.

54 European Commission (2013), p. 24.

55 Recital 38 of the Victims' Directive.

56 <http://www.skalbes.lv/en/>

57 The main support service provider, Weisser Ring, is a NGO that does not rely on state funding, however, Weisser Ring is operating a helpline which is the only support service fully funded by the State.

58 The main organisation providing general and specialised support services is Victim Support N which is, nevertheless, strongly relying on State (Ministry of Justice and Safety) and municipal funding

## ACCESSIBILITY<sup>59</sup>

As mentioned before, the Victims' Directive establishes that Member States shall ensure that victims have **access** to support services.

The indicator which is instinctively associated with accessibility is the geographical sense of the word. The Directive establishes that support services shall have a "sufficient geographical coverage".

Whilst this isn't defined in the Directive, an examination of territorial coverage in the Member States shows that while in some Member States the available support services do cover the entire territory (**AT, CZ, EE, FR, HU, MT, PL, SE, SI**), this is not the case in others (**BG, HR, CY, EL, ES, IT, LT, LU, RO, SK**). In these last countries, support services are located in mainly urban areas, in some cases only in the capital and other major cities, leaving rural areas deprived of easily accessible services.

In some Member States (**IE, FI, NL, PT**), while sufficient territorial coverage might not been achieved yet, other innovative solutions are being adopted, for example, helplines, house visits and itinerant services.

Some of these alternatives to face-to-face support, particularly the helplines, were also adopted by other Member States (**AT, BG, CY, CZ, DE, EE, EL, FR, FI, HU, HR, IE, IT, LT, LU, LV, MT, NL, SE, SK**).

## REFERRAL OF VICTIMS TO SUPPORT SERVICES

Article 8, paragraph 2 of the Directive emphasises the need to facilitate referral between the State's competent authorities which receive the criminal complaint and victim support services. Referral mechanisms exist in some Member States (**BE, BG, CY, DE, EE, ES, FI, FR, HU, LT, LU, NL, SE, SK**), even though in a few of these (**CY, LT, LU**) the referrals mechanisms are only in place for certain groups of victims, normally victims of domestic violence, victims of trafficking in human beings and child victims.

In other Member States (**AT, CZ, EL, HR, IE, IT, LV, MT, PL, PT, RO, SI**) referral mechanisms do not exist or exist but in an informal manner. In **PT**, for example, pilot referral mechanisms are in place between victim support services and law enforcement agencies but these mechanisms have "(...) *limited dimension and directed towards a very small number of victims (...)*".

<sup>59</sup> The term accessibility in this sense, and throughout the present text, unless mentioned otherwise, is intended to mean the functional accessibility as in 'the quality of being able to be reached or entered', rather than understanding it within the meaning of accessibility for persons with disabilities, within the meaning of Article 9 of the UN Convention on the Rights of Persons with Disabilities.



The main difficulty identified with regard to referral mechanisms in several Member States is the lack of consistent referral policies and procedures on how to refer victims to victim support services.

In addition, the overall lack of knowledge among professionals about the different services victims need contact with is problematic. The unfamiliarity of these professionals with the established support network clearly undermines their ability to refer victims of crime to such services depending on their specific needs.

Moreover, the lack of clear guidelines on processing and transmitting personal data, at the minimum gives professionals cause for concern when transferring personal details to other entities/services. At worst, they will not transfer the information.

Even in Member States where generic and specialised support services exist, the poor comprehensiveness of the support network jeopardises the quality of support provided by those existent services as there is no effective communication and cooperation between the different entities/services which allows to truly address and respond to all needs of the victim.

The Victims' Directive does not refer explicitly to the quality of support services provided to victims. Nevertheless, Recital 63 mentions that "(...) *it is essential that reliable support services are available to victims and that competent authorities are prepared to respond to victims' reports in a respectful, sensitive, professional and non-discriminatory manner.*" This reference allows to infer that a service of good quality is one that is reliable and where victims are treated in a respectful, sensitive, professional and non-discriminatory manner. However, these criteria are insufficient to accurately measure the quality of services and a need was felt, at the national and European level, to broaden the list of criteria<sup>60</sup>.

60 FRA - European Agency for Fundamental Rights. (2014), p. 91.

## GOOD PRACTICES

### *Remote Support Mechanisms*

The lack of face-to-face support services in all areas (county, district, court jurisdiction areas, etc.) can be fulfilled by the setting up of remote support mechanisms which are able to provide an alternative solution in urgent cases. A good example of these remote support mechanisms is the 116 006 helpline - an European-wide and free of charge number created to offer victims direct access to professional support services provided either by State authorities, private entities or NGOs.

## QUALITY

Some of these existent quality standards were government-developed – usually in the context of funding protocols - or were set up by the different service providers themselves. More and more, quality standards are proposed and defined by umbrella national or international organisations. This is the case of the Victim Support Europe (VSE) standards.

Considering the membership of VSE which represents 54 national organisations in 29 countries, providing support to over 2 million victims of crime each year, this report emphasises the VSE standards as a starting point for the measurement of quality of services. These standards are the following:

- 1. The support service is available to all types of victims of crime** - the service support all victims of crime regardless of the type of crime committed, whether the victim presented criminal complaint, the victim's age, cultural background and language. Considering that certain groups of victims do not reach out for, or hardly do, for victim support services, making the service available to all types of victims includes measures to reach out to vulnerable groups, e.g. children, elderly people, people with disabilities, cross border victims.
- 2. The support service respects and treats victims with courtesy and dignity** - the victims support service staff and volunteers must, on one hand, treat victims with respect, courtesy and dignity. This includes victim support workers communicating with victims in a proper way and treating them in a respectful, kind and polite manner. Additionally, a complaints strategy must be in place for cases where the victim feels he/she is not treated with respect. On the other hand, the support service must be organised in a way which ensures that response to victims is given in a reasonable time, that the premises are pleasant, clean and comfortable and that privacy is granted to victims when talking to a victim support worker and discussing his/her case.
- 3. The support service works to ensure victims are safe** - ensuring victims' safety includes assessing the risks for victims and providing them advice accordingly, putting in place safety basic standards and safety measures within the premises, and ensure confidentiality/protect victims' personal data.
- 4. The support service responds to victims' individual needs** - the services must be tailored to respond to individual needs of victims and their different abilities and vulnerabilities.

5. **The support service is *diversified*** - this includes providing services in a range of different ways/means, e.g. office based support, helplines, mobile services, online services, and providing a different range of services, as a minimum, information, advice and support in accessing compensation, referral to other relevant services, emotional support, psychological support or referral to psychological support, advice relating to financial and practical issues, advice relating to risk and prevention.
6. **The support service is provided through *referrals and cooperation*** - a victim support service must inform victims about other services and services providers, on one hand, and must refer victims to partner organisations which will satisfy the victims needs with quality, on the other hand.
7. **The support service *ensures good governance structures*** - a good victim support service must comply with national laws and regulations.
8. **The support service *provides and/or encourages training*** - this means that the support service must ensure that all staff and volunteers receive an appropriate level of training in accordance to the nature of their contact with victims and which, as a minimum, aims at ensuring that victims are treated with dignity, that the support provided responds to victims' needs and that no further harm is caused.
9. **The support service has *monitoring and evaluation mechanisms in place*** - on one side, this means that the victim support services are evaluated at least once every two years and, on the other side, that there is a complaint system in place that allows victims to give feedback and seek redress.

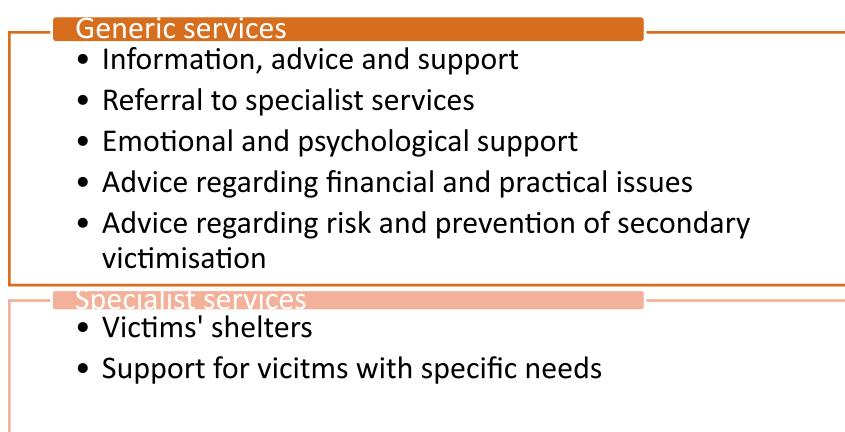
The standards are accompanied by sub-standards and tasks which help guide users to understand what is required in order to conform with those standards. The standards themselves are focused primarily on delivering a high quality service to victims. Nevertheless, some governance standards are also included.

# 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.*

Article 9 of the Victims' Directive is to be read jointly with Article 8<sup>61</sup>. As such, this provision provides the list of minimum generic and specialist support services which should exist in all Member States.

Article 9, therefore, provides for certain minimum type of services that need to be put into place, under the conditions set out in Article 8.



**Figure 17:** Minimum victim support services required by the Directive

61 European Commission (2013), p. 28.

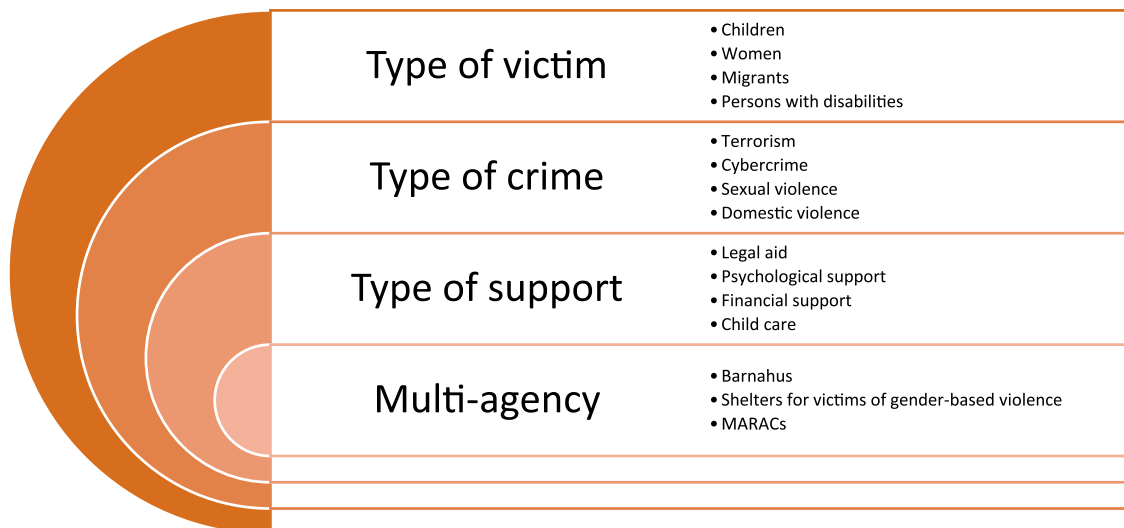
Understanding, however, that those are only the minimum type of services, it appears from the national research that, many countries provide a broader range of these services. Worryingly, however, there is still a significant number of countries which fail to ensure provision of generic nation-wide victim support services, as required by the Directive. Hence, there is no comprehensive generic services available in Bulgaria, Greece, Lithuania, Romania and Slovenia. In some other countries, like in Italy, generic services are only at the beginning of their development, with a national network of victim support, Rete Dafne, only having been established in 2018. At the same time in Croatia, victim support is provided through a patchwork of different approaches, where different level of support is available to victims across the country, depending on the jurisdiction.

Against this background it is important to notice that the minimum of generic victim support services, as required by Article 9 of the Directive, is still far from being fully implemented across the EU.

In addition, Article 9 indicates the necessity for Member States to ensure that necessary specialist services are made available to victims. While the Directive limits itself to only suggesting one specific type of specialist services: victim support shelters and support to victims of only certain types of crimes – such as sexual, gender-based and violence in close relationships.

However, the reality is, especially considering the needs driven approach to victim support, that the range of specialist support services needs to be much broader to make sure that all victims receive the support they actually need.

Comparative experience indicates that there are four main types of specialist support, depending on the type of victim, type of crime and type of support or a combination of these different factors, as well as some specific forms of multi-agency support for particularly vulnerable victims or in particularly complex situations.



**Figure 18:** Some examples of different specialist support services

Presence of different types of available generic and specialised support services are expected to respond to victims' needs. However, there is a visible absence of comprehensive victims' surveys or mapping exercises of victim support services. When there are some partial efforts towards such activities, different sources use different methodologies, making any comparison on EU-level overview very difficult to conduct. At the same time, without information and data, it is impossible to understand the scope of the problem and the needs of victims.

As a matter of fact, judging by the opinion of professionals who participated in the survey, Article 9 lacks systemic implementation at the EU level, with many services still not available to most victims.

To the best of your knowledge and experience, do all victims receive the following services?	Always	Often	Someti- mes	Rarely	Never
Information, advice and support relevant to the rights of victims	33,2%	40,9%	19,5%	5,8%	0,6%
Information about direct referral to existing relevant specialist support services	27,6%	41,3%	21,3%	9,2%	0,6%
Emotional and psychological support	26,9%	37,0%	25,0%	9,7%	1,4%
Advice relating to financial and practical issues associated with the criminal offence	17,3%	42,0%	27,5%	10,9%	2,2%
Advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation	21,5%	32,3%	29,7%	13,7%	2,8%

**Figure 19:** What services do victims receive?

# DEFINING ACCESSIBILITY OF VICTIM SUPPORT SERVICES

## INTRODUCTION

***How do we determine if support services in a country are accessible in accordance with the EU Victims Directive?***

A fundamental challenge when assessing the practical implementation of Article 8, is determining the extent to which a national system of support services must be available in a country to comply **with the Directive's obligations** that the **support is accessible and provided to a sufficient geographical distribution (recital 37)**.

To date, our research has identified **no recommendations from the EU institutions or other organisations** as to what would be the minimal level of service delivery to comply with Article 8.

This creates **significant barriers for victims who wish to enforce their rights before the courts**. It also inhibits the EU Commission's own analysis of compliance and any follow up action including infringement proceedings and decisions on amendments to the existing Directive.

Of course it also complicates the work of States wishing to implement a national system of support. In short, **if we don't know what compliance should look like, how do we know if it has been achieved or not?**

Given the findings of our research as well as those of the EU FRA that a number of Member States have not implemented Article 8, it is essential that there is a clarity on this issue.

This report therefore sets out key **factors that could be taken into account when examining the availability of support services and minimum requirements for implementation of Article 8**. It is important to note here, that the focus of this work relates to generic victim support i.e. services that are available to all victims and not just focused on one group. Whilst the analysis will largely be applicable to specialist services additional factors will need to be taken into account.



## THE OBJECTIVES OF IMPLEMENTATION CRITERIA

Criteria on access to support services have several functions.

- They can be used by individuals and organisations to know **what they can expect**, to decide if their **rights have been respected** and to **enforce those rights** through the courts or other routes;
- They can be used by **national policy makers** to devise their **entire national victim support framework**, using national and community **needs assessments** to determine the exact manner and extent of delivery;
- They can be used by **national policy makers** to make a quick assessment of whether existing systems are **compliant with EU requirements** and if victims are actually accessing support in sufficient numbers. Thus a relatively speedy, high level analysis of a State's victim support system could be carried out recognising that a subsequent detailed local analysis will eventually also be needed. This would work whether there are relatively easily measured criteria e.g. a certain number of offices per capita or per region;
- They can be used by the **European Commission** to determine **compliance with EU laws** and for subsequent enforcement action.

For a high level analysis or for compliance checking which doesn't entail a detailed community needs analysis, the best approach may be to develop a series of questions which would indicate what measures are in place to ensure that services are provided to an adequate level.

A lack of the required measures would show that further analysis was necessary and imply there may be inadequate implementation. Notably, the UN has used this approach as a **toolkit to support policy decisions** in the development of national police structures<sup>62</sup>.

## OBLIGATIONS ON MEMBER STATES WHEN IMPLEMENTING EU LAWS

Irrespective of specific criteria for a given piece of law, a body of decisions by the **Court of Justice of the European Union** (CJEU) and the **European Court of Human Rights** (ECtHR), already helps define the ways that Member States should implement the Victims Directive.

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62 United Nations Office on Drugs and Crime, "Public Safety and Police Service Delivery: Criminal Justice Assessment tool kit" - [https://www.unodc.org/pdf/criminal\\_justice/PUBLIC\\_SAFETY.pdf](https://www.unodc.org/pdf/criminal_justice/PUBLIC_SAFETY.pdf)

In summary those rulings indicate that **laws implementing the obligation to ensure access to victim support services must:**

- be **sufficiently precise** and **clear**;
- be fully **effective**;
- achieve an **outcome consistent with the objective** of support to victims;
- not be **arbitrary**;
- ensure individuals are made **fully aware** of their right to access support services;
- allow for **enforcement** or an **effective remedy** before the courts where access is not provided.

The approach is well set out by both the ECtHR and CJEU. The CJEU has held that:

- The obligation, arising from a directive, to **achieve the result** envisaged by that directive and the **duty to take all appropriate measures**, whether general or particular, to ensure the fulfilment of that obligation in accordance with the principle of sincere cooperation in the second subparagraph of Article 4(3) TEU is **binding on all the authorities of the Member States**, including, for matters within their jurisdiction, the courts<sup>63</sup>.
- It is essential for national law to **guarantee that the national authorities will effectively apply the directive in full**, that the legal position under national law should be **sufficiently precise** and **clear** and that **individuals are made fully aware of their rights** and, where appropriate, **may rely on them before the national courts**<sup>64</sup> and this is of particular importance where the directive in question is intended to accord rights to nationals of other Member States.

Similarly the ECtHR has held that the principle that **national law must be interpreted in conformity with EU law requires** national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration (...), with a view to ensuring that the directive in question is **fully effective and achieving an outcome consistent with the objective pursued by it**.

However, it should be borne in mind that even when something is left to Member State competence, general principles of EU law still apply, including the **right to an effective remedy**. This right, which has existed for a long time in the CJEU case-law, is contained in **Article 47 of the Charter**:

<sup>63</sup> see, inter alia, judgments of 10 April 1984 in von Colson and Kamann, 14/83, EU:C:1984:153, paragraph 26; of 8 September 2011 in Rosado Santana, C 177/10, EU:C:2011:557, paragraph 51, and of 19 April 2016 in DI, C 441/14, EU:C:2016:278, paragraph 30

<sup>64</sup> Case C-365/93 Commission v Greece [1995] ECR I-499, paragraph 9

'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has **the right to an effective remedy** before a tribunal in compliance with the conditions laid down in this Article.'

For example, Article 5 of the ECHR sets out that "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty" except in specified circumstances.

**The ECHR has subsequently ruled that** national law on this issue must be sufficiently **accessible, precise and predictable** in its application in order to avoid all risk of arbitrariness<sup>65</sup>. If the law is not made accessible, it may be applied arbitrarily.

In analogy, full accessibility of support services precludes that support services are provided in an **arbitrary way and the laws or rules governing provision of services should be precise and predictable**. In other words, victims should not be exposed to random luck to determine their level of access. Rather there should be a **clear and thought out system for the provision of support to ensure equality of access**.

While Member States have a margin of discretion in defining how to implement the Directives' objectives, a situation of non-conformity that persists and leads to negative impacts, without any action taken by the competent authorities is considered an indication that the Member States have exceeded such discretion.

## FACTORS RELEVANT TO ACCESS TO VICTIM SUPPORT

When considering access to services, several broad **categories of factors** can be taken into account.

- 1) The **physical ease** with which a victim may reach that service.
- 2) Other types **of barriers which may hinder a person's ability to reach a service**. For example, if the service is only open during restricted hours, or if certain eligibility criteria are applied e.g. the need to report the crime or co-operate with the police.
- 3) The **awareness** that victims have of a service. In simple terms, if victims don't know a service exists, they will not have access to it.
- 4) **Planning mechanisms** for service provision?

## DETERMINING PHYSICAL ACCESS

With respect to physical access, we must take into account the **types of services** that are to be considered as well as **the minimum level of access** that is required.

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<sup>65</sup> Judgment of the Court of Justice of the European Union of 15 March 2017, Al Chodor, C 528/15, at 38 and the case-law cited.

## WHAT TYPES AND FORMS OF SERVICE ARE RELEVANT?

Support can be delivered through several means. These are primarily:

- 1) **Face to face** services delivered in **permanent locations/offices**
- 2) **Face to face** services which **move to the client** e.g. mobile van service
- 3) **Distance support** delivered through helplines or online systems

It is the combination of these different services in their entirety which will be assessed to determine overall access. It would not be fair, for example, to state that no service was available to victims in a given area if there is no office, though there may be helplines and online services available.

However, it is important to note that **if any one service is relied on to demonstrate compliance across a country, it should provide the full range of services required in the Directive.**

For example, where a Member State puts forward that it complies with the Directive as it has a national helpline (though no other services), the Member State would need to demonstrate that the helpline was not merely an information line, or a first contact point.

The helpline would need to provide a **full therapeutic service in accordance with Article 9 of the Directive**, for as long as victims need support via that helpline. In the case that it does not, the accessibility of other support services will also need to be taken into account.

### *Article 9*

#### **Support from victim support services**

1. Victim support services shall, as a minimum, provide:
  - (a) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;
  - (b) information about or direct referral to any relevant specialist support services in place;
  - (c) emotional and, where available, psychological support;
  - (d) advice relating to financial and practical issues arising from the crime;
  - (e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation...

In addition, it must be considered whether the alternative service (online instead of face to face) is a **sufficient alternative**. In other words, are there **aspects of a particular service which makes its provision essential** for at least some proportion of victims and can those aspects be replicated by other services?

ECtHR rulings can by analogy be helpful in this respect. As mentioned above, the ECtHR has emphasised that **remedies** (within the meaning of Article 13 on the right to a remedy) available to a litigant at domestic level are “**effective**”, if they **prevent the alleged violation** or its continuation, or **provide adequate redress** for any violation that has already occurred<sup>66</sup>.

Applied to the question of whether alternative support services are adequate, **the question is: if a physical service is not accessible to a victim, is there an alternative service (remedy) which overcomes this failure (provides adequate redress for the violation).**

Thus it could be legitimate to demonstrate there are other services offering similar results. However, such services would not only need to be similar in nature but also **fulfil critical aspects of face to face meetings**.

Within the remit of this project, we have not found research which explicitly determines whether face to face or other types of support are critical and cannot be replaced by other types of services. However, feedback from victim support providers has indicated that whilst many victims and many types of crimes can be adequately supported at a distance, **some victims only accept face to face services and some**, especially those involving highly traumatic crimes, **require a face to face service to fully benefit from the offered support**.

Whilst further research is required, it seems that **implementation which relies solely on remote provision of support is unlikely to meet the needs of a broad range of the victim population**. Determining the **right combination of different forms of service** will therefore be **essential** to delivering effectively for all victims.

## WHAT SHOULD BE THE MINIMUM LEVEL OF ACCESS?

The second issue is how to define the level access that victims should have as a minimum. For example, would it be acceptable that a victim had to travel 10 hours to reach a service? Would that be acceptable for some victims and not others, and how can we cater for these different needs and requirements?

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<sup>66</sup> Supra 6, Kudla, at 158.

A number of approaches have been identified to help determine minimum requirements. These are based on the following sources:

- 1) Rulings of the European Court of Human Rights (ECtHR)
- 2) Rulings of the European Court of Justice (CJEU)
- 3) The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environment Matters (Aarhus Convention)
- 4) The Council of Europe Convention on preventing and combating violence against women and domestic violence (The Istanbul Convention)
- 5) UN Convention on the Rights of People with Disabilities
- 6) Planning for social and health-care services
- 7) Planning for police services

## DETERMINING THE NOTION OF ACCESS

### Sufficient Geographical Distribution

Starting with the Directive itself, support must be provided to a “**sufficient geographical distribution** across the Member State to allow all victims the opportunity to access such services”.

This suggests that a service should not be too far from any particular victim. However, **sufficient geographical distribution is not defined** in the Directive and therefore requires elaboration to serve as a useful guide.

In this regard, it is germane to note that the Council of Europe study Combating violence against women: minimum standards for support services<sup>67</sup> proposes that each Member State should provide helplines, shelters, rape crisis centres and sexual assault centres with **an adequate geographical distribution**. This study was the inspiration for the language used in the Victims Directive.

Through that study and within the Istanbul Convention, additional requirements are set out which perhaps informs about how to determine what is a sufficient geographical distribution. In particular it points to:

### Access based on need and demonstrated by number of services

Article 23 of the Istanbul Convention requires that Parties shall take the necessary legislative or other measures to provide for the setting-up of appropriate, easily **accessible shelters** in **sufficient numbers** to provide safe accommodation for and to **reach out** pro-actively to victims,

<sup>67</sup> [https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF\(2007\)Study%20rev.en.pdf](https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF(2007)Study%20rev.en.pdf)

especially women and their children. The number of shelter places **should depend on the actual need**<sup>68</sup>.

### Access based on availability in every region

The Council of Europe recommends that safe accommodation in specialised women's shelters are available in **every region**.

### Access based on per capita requirements

The Council of Europe recommends that with respect to shelters there is one family place **per 10 000 head of population**; one rape crisis centre per 200 000 women; one sexual assault centre per 400 000 women; one women's counselling centre for every 50 000 women; and outreach and pro-active services in all regions<sup>69</sup>.

Unfortunately, within the bounds of this study, further details could not be obtained on the methodology for determining the ratio of service per capita.

Beyond taking into account the overall population density of a region, **population distribution** is also relevant. For example, if a particular region is large with the majority of a population living only in one part of the region, it stands to reason that services will be most effectively provided near this high population density. At the same time, low population density areas also need some **minimum adequate level of service**, or additions to face to face services.

As can be seen all three of these approaches could be applied to support the determination of whether access to support is effective and practical. However, at present, there is no determination of **which method would be most appropriate in which circumstances to determine accessibility requirements**.

### Determining optimal location – methods used in other sectors

It is important to note that whilst the approaches above can help to determine the number of services, or general location, they do not help carry out a more **precise process for deciding where services should be located**. This can be critical to victims for their ease of access.

It is therefore worth considering approaches taken in other sectors such as health care, provision of police and other emergency services, and even private sector distribution centres. For example,

68 Explanatory Report – CETS 210 – Violence against women and domestic violence

69 [https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/Final\\_Activity\\_Report.pdf](https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/Final_Activity_Report.pdf)

in the Netherlands, a range of **indicators of accessibility** of health-care are used including **reasonable costs for individuals and travel distance**.

The private sector as well as service delivery sectors, use a number of different **mathematical models** to help determine the optimum distribution of services or offices, such as warehouses or fire stations.

Research to improve the location of police stations in rural South Africa, set out **four location models – analytic, continuous, network and discrete**<sup>70</sup> which could help determine the best location of police stations. Of the four models **discrete location models (Covering models)** were seen to be the most. In particular, the author noted:

“Simply stated, the set covering model **minimizes the number of sites needed to cover all the demands**; and the maximal covering location models **maximised the number of covered demands with a certain number of sites**. The p-center model minimises the coverage distance needed to cover all the demands with a certain number of sites”.

#### **Applying the discrete location model to determine where to locate support services**

Applying this to the provision of victim support, a first analysis using the set covering model could help work out the **optimum provision of services to meet the demands of all victims of crime**.

A subsequent analysis using the p-center model would then take into account **budget allocations and other limitations to maximise the delivery of demanded services** based on the budget available for a set number of sites.

Carrying out both analyses would allow for **an initial optimum provision based on existing budget, whilst planning for the future** by understanding what the gap between demand and service provision would need to be addressed.

Of course, here we only provide an overview of one model which might be of relevance. Further analysis would be needed to better understand to what extent this or other models would best fit the victim support sector.

<sup>70</sup> S. Cramer, ‘Locating Police Service Points in Rural Areas of South Africa’, University of Pretoria - [https://repository.up.ac.za/bitstream/handle/2263/33478/Cramer\\_Locating\\_2014.pdf?sequence=3](https://repository.up.ac.za/bitstream/handle/2263/33478/Cramer_Locating_2014.pdf?sequence=3); See also e.g. K. Curtin, K. Hayslett-McCall, F. Qui, ‘Determining Optimal Police Patrol Areas with Maximal Covering and Backup Covering Location Models’ - <http://www.utdallas.edu/~ffqiu/published/2007Curtin-NASE.pdf>; P. Muller, ‘Positioning Police Emergency Vehicles: Determining facility locations and routing techniques for fast emergency response’ University of Twente/ East Netherland’s Police - [https://essay.utwente.nl/65207/1/Muller\\_MA\\_MB.pdf](https://essay.utwente.nl/65207/1/Muller_MA_MB.pdf)



## Access should be practical and effective

With respect to the determination of access, a number of principles have been established through **ECtHR rulings** as well in other contexts.

As a starting point, the ECtHR has rules that the right of access to a court must be "**practical and effective**", so that an individual must "*have a clear opportunity to challenge an act*" that constitutes an interference with his rights<sup>71</sup>. The essence of the right of access to a court is impaired when the rules cease to serve the aims of justice and constitute barriers to justice<sup>72</sup>.

Applying these notions to victim support services, it could be examined whether **access for individuals is practical and effective, and if there are any barriers which would impede such access**.

Another analogy in this regard may be drawn from the proposition that judicial remedies allowing a victim of domestic violence to escape the violent situation through, inter alia, divorce or separation proceedings shall be **accessible and effective in order to guarantee practical – not just theoretical or illusory protection to the victim in a vulnerable position**<sup>73</sup>.

As the ECtHR held, such an effective access may require **a combination of means of support**, such as legal aid or by simplifying the procedure for victims<sup>74</sup>.

Fitting these principles into the victims' rights scenario, it is crucial that the legal and policy framework **facilitate access to support rather than impede it**. For that reason, legislation and the policy framework should be reviewed and assessed to determine **whether they promote, or on the contrary, impede accessibility of victims' support services**.

### Barriers or restrictions on access

Taking into account that the ECtHR examines **barriers** to access to determine whether access is genuine and practical, it is worth exploring some of the barriers it has recognised:

#### - Limitations based on discrimination

Under the principle of "equal access to justice", justice **may not be restricted on discriminatory grounds**<sup>75</sup>. In this line of reasoning, and indeed in line with the Directive itself, **access to victim**

71 Judgment of the European Court of Human Rights in *Zubac v. Croatia* GC, at 76-79.

72 *Ibid*, at 98.

73 <https://rm.coe.int/1680597b16>

74 <https://rm.coe.int/1680597b16>

75 Opinion of Advocate General Szpunar on 7 August 2018. Case C-327/18 PPU Minister for Justice and Equality V R O.

**support services should be provided to all victims on a non-discriminatory basis**, regardless of the type of crime, the time passed from its commitment, age, sex or other characteristics of the victim.

When defining accessibility, Member States must also **take into account the diversity of victims and their situations**. It is worth noting here that the **UN Convention on the Rights of Persons with Disabilities** sets out clear obligations and rights with respect to accessibility for people with disabilities.

Article 3 of the Convention refers to accessibility as a general principle of the Convention that should be considered in relation to the enjoyment of the rights under the Convention.

Accessibility of support services must therefore be ensured for persons with disabilities and is predicated upon the idea of removing “barriers” to accessibility such as implementing accessibility standards, universal design, and providing training to all stakeholders on accessibility for persons with disabilities.

#### **- Time based barriers**

The ECtHR has recognised **time factors**<sup>76</sup>, as well as **too restrictive limitation periods** for bringing a claim, as potential violations of the right of access to a court<sup>77</sup>. However, **proportionate limitations are permissible**.

It is also notable that for example, with respect to violence against women, the **Council of Europe** has suggested that Parties develop minimum standards for the provision of specialised services, including: at least one free national helpline covering all forms of violence against women **operating 24 hours a day 7 days a week** and providing crisis support in all relevant languages. The suggestion perhaps being that at least for this type of service, there must be **permanent accessibility**.

Applying this approach to accessing support services, it could be argued **that the time taken to reach a service, restrictions on when a victim may access a service and access limitations based on when the crime took place** for example, could also constitute limitations on access. **Issues relating to location of services and distance of travel** will also be linked to some of these timing issues.

Linked to time barriers, is the issue of **waiting lists**. In the area of health-care, one such commonly used indicator in patient-centred service delivery relates to **waiting lists or postponements of**

<sup>76</sup> Judgment of the European Court of Human Rights of 1 March 2016 in *Arlewin v. Sweden*, Application No. 22302/10.

<sup>77</sup> Judgment of the European Court of Human Rights of 11 June 2014 in *Affaire Howald Moor and Others v. Switzerland*, Application No 52067/10 at 79-80; and of 10 July 2002 in *Yagtzilar and Others v. Greece*, Application No 41727/98 at 27.

## provision of health-care.

In **Finland**, since 2005, the public system has been required to **guarantee immediate contact with a health centre during working hours** either by phone or by personal visit<sup>78</sup>. This was established due to substantial variation in waiting times for care among municipalities.

Linked to issues of wait times, is the question of **workload on staff**, with both these notions coming under the general issue of **need or demand**. In effect, service provision could be determined by using waiting times and the workload of staff e.g. staff should not be handling more than a certain number of cases per week as an indicator of whether there is sufficient provision of services. Or given the varying types of cases – with some being complex – it may be based on the number of session or session hours combined with the number of people waiting for appointments and the length of waiting times.

Importantly, as with the general issue of determining need, **it should not be assumed that a low uptake of service demonstrates a low need**. This should be examined in conjunction with an analysis on barriers to access.

### - Cost based barriers

Equally the ECtHR has held that the right of access to a court may be impaired by the **prohibitive cost of the proceedings** in view of the **individual's financial capacity**<sup>79</sup>, including excessive court fees<sup>80</sup>.

This could suggest in order to meet some of the requirement of accessibility, **victim support services should be affordable**. Whilst the service itself should be **free of charge** according to the Directive, **inhibitive costs** such as travel to the location or charges for example for interpretation and translation could be construed as **preventing access in individual cases**, based on the victim's financial capacity. It would also seem legitimate that **specific victim groups which may have financial vulnerabilities** would need to be taken into account more generally when developing services and determining access levels.

### - Procedural based barriers

Where services impose **administrative requirements** on victims to access services, these should not be so heavy as **to inhibit access**. For example, if a service provider requires a wide range

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78 [https://www.hbs.edu/faculty/Publication%20Files/Finnish\\_Health\\_Care\\_System\\_SITRA2009\\_78584c8b-10c4-4206-9f9a-441bf-8be1a2c.pdf](https://www.hbs.edu/faculty/Publication%20Files/Finnish_Health_Care_System_SITRA2009_78584c8b-10c4-4206-9f9a-441bf-8be1a2c.pdf)

79 Judgment of the European Court of Human Rights of 28 October 1998 in *Ait-Mouhoub v. France*, Application No. 22924/93 at 57-58; and of 29 June 2000 in *García Manibardo v. Spain*, Application No. 38695/97, at 38-45

80 Judgment of the European Court of Human Rights of 19 June 2001, in *Kreuz v. Poland*, Application No 28349/95 at 60-67; of 30 November 2005 in *Podbielski and PPU Polpure v. Poland*, Application No 39199/98, at 65-66; and of 24 May 2006 in *Weissman and Others v. Romania*, Application No 63945/00, at 42.

of information or evidence of the actual crime before they accept to offer support, this may be disproportionate compared with the aim of gathering this information. Ultimately, victims may be discouraged from seeking support.

**- Barriers inhibiting service providers from delivering a support service**

Whilst this factor does not relate directly to victims' access, it can be relevant where rules are imposed on those already providing or wishing to provide a support service. In other words, **those wishing to provide support services should not be unreasonably prevented from doing so.**

Rules which effectively prevent or limit the ability of organisations to support victims or deliver services, could be contrary to the Directive. This notion is reflected in **the Aarhus Convention**. Under the Convention, NGOs must be able to acquire legal standing in proceedings concerning environmental matters in order to protect the general interest. According to the CJEU, **rules concerning the legal standing of NGOs cannot make impossible for NGOs to exercise such right** and impede wide access to justice<sup>81</sup>.

With respect to support services this could include e.g. setting **too high requirements for registration** of such providers, establishing **onerous standards**, imposing **repeated audits** and other reporting requirements.

Equally, the **availability (or lack thereof) of funding and resources** to cover **the running of sufficient services** can operate both as a barrier and an indicator of the potential adequacy of support. As such, it could be determined what should be the **minimum per capita expenditure** on support to ensure sufficient access.

Alternatively, where for example a State relies on delivery of support through non-governmental actors, the level of funding provided to them can be an immediate indicator of adequacy and particularly useful when combined with other factors such as number of services, wait times, number of victims served etc. It is also helpful when compared with **funding assigned to similar non-victim focused services**, or when compared with **service provision in other similar countries**.

The examples above are not exhaustive but provide just some of the **most common barriers** and will themselves operate together. For example, where a service is a long distance from a victim and there is no suitable transport, this operates potentially as both a cost and time barrier.

Beyond the barriers and indicators already provided above, another key aspect to ensuring access

<sup>81</sup> Judgment of the Court of Justice of the European Union C-243/15 Lesoochránárske zoskupenie VLKv Obvodný úrad Trenčín (Slovak Bears II), C-115/09Trianel, at.45

to services is that victims are aware of those services.

## AWARENESS OF SERVICES

Any service is only truly accessible if the possible beneficiaries are **aware of its existence, location and functioning hours**. Given that all persons are potential victims of crime, an accessible support service is one that is **known at least by the population within the boundaries of the area where the service is placed**.

This requires widespread **awareness raising and information dissemination** on support services by the support service itself. These activities should be carried out on a **regular and long term basis**, be both **nationally and locally focused** and be **well funded** to ensure **high quality, engaging** and **innovative** approaches. Such activities include:

- **Media campaigns** – traditional media, online and social, local and national
- **Advertising** – tv, radio, internet, apps, in buildings, newspapers and magazines, branding etc.
- **Outreach** e.g. engagement and education of children in schools, in sports and leisure organisations, community organisations and events,
- **Referral and information provision to victims:** organisations in contact with victims (e.g. criminal justice system authorities, health services, education services, social services, private companies, insurances, etc ) refer them to support services and/or provide them with information on those services.

Perhaps the most effective method of ensuring awareness where a victim reports a crime or approaches an organisation, is through **b**. Such systems tend to work well since the support provider will directly contact the victim and explain the service they offer. This will usually result in a **better understanding of the service, how it is relevant and ultimately a better uptake**.

To determine awareness both **output and outcome indicators** could be used. In this way, measures established to raise awareness would be considered alongside measures to **determine the extent to which the population generally and victims specifically are aware** of support services and what those services do. For the latter outcome indicators, specific research through e.g. **consultation, surveys, interviews** would be necessary to determine if populations actually knew about the existence of support and how it might be helpful.

In the above sections, we have set out factors which could be used to determine access requirements for support.

However, an important aspect of ensuring full and effective implementation of Article 8, is the establishment of **mechanisms for implementing the services**. In the area of social and health care services, and indeed with respect to policing, it is common practice to put in place **strategies and planning provisions** at the national and local level to ensure full and equal access to the services. The section below explores some approaches to planning in these sectors as inspiration for their use within the victims sector.

## PLANNING OF SERVICES: THE EXAMPLES OF SOCIAL AND HEALTH-CARE SERVICES

We have attempted to approximate the meaning of accessibility of victims' support services by references to concepts of accessibility in other areas regulated by law.

The concept of accessibility sometimes revolves around well-defined fundamental rights, such as the right to justice. In other instances, certain rights although recognised by international law, or by European Union law, for that matter, have less precisely defined content, partly due to the fact that these rights have not been fully recognised by domestic legislation. In such cases, rights are often defined primarily through policy actions.

This is the case of the **right to health**, which is frequently associated with access to health care. According to General Comment N° 14 (2000) on the Right to Health, adopted by the **Committee on Economic, Social and Cultural Rights**, the right to health implies an obligation on States that all public health and health-care services, goods and facilities must be **available, accessible, acceptable and of good quality**. This means for example that functioning public health and health-care facilities, goods and services must be available in **sufficient quantity** within a State.

Similarly, the **right to protection against poverty and social exclusion**, as defined by Article 30 of the European Social Charter, provides that Parties take measures within the framework of an **overall and co-ordinated approach** to promote the **effective access** of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance.

On this basis, the content of the right to health-care, for example, is usually not defined through litigation but through policy. Nevertheless, the performance of States' national health-care systems and social security systems are **monitored and compared in cross-country comparative studies by international bodies**. The **World Health Organisation**, for example, established in partnership with organisations and national governments the European Observatory on Health Systems and Policies which supports and promotes evidence-based health policy-making.

The Observatory, *inter alia*, systematically describes the functioning of health systems in countries

as well as reform and policy initiatives in progress or under development and **evaluates them against a set of indicators**<sup>82</sup>.

Accessibility of healthcare, social (or welfare) services had to be built into the planning of such services and as a result national systems often underwent dramatic reforms. The issues and factors that were taken into account during such reforms can reveal the approaches they have used to better ensure accessibility of services.

As a starting point, it must be recognised that there is no one unique model of delivery of health and social services. Services may be planned by local or regional authorities or may be the responsibility of central government, or indeed private service providers. In the Netherlands, for example, health-care providers are responsible for planning in line with **patients' needs** and for investments in the services they provide<sup>83</sup>.

Having said that, whoever develops such planning or reform, will be driven by a policy framework which **identifies problems with the service as well as objectives and indicators** for success. In the Netherlands, for example, the health-care reforms introduced since 2006 aimed at a more **demand-driven** and **patient-centred system** powered by market incentives and low government interference<sup>84</sup>.

As mentioned above, in the area of health-care, one commonly used indicator relates to **waiting lists or postponements** of provision of health-care service. This may be a good indicator for certain types of victims' support services, if adapted, such as waiting period for appointments in general or for more specific care such as psychological counselling.

In the Netherlands, other indicators relating to accessibility of health-care **are reasonable costs for individuals and travel distance**. Similarly, a victim support service (if face to face) should not be so distant that a potential victim will be prevented from accessing that service because of the distance issues.

At the same time, taking into account the different geographies of the Member States, the different population levels of member states throughout their territory and the feasibility, efficiency and effectiveness of service delivery, it would not be reasonable to expect that face to face services are immediately available within just minutes of any given victim.

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82 <http://www.euro.who.int/en/about-us/partners/observatory/publications/health-system-reviews-hits>

83 [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0016/314404/HIT\\_Netherlands.pdf](http://www.euro.who.int/__data/assets/pdf_file/0016/314404/HIT_Netherlands.pdf)

84 [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0016/314404/HIT\\_Netherlands.pdf](http://www.euro.who.int/__data/assets/pdf_file/0016/314404/HIT_Netherlands.pdf)

National legislation may also expressly mandate certain institutions with **planning tasks**. In France, the **planning of health care services** is provided for in law<sup>85</sup>.

More commonly known as the law "*Hôpital, patients, santé, territoires*". The planning of the services may be based on **detailed diagnostics of a territory** which includes, inter alia, certain demographic data such as the **density of the population, population dynamics, et cetera**.

The law created 26 "*Agences régionales de santé*" (ARS) that are public institutions with a number of competences in the health-care sector, including a **strategic planning and an oversight role**<sup>86</sup>. Every ARS has delimited one or more health territories in its region, each of which convene a "*Conférence de territoire*" and **participates at the planning of health-care services** and contributes to the development of a "*Projet régional de santé*". There is an extensive **consultative mechanism** in place in every ARS region.

The law "*Hôpital, patients, santé, territoires*" envisages several ways to **adapt the provision of health-care to the local specificities**, to **improve the territorial division** of the offer of health-care and to **fight against inequalities** in health-care provision<sup>87</sup>.

The "*Projet régional de santé*" should, as a matter of law (art. R.1434-2 of the "*Code de la santé publique*"), contain the assessment of health needs and their evolution, taking into account

- the **demographic, medical and social** data;
- an **analysis of the offer and its foreseeable evolution** in the domains of prevention, care and situations when a person loses his or her autonomy;
- **fixed objectives** in the matters of prevention, improvement of access to health-care, reduction of social and territorial inequality in health, quality and efficiency of care, and respect of the rights of the users;
- measures of **coordination** with other organisations in the area of health-care; and
- **further organisation and evaluation** of the implementation of the regional project<sup>88</sup>.

Moreover, regional schemes for investment in health ("*schémas régionaux de l'investissement en santé*") were put into place in 2013, with the objective of ensuring **coherence of investments** at the regional level. In order to attain the objectives, regional schemes examine investments undertaken within the previous 10 years and **identify existing capacity available to meet the needs** identified by the ARSs. This effort is aided by the data compiled by the OPHELIE tool<sup>89</sup>,

85 n° 2009-879 of 21 July "portant réforme de l'hôpital et relative aux patients, à la santé et aux territoires"

86 [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0011/297938/France-HiT.pdf?ua=1](http://www.euro.who.int/__data/assets/pdf_file/0011/297938/France-HiT.pdf?ua=1)

87 <http://geoconfluences.ens-lyon.fr/doc/transv/sante/SanteDoc2.htm>

88 [https://solidarites-sante.gouv.fr/IMG/pdf/vademecum\\_loi\\_HPST.pdf](https://solidarites-sante.gouv.fr/IMG/pdf/vademecum_loi_HPST.pdf)

89 [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0011/297938/France-HiT.pdf?ua=1](http://www.euro.who.int/__data/assets/pdf_file/0011/297938/France-HiT.pdf?ua=1)



which standardized the inventory control and facilitated management of hospital property assets<sup>90</sup>.

In the Czech Republic, there is a specialised public Institute of Health Information and Statistics of the Czech Republic which, inter alia, build **extensive national databases** for the quantification and analysis of indicators of the quality of health-care and **improves planning of health-care services**<sup>91</sup>. A similar institute was established in France in 2003, "*Observatoire National de la Démographie et des Professions de Santé*", which is responsible for **gathering the harmonised data** needed for regional and national analyses relating to

- the demography of health professionals,
- their establishment on the territory,
- their modes of practice and access to care and
- to provide support methodology for the production of harmonized data and indicators<sup>92</sup>.

In Finland, in the 1980s and 1990s, a series of reforms were introduced in order to **improve access** (every patient or family has a specified physician who has responsibility for access to them) and **continuity of care** (a physician remains the same)<sup>93</sup>.

A statutory obligation placed on local governments to provide services is laid down in the Act on Planning and Government Grants for Social Welfare and Health-Care (733/1992). According to the Social Welfare Act (710/1982), as amended, the Regional State Administrative Agencies are responsible for **planning, guidance and supervision** concerning social welfare within their area of operation.

The National Supervisory Authority for Welfare and Health operating under the Ministry of Social Affairs and Health guides the operations of the Regional State Administrative Agencies in order to **harmonise their principles of operation, procedures and practices**.

The Government is responsible for the overall strategy of social welfare and health-care. It adopted the so-called **Kaste Programme** (until 2015) as a **strategic tool for managing and reforming social and health policy**.

Generally, however, the range of social welfare and health-care services provided by municipalities is very broad, varying based on **geography, resource allocation after needs adjustment, financial**

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90 <https://www.hspm.org/countries/france25062012/livinghit.aspx?Section=4.1%20Physical%20resources&Type=Section>

91 <https://www.uzis.cz/nas>

92 <https://solidarites-sante.gouv.fr/ministere/acteurs/instances-rattachees/article/ondps-observatoire-national-de-la-demographie-des-professions-de-sante>

93 [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0007/80692/E91937.pdf?ua=1](http://www.euro.who.int/__data/assets/pdf_file/0007/80692/E91937.pdf?ua=1)

**resources, availability of health professionals**, and the way in which each population's **health-care needs are perceived** by municipal decision-makers.

Another example where the planning requirement is incorporated in a statute is the Police and Fire Reform (Scotland) Act 2012 which prescribes **local policing divisions to develop and publish local policing plans**.

In Edinburgh, four Locality Improvement Plans have been created which highlight local community safety concern and priorities in these areas. Locality Improvement Plans were **widely consulted** – they are **developed in a wider context of the community** (in accordance with the Community Empowerment (Scotland) Act 2015) are supported by a Neighbourhood Partnership<sup>94</sup>.

The Plans set out the priorities for improving and the actions that will be carried out in the short, medium and long term. The Community Empowerment (Scotland) Act 2015 requires public bodies to, inter alia, identify and improve outcomes in the geographical areas which experience the greatest inequality and to review and report publicly on progress in improving the achievement of each local outcome and revise and update the plans as appropriate<sup>95</sup>.

As can be seen, States have developed extensive models and planning systems to ensure they are able to offer sufficient health and other services to their citizens. Arguably if victim support services are to reach the level of delivery required, **State will need to adopt similar planning systems**.

## COMMUNITY NEEDS ASSESSMENT AS A TOOL TO ASSIST PLANNING

One commonly used tool tools for the planning of social services is the so-called **community needs assessment**. A community needs assessment evaluates **needs, resources and challenges of a community**.

Wambeam conceptualised the community needs assessment in three stages: The first stage is the **planning stage** and involves **defining a community** in which a service is planned to be delivered, **forming a workgroup** and **identifying research questions**. The assessment should be driven by data.

Reliable **quantitative and qualitative data should be collected** and properly **analysed**. The assessment is concluded by writing a **technical report and preparing an intervention plan**. This helps to reach out to all stakeholders, reduce challenges and maximise the positive outcome<sup>96</sup>.

94 <https://www.scotland.police.uk/assets/pdf/477903/edinburgh-policing-plan-2018-2021?view=Standard>

95 See in detail Part 2 of the Community Empowerment (Scotland) Act 2015.

96 Wambeam R. A., The Community Needs Assessment Workbook, Oxford University Press, 2015

Notably, community needs assessments have been well employed across the United States to determine support service needs. This has also increasingly been the case in England where funding has been devolved to the local level through Police Commissioners, and the assessment is used to inform the commissioning of services process.

**In simple terms needs assessments entail research to understand the needs of victims in a community (whether local, regional or national) and what resources and services are available and should be available to help them.** This involves understanding the current situation and carrying out a **gap analysis** setting out the difference between victim needs and actual services.

According to guidance developed by the **US Office for Victims of Crime**, the following steps are recommended when developing a community needs assessment:

### **1) Formulate needs assessment questions**

One of the first tasks is to **identify what you want to learn about the community** – what questions need to be answered to help develop the best programme for victims. Questions could include what victim services already exist, who are local partners, what training has been provided, what level of service use exists, what are barriers to access etc.

By way of example, an assessment carried out in 2017 by Illinois State covered the following areas<sup>97</sup>:

1. Crime Experiences
2. Details of the Crime
3. Law Enforcement
4. Victim Needs
5. Unmet Needs of Victims
6. Barriers to Meeting Victim Needs
7. Who Informed Victims of Resources
8. Victim Compensation Fund
9. Region and Transportation
10. Demographics

### **2) Review Existing Data Source**

The next step is to **identify what information and data already exists, and to collect this data.**

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97 J. Maki, '2016 Victims Needs Assessment', Illinois Criminal Justice Information Authority - [http://www.icjia.state.il.us/assets/articles/2016\\_ICJIA\\_Victim\\_Needs\\_Assessment\\_Summary\\_Report.pdf](http://www.icjia.state.il.us/assets/articles/2016_ICJIA_Victim_Needs_Assessment_Summary_Report.pdf)

### 3) Collect new evidence and data

Taking into account the needs assessment questions and gaps in existing information, it may be necessary to **collect new data**. This can largely be achieved through **interviews of stakeholders and victims, focus groups and surveys**.

In addition, as the University of Kansas reflects in its community toolbox 'community problems require a **geographic examination**. Maps that contain detailed information about social, economic, and political trends can be a valuable resource in community problem solving. These maps can be constructed using GIS (Geographic Information Systems), a digital mapping system<sup>98</sup>'.

### 4) Analyse Data

Having collected the data, it will need to be **analysed** both from a qualitative perspective which usually entail answers to open ended questions that don't tend to result in numerical data. In addition, quantitative data such as from surveys or statistics will need to be analysed. The analysis should help to understand **what needs exist, how these are currently being served, where the gaps are, what are the causes or drivers for these gaps and possible solutions**.

### 5) Report findings and act on them

Once the report is finalised, a **dissemination of the report** will be essential as will an action plan to react to the findings.

## CONCLUSION

In conclusion, the analysis above aims to kick start discussions and more comprehensive analysis to determine what national victim support services should look like.

This is not to ignore that around the world, countries are already applying analytical models to answer these questions whether with respect to victim support or in similar fields.

The notion of accessibility of victims' support services may be developed by references to accessibility requirements found in a number of human rights treaties, developed by the CJEU and within other fields such as health care.

It is important to explore approaches in other fields and to make a **fundamental shift in the understanding of victims' support services from luxury services to those which are considered as essential to be provided to the population by right**.

<sup>98</sup> <https://ctb.ku.edu/en/table-of-contents/assessment/assessing-community-needs-and-resources/geographic-information-systems/main>

Health care, welfare services, policing, and justice are seen as essential and have appropriate **planning and provision systems in place**. Victim Support acts as a **bridge between these different services** helping ensure **victims can recover and be healthy, active citizens**. It too must be **properly planned and resourced**.

It is clearly a complex task to determine whether the national framework is sufficient for the purposes of the Victims Directive. Yet, a wide **range of factors can be indicative of good or poor access**. These indicators should, however, be used in combination in **multi-varied analyses** to truly understand the way service provision is operating across an entire country – and whether this is adequate.

At the same time, the **use of outcome indicators**, can offer a very simple way of understanding the reality for victims. **If victims say they did not know about support and they simply couldn't get to it, the reality is they did not have access**.

Based on the above, a range of factors can be listed and used in combination to:

- Help **victims know the extent of their right to support** and **enforce that right** before appropriate authorities including courts
- Help **States to develop national support frameworks** that meet the needs of the country
- Help **States to determine their compliance** with EU requirements
- Help the **European Commission to assess compliance** in its role as guardian of the Treaties.

## RECOMMENDATIONS

Based on the analysis, below are **recommendations** on how States and the European Union can begin to develop and assess national victim support frameworks.

### ESTABLISHMENT OF NATIONAL VICTIM SUPPORT STRATEGY AND IMPLEMENTATION PLANNING

Member States should demonstrate they have in place a **clear strategic vision and implementation planning** to establish accessible services for all victims of crime across their territory. Approaches used in the areas of policing, social welfare and health care services could be used as inspiration for planning approaches.

Such approaches ensure that not only is a **basic strategy** established, but there are also **clear legal obligations associated with the planning and provision of the service** and the **infrastructure**

at the national and regional level is established to **ensure an objective and clear process** for determining **what support should be provided, where and by whom**.

## IMPLEMENTATION OF NATIONAL AND LOCAL COMMUNITY NEEDS ASSESSMENT

Member States should carry out **needs assessments** to determine both the **local and national needs** for victim support. Both are essential since a wholly localised perspective risks **fragmentation, lack of efficient and effective structures** which poorly operate across local boundaries, and unequal provision of services. **A balance between reflecting local and national needs is required.**

## DEVELOP A LIST OF INDICATORS TO HELP DETERMINE NEED AND APPROPRIATE PROVISION OF SUPPORT

A list of factors should be developed which are the most important and relevant in determining:

- The **adequacy** of current service provision;
- The **actual requirements** of the victim population;
- The **gap** in current and future needs;
- The best **means to meet** those needs.

When using these factors to analyse services, the **full range of services** (face to face, mobile, online, helpline etc.) available to a victims **should be considered**. Where an alternative service is put forward to demonstrate accessibility it must be a **sufficient alternative**. It is **questionable whether reliance on distance support will alone be enough** to replace the need for face to face services.

Indicators should incorporate a **mix of output/ process indicators** related to measures taken to achieve a goal, and **outcome indicators** which measure whether a goal has been achieved. Critical to the use of outcome indicators will be a better **understanding of the extent to which victims in fact need support services**. Analysis here will need to differentiate between variables such as the type of victim, type of crime and type of service offered. This is necessary to help determine possible outcome targets e.g. number of victims to receive support per year.

Based on the analysis above these factors could include:

- 1) **Laws implementing the obligation to ensure access to victim support services must**
  - a. be **sufficiently precise and clear**;
  - b. be fully **effective**;

- c. achieve an **outcome consistent with the objective** of support to victims;
- d. not be **arbitrary**;
- e. ensure individuals are made **fully aware** of their right to access support services;
- f. allow for **enforcement** or an **effective remedy** before the courts where access is not provided.

**2) Services should be provided to a sufficient geographical distribution. This could be determined by e.g.**

- a. **Analysis of needs** of victims within the local area. **Outcome indicators** could be used as part of the analysis to determine the **proportion of the population** needing support, the number of victims requesting support and receiving support;
- b. Establishing the **number of services** to be provided **within a given area** taking into account variables such as population density, public transport links, size of the relevant area and potential distances to travel;
- c. Establishing the **number of service** to be provided on a **per capita basis**;
- d. Using **mathematical modelling** to determine the optimal location of services. Factors already mentioned such as distance to support, travel options, barriers to movement, size of the area should be incorporated into the model.

**3) Access should be practical and effective and barriers should be minimised**

- a. As above, **outcome indicators** can be used to determine if **victims are in fact using services**;
- b. Access should be available on an **equal basis** and **barriers which limit access** in a discriminatory way **should be removed**;
- c. **Barriers** which **reduce the availability of services** in **time** (opening hours) should be identified;
- d. **Barriers** which limit access based on **when the crime occurred** should be identified;
- e. **Barriers** which **increase the time it takes to access services** should be identified (waiting times, insufficient staff or other resources, distance from a service, time taken to physically get to a service);
- f. **Barriers** which increase the **cost of accessing service** should be identified (travel, charges for support, administrative charges);
- g. **Barriers** which increase **procedural burdens** on victims should be identified;
- h. **Barriers inhibiting service providers from delivering a support service** should be identified.

**4) Services must be publicised and the public and victims aware of those services through a range of measures such as:**

- a. Media Campaigns
- b. Advertising
- c. Outreach
- d. Referral of and information to victim

# UNDERSTANDING THE NATIONAL FRAMEWORK FOR SUPPORTING VICTIMS OF CRIME

In the previous chapter, we explored the notion of access to support and how a logical framework could be established to ensure that Article 8 of the Victim's Directive is fully and correctly implemented in the Member States.

The Article focusses on **specific services designed to support victims** – whether generic or specialist. At the same time, it can be seen across the European Union and globally, that a **wide range of organisations and institutions can, or indeed should, also deliver some form of support to victims as an integrated part of their wider service.**

This chapter provides an overview of the different sectors able to positively impact on victims lives and organisational approaches to **bring these sectors together** in a coherent system of support which **continually improves** and delivers at a **high quality.**

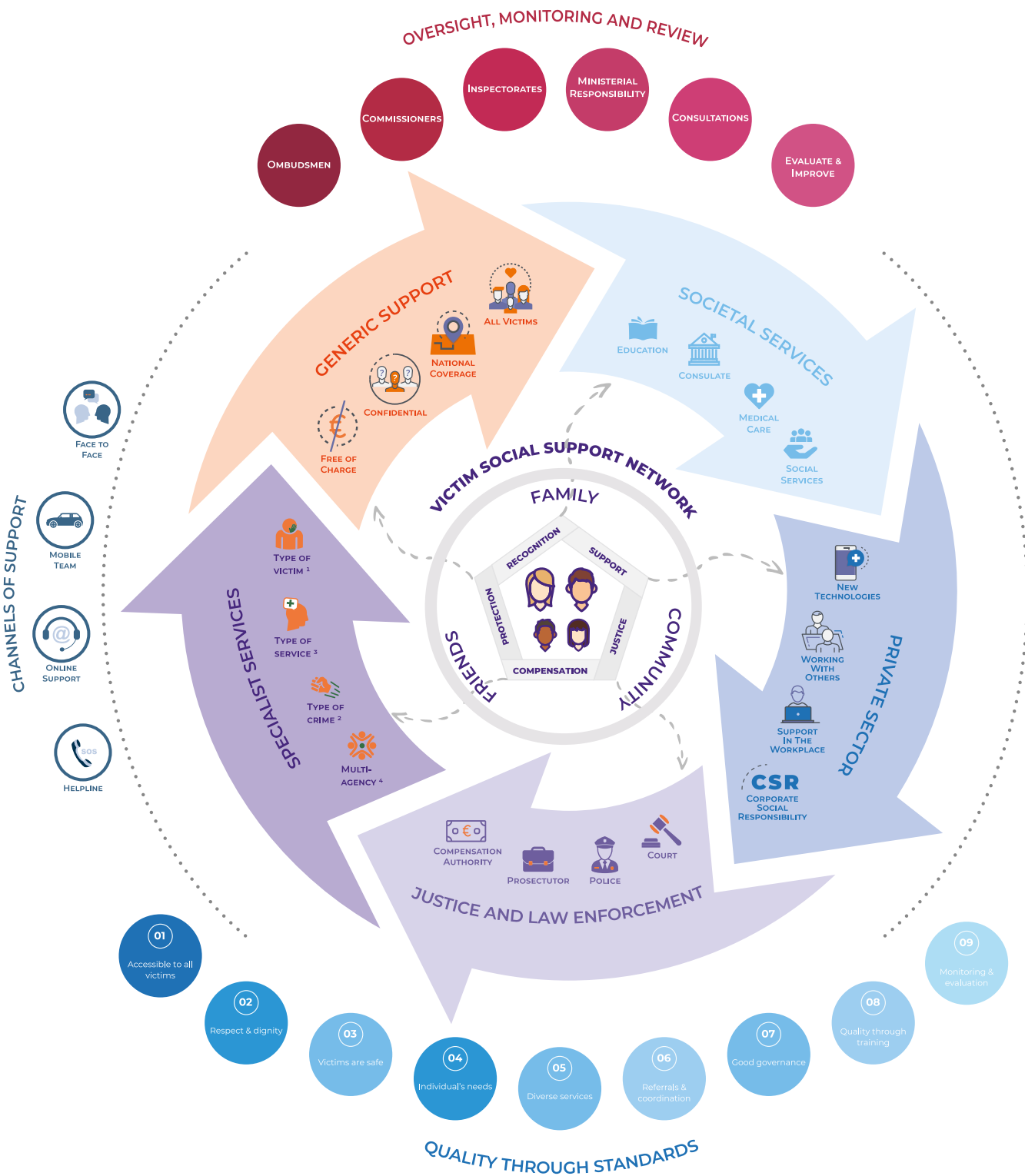
It aims to change the way we perceive engagement and actions for victims from a **siloed approach** with each organisation operating in single sphere and single perspective, to one where **every entity that comes into contact with victims does so from victim centred perspective.**

It is a change from asking **how a victim fits within an organisation's system**, to asking **how organisations should adapt themselves to ensure that all the negative impacts of crime on all aspects of victim's life are addressed.**

The diagram below provides a **visual representation** of the **main sectors which can offer support and assistance to victims** as well as **key channels of support, continual improvement approaches** and **standards** to ensure **high quality services.** A full description of each part of the schematic is provided subsequently.



# NATIONAL FRAMEWORK FOR COMPREHENSIVE VICTIM SUPPORT



## WHAT ARE THE DIFFERENT SOURCES OF SUPPORT FOR VICTIMS?

### Victim's Social Support Network

When discussing victim support it is common to jump straight into a discussion of **which professional organisations** – whether NGOs or State – should be assisting victims. However, **many victims never reach such organisations.**

In fact, most of us, in most situations are **largely resilient** and do not need the help of an organisation. However, an integral part of an individual's resilience is **the social support network** they are surrounded by. This may mean **family, friends, colleagues**, the **local community** or any **combination** of those.

Depending on a victim's personal situation, group situation and the type of crime, **reliance** on different parts of this social network will **ebb and flow**. In some cases, the network alone will not be sufficient or will not be able to offer certain forms of assistance the victim needs. In other cases, a victim may not have such a supportive network and will need a range of professional help.

Evidence<sup>99</sup> indicates that **the stronger and more supporting a victim's social network, the better the outcomes tend to be for victims**. As a starting point, it is therefore essential to **strengthen a victim's network** both in terms of **those within the network** but also **their ability to support** the victim. This entails understanding the **impact of crime**, the **needs of victims** as well as understanding the **most appropriate responses** to help the victim.

Of course, there can be a wide range of limitations on how such networks can be influenced and strengthened. Many of these issues may well be beyond victims policy alone and is more relevant to social integration policies.

However, building **greater awareness in society** of its role in helping victims and how it can help, can already have an important impact. For example, incorporating victim oriented themes into **school education**, into **private sector training**, into **community centres and sports clubs** can be a direct action to increase knowledge and awareness.

It is also recommended to develop psychological first aid (PFA) training which can be taught to members of the public as well as first responders. Arguably such training should be provided on

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<sup>99</sup> See e.g. D.Green and L.Roberts, 'Helping Victims of Violent Crime: Assessment, Treatment and Evidence Based Practice' 2008, Springer

a par with physical first aid training.

According to the National Child Traumatic Stress Network and National Center for PTSD, Psychological First Aid<sup>100</sup> is

“an evidence-informed modular approach to help children, adolescents, adults, and families in the immediate aftermath of disaster and terrorism. Psychological First Aid is designed to **reduce the initial distress caused by traumatic events** and to foster **short- and long-term adaptive functioning and coping**.

Principles and techniques of Psychological First Aid meet four basic standards. They are:

- (1) consistent with research evidence on risk and resilience following trauma;
- (2) applicable and practical in field settings;
- (3) appropriate for developmental levels across the lifespan; and
- (4) culturally informed and delivered in a flexible manner.”

Notably this guide and others foresees the use and training for PFA **to be targeted at professionals such as first responders**. However, research should be carried out to determine how the principles and approaches established for existing PFA course could be adapted to be relevant for use by members of the public – for use in any traumatising situations whether due to crime, disaster or for example road accidents.

The objective is develop a community wide self-resiliency and ability to provide a basic, non-harmful assistance to people before professionals arrive at the scene and when helping victims within the social support network.

Ultimately, our communities should be **informed, resilient and caring** about victims and victimisation issues.

Beyond this initial social support network, **victim support systems are complex and cannot be limited to a single project, organisation or institution**. Its different elements must come from a range of different interlinked services.

### Victim Support Organisations

As already scene in previous chapters, in every State there should be a combination of generic and specialist victim support organisations.

**Generic victim support** offers its services to **all victims of crime** irrespective of the type of crime

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100 Psychological First Aid: Field Operations Guide, 2nd Edition. July, 2006. Available on: [www.nctsn.org](http://www.nctsn.org) and [www.ncptsd.va.gov](http://www.ncptsd.va.gov).

or the victim’s situation. It is an **essential net** to ensure **no victim is forgotten**. Organisations falling into this field should offer a range of services in line with Article 9 of the Victims Directive.

This does not mean it necessarily offers all services. However, one driver of **secondary victimisation** is the **need of victims to engage with a large number of organisations** in order to receive the full range of support they require. Simply put, **the fewer organisations the victim has to work with the better**. As such, the more services that can be offered through a single entity the better.

Support can be offer to victims through **a range of channels** which ideally will be provided **in conjunction with each other** to maximise accessibility of services. The main channels for support include:

- **Face to face direct support** – usually in the offices of an organisations
- **Mobile services** – for some victims who live in isolated areas or who cannot come to the victim support office, the service must be mobile so it can be provided in a more convenient location. This may be done through regular visits to certain locations, or may be ad hoc based on a victim’s request
- **Online support** can be offered through information provided on websites, direct support in chat rooms, through apps (Skype, Viber etc.) or on social media.
- **Through helplines**, with at least one national 116006 victims’ helpline and possibly specialist helplines for victims of domestic violence, trafficking etc.

Beyond these channels, support services should operate according to a range of key principles which help ensure that the service operates to **meet the needs of victims, maximise the impact of the services and minimise risks of further harm**.

Some of the key principles that generic support organisations should operate according to include:

All victims	Respectful	Empowering	Relevant
<ul style="list-style-type: none"> <li>• Accessible for all                             <ul style="list-style-type: none"> <li>- indicators for access</li> </ul> </li> <li>• Proactive:                             <ul style="list-style-type: none"> <li>- reach out;</li> <li>- referral;</li> <li>- help them come forward</li> </ul> </li> <li>• Co-ordination of services</li> <li>• Free of charge</li> <li>• Everyone’s job</li> <li>• Multiple channels:                             <ul style="list-style-type: none"> <li>- face to face, mobile</li> <li>- online, helplines</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Direct interactions</li> <li>• Institutionalised in structures</li> <li>• Transparent and not hidden</li> <li>• Communication and information – multi-format, simple and accessible</li> <li>• Non-discriminatory</li> <li>• Confidential</li> <li>• Constant review and improvement</li> </ul>	<ul style="list-style-type: none"> <li>• Listen</li> <li>• Consult</li> <li>• Participation</li> <li>• Self realisation</li> <li>• Education and self help</li> </ul>	<ul style="list-style-type: none"> <li>• Universal/ generic and specialist services</li> <li>• Stepped model</li> <li>• Targeted, flexible and individualised – assessment and different therapies</li> <li>• Watchful waiting</li> <li>• Regularly reviewed and improved</li> <li>• For as long as needed</li> <li>• High quality, consistent standards</li> </ul>

**Specialist victim support** is also necessary in a comprehensive system. Such organisations will have a specialist capability to deliver bespoke services focused on:

- type of **victim**
- the type of **crime**
- the type of **service**
- a **multi-agency** approach

**Type of Victim:** some organisations will have a specialist capability to **support specific groups** such as women, children, persons with disabilities, older people etc. Whilst they may offer similar services to generic victim support, they have specialist knowledge of their client group and will **adapt and specialise according to those needs**. For example, organisations that work only with, or predominantly with children should have more specialist child friendly buildings and rooms, specialist protection measures in place suited to the particular vulnerabilities of children, specialist training in how to work and communicate with children and how to emotionally support them and help them recover.

**Type of Crime:** this is a **common method of specialisation** with many organisations focused on e.g. **domestic violence, child sexual exploitation and human trafficking**, though of course many other crimes have specific support organisations. For some of these crimes, very specific services such as shelters or rape crisis centres attached to hospitals may be established. Organisations have a detailed knowledge of the specific impacts and needs of victims from their field and again what infrastructure, training and different support methods are needed.

**Type of Service:** Some organisations specialise in a **particular service**. This is commonly seen with respect to **counselling** or **legal assistance** where an organisation may employ lawyers and psychologists to offer only the one type of service.

The advantage here is that they are able to have a highly specialised capability in a single field. Importantly, without such organisations victims may only have access to generalists from that profession who don't necessarily have a focused expertise e.g. where they are not trained in trauma counselling or they rarely represent victims in legal proceedings.

Another specialist type of service is that of **peer support**. This is where an organisation is set up by victims for victims. It may incorporate specialist professional support or it may operate solely as a venue for victims to meet and speak to others who are in a similar situation.

**Multi-Agency Support:** increasingly in some fields, it is understood that the best way to support victims is by **bringing the many different actors involved together in a single place**. This is

increasingly seen with respect to highly vulnerable groups or to traumatising crimes such a child victims of abuse or domestic violence victims. Such examples include the Barnahus model of support for children victims, shelters for women and children victims of domestic violence and Multi-Agency Risk Assessment Centres (MARACs) for high risk domestic violence victims.

These centres enable a victim to receive a range of support as well as engage with law and justice authorities, schools and social welfare authorities as appropriate in order to better deal with the broad range of difficulties that the victim may be experiencing. It is based on the understanding that dealing solely with victims from a justice lens or a psychosocial lens will fail to address a number of issues in a victim's life which are either impacted by the crime or may well be contributing to the crime. A **holistic approach** will therefore produce the best results for support, protection and prevention.

### Quality Standards for Victim Support

Whilst an essential element of successful national support systems is the extensive national provision of victim support through generic and specialist services, this alone is not sufficient.

Those services must also be of a **high enough standard to ensure good quality support** which fully aids recovery and does not cause further harm. Different approaches have been taken in Member States to ensure such standards, ranging from **self-regulation** through to **government imposed standards** whether applied through **funding mechanisms**, through **legislation** or through **licensing/ registration requirements**.

These standards may be more focused on governance issues as is often the case when imposing requirements on organisations seeking to register as charities. Similarly international standards such as ISO's focus largely on internal systems and do not have specific requirements on how to ensure proper delivery of support services. This contrasts with some governmental approaches such as in France where clear standards have been established **relevant to service delivery**.

Recognising a gap in European standardisation for the delivery of victim support services, **Victim Support Europe has created its own set of standards for its full members**. These standards include sub-standards and tasks and are part of its accreditation system which focuses on helping Members to improve the way they operate in line with those standards.

The standards were developed based on research on a wide range of existing standards both support and non-support focused. They are primarily aimed at **ensuring high quality delivery of support, though there is limited focus on good governance which primarily relies on national standards for charities**.

The following standards<sup>101</sup> have been put forward could be used as the basis for European or national standards:

1. **Accessible** to all victims of all crimes
2. Provide **respect** and **dignity** for victims
3. Ensure **safety** for victims
4. Respond to victims' **individual needs**
5. Provide **diverse** services
6. Ensure **referral** to other providers when needed and **coordinate** support with them
7. Put into place good **governance** mechanisms
8. Provide different **training** programmes to staff and volunteers
9. Conduct **evaluation** and **monitoring** to support **improvement**.

## SUPPORT THROUGH WIDER SOCIETY

Besides organisations that specialise in supporting victims of crime, **a wide range of actors engage with victims** – whether they are aware of this or not. Such organisations can play a vital role in helping victims cope with the aftermath of a crime and assisting in their recovery.

Some of these entities may naturally be well placed to help victims from a victim perspective whilst others may not even see this as their role. However, **only by mainstreaming a victim centred approach into all organisations which engage with victims can we truly achieve an effective national framework for victim support.**

Below we have provided an overview of some of the key sectors that should have **a role in supporting victims** and **how that support may be manifested.**

## JUSTICE AND LAW ENFORCEMENT

Perhaps this is the most obvious sector for victim support which is also already recognised within EU legislation. Those operating in this sector such as **police, prosecutors, court staff, judges, lawyers, probation services** etc. engage with victims to differing levels and frequencies. The quality of that engagement can be **highly damaging or can support recovery** as well as improve the **ability of victims to participate** positively in criminal proceedings.

For some authorities, it makes sense to have **specialist victim units** where the objectives of staff are focused around working with victims within the context of the authority's mission. Examples include victim units in the **Belgian Police** and **Police Family Liaison Officers in England** who provide specialist assistance to families of homicide victims.

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101 A more detailed overview of the standards can be found at Annex V.

Similarly, some **prosecution authorities have specialist offices** focused on victim well-being, whilst in the **Courts** it is becoming increasingly common to find **court victim and witness services** which help victims in court, for example through orientation visits.

In addition to specialist units for all victims, there may be **specialist staff** for **specific types of crime or types of victims** such as **sexual violence** or for working with **children**. Such staff have specialist training and will tend to be the only ones that work with these victim groups.

However, irrespective of whether specialist units or staff exist, all staff within these organisations should have **basic understanding and training on victims' needs, impact of crime and how to engage with victims in an appropriate and respectful manner**.

Yet this is not only about staff. **Infrastructure, procedures and policies** should also be in place to ensure **proper and appropriate treatment of victim** and the **minimisation of secondary victimisation**. This might entail basic **training** for all, **procedures** on when and how to contact victims, procedures on minimising interviews or ensuring sufficient notice is provided to attend hearings, for example. It will not be enough for staff to be informed and trained in working with victims, the environment they operate in must be supportive of this goal.

## SOCIETAL SERVICES

This can include **social welfare services, schools and other educational institutions, healthcare providers** etc. All play an important role in helping victims as a **part of their provision of general services** to the population.

In some cases, the role may be self-evident, where some welfare services for example offer counselling or trauma care. However, as with law enforcement and a multi-agency approach, service providers need to have **a wider understanding of victimisation issues and how to identify victimisation** to incorporate this knowledge into their daily interactions.

This might mean for example, teachers assisted in understanding underlying causes for child behavioural changes – which might be linked to violence at home – and knowing how to explore those issues and how to respond. It may entail an unemployment agency understanding that a person has lost their job due to violent crime, and knowing that victim support services exist and can help.



Some of the key factors when working with victims in these situations are:

- **Understanding** victims – knowing about indicators of victimisation, impact of crime and needs of crime;
- Knowing **how to engage** with victims;
- Knowing **what to do** when working with a victim;
- Developing **victim oriented practices** and responses;
- Knowing what **specialist services** exist for victims to support referral.

## PRIVATE SECTOR

**Profit making companies** should and do play a wide ranging role in helping to deliver support. Starting with their own work place, companies can **operate in a significantly more victim friendly way** with respect to their **own staff who are victims of crime**. This relates to situations **where staff are victimised outside of the work place as well as victimisation in the workplace**

As with societal services, this means putting in place the **training and procedures** to help **identify** those who have been victimised and who may benefit from a victim centred approach at work. It should be emphasised that this is not developing investigative systems to identify victims. Rather, this is about ensuring that where a person's work is affected due to a crime they have suffered, they are not further penalised for e.g. poor performance.

This involves creating a **safe environment for people to come forward** and explain the difficulties they are facing. It means creating appropriate responses which **help victims to cope in the workplace**, creating a **flexible and understanding environment** which is not only supportive in helping victims recover but is gives victims the **time they need to recover**.

It may entail adaptations to work objectives or work environment to enable victims to continue being productive members of the work community. For example, after the Boston Marathon attack, victim support workers (victim navigators) helped some victims to have changes in the work tasks they carried out due to physical injuries.

Equally, the work place should be a **safe environment where criminal and bullying behaviour such as harassment is not tolerated** and there are **safe means for victims to report** and **victim friendly procedures to handle complaints**.

Companies must also take into account the **safety of staff when working**. In some sectors, there may be increased risk of violence and appropriate procedures must be established to prevent this from happening and to help staff if it does happen.

Finally taking a broader perspective on victimisation, some practitioners e.g. first responders, those working with abused children, are much more prone to vicarious trauma. Employers must have **effective procedures in place to minimise these risks and to support staff if they do suffer**.

Besides effective support for employees, the private sector can play a key role in supporting organisations in their work. In some instances, this entails **partnerships** to develop **new technologies** such as mobile apps, artificial intelligence, remote support capabilities, mobile alarms etc., all of which can be used to help victims. Equally new technologies can be used **to improve internal mechanisms** such as case management systems and communications channels between organisations.

**Partnerships between the private sector and support and law enforcement** are also critical. These partnerships are used to help identify victims e.g. where hotels are used for trafficking, staff can be trained on indicators of a trafficking situation, or where social media organisations incorporate measures to identify online crime victims and connect them with support services. They also work to identify perpetrators and help victims reach specialist services or obtain specialist equipment to help deal with the crime.

Directly linked with these partnerships are organisations own **corporate social responsibility programmes**. Many organisations today donate funds, provide pro bono services or allow their staff to volunteer during company hours. There are a range of ways in which companies can **incorporate victim solutions in their corporate social responsibility strategies**, however, often this field is **ignored or forgotten**.

## OVERSIGHT, MONITORING AND REVIEW

For the success of national framework to be assured, it is not sufficient that services are established. There must be **mechanisms in place to regularly review and monitor those services to help them achieve existing goals and standards as well as to improve in the future**.

A wide range of bodies and mechanisms have been established in different countries to help achieve this oversight system. Some of these are **independent bodies** such as ombudsmen, commissioners and inspectorates. They can have a variety of roles including appeals and review of individual cases, assessment of existing services and policy and strategic development providing recommendations on how to improve systems.

At the same time, it is essential to have **State internal systems** to drive policies and laws. Ideally this results in one or Ministers with direct and explicit responsibilities for victims policies, specialist victims policy units in Ministries and co-ordination mechanisms across Ministries.

Finally, it is critical that **oversight and review mechanisms** incorporate **inclusive consultation** to ensure that **victims themselves as well as NGOs** operating in the field or representing victims are **part of the process of review and improvement**. Failure to include them in such processes inevitably leads to weaker or ineffective solutions.

As reflecting in the previous sections on indicators for ensuring access to support, ideally these different oversight mechanisms will be linked through long term strategic planning, community needs assessments as well as other analytical tools such as impact assessments, data gathering through improved statistic in criminal justice and support systems and through consultations and surveys.

Whilst some entities will be operating independently and according to their own objectives, timetables and the demands of victims, they should still be able to **fit within a wider policy review framework established by the government**.

These multiple means for delivering and improving support services will help ensure a **coherent and comprehensive response to crime from the victims perspective**. This approach reflects that victim support is the **bridge that spans justice, welfare and wider society, bringing them together to ensure the long term wellbeing of victims**. It is a **long term commitment, a right and a duty**.

Its many elements span and interlink the work of NGOs, Governments and the private sector, justice, social welfare, medical care and much more. It must be **victim-centered and built around the victim, rather than the victim having to adjust to the system**.

# 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.*

## UNDERSTANDING THE CONTENT OF THE RIGHT TO BE HEARD

In furthering the idea of victim-centred justice system, Article 10 of the Victims' Directive establishes victims' right to be heard. This right is built into the Directive to guarantee that all victims are given the opportunity to participate actively in the criminal proceedings, and to provide evidence if they can and wish to do so<sup>102</sup>. There is a significant margin for Member States when implementing Article 10. First, the specific procedural rules are to be established by the national law of each Member State and, secondly, the Commission itself admits that the right to be heard might range from more basic procedural guarantees<sup>103</sup>, for example the right to be present at trial and to supply evidence to the competent authority, to the systems where there are more extensive guarantees, such as the right to give an impact statement, if they wish so.

It is important to emphasise that the right to be heard shall not, in practice, correspond to an obligation to give testimony<sup>104</sup>. Victims' wish not to be heard in the criminal proceeding must be respected. How does the right to be heard work in practice?

All Member States make sure that victims can be heard during criminal proceedings and may provide evidence. As indicated in the Directive, the procedural regulation of this right is a matter of national law and, therefore, varies significantly from one Member State to the other. In most Member States, victims can be heard and can provide information and evidence during the criminal investigations and the pre-trial phase by the police and the judicial authorities, respectively. During trial, victims can be asked to provide evidence as witnesses. However, to provide evidence, they have to be called to testify and they cannot do so in their own initiative.

102 European Commission (2013), p. 29.

103 Ibid.

104 For example, HU and PT.

## GOOD PRACTICES

### *Victim Impact Statement*

Since 2012 victims in **The Netherlands**, can choose to make a statement regarding any issue at stake in the criminal proceedings. Victims are, therefore, provided with an opportunity to reflect on the evidence, try to influence the sentencing and in general to tell to the court about how the crime impacted their life.. The statement is given in person, in the court, during an oral hearing. If the victim is unable to speak, up to three other persons - their relatives or legal representatives, are entitled to make the statement on victims behalf. Recently, this right to be heard was extended to stepfamily. Victim impact statement is a powerful tool, which gives the victim an opportunity to face their perpetrator and speak openly and publicly how the crime affected their life. This can be done in addition to, and is not conditioned with the victim being heard as a witness.

This practice is also used in other Member States, e.g. Ireland and Hungary.

## HOW RIGHT TO BE HEARD WORKS IN PRACTICE?

Despite the procedural differences in the Member States, some common problems were identified. The research highlighted that when testifying in court, victims are confronted with the offender even when there are technological tools available to avoid such confrontation (e.g. video link). There appears to be a systemic lack of sensibility of judicial authorities towards the victims' needs. For example, the use of extremely technical language is still a norm, rather than an exception. Also, there still is a prevalence for requesting the victim to repeat their testimony, which is worsened by the overall formal rigidity of the criminal proceedings. These are situations that, usually, make victims very uncomfortable and insecure which can, in turn, jeopardise the quality and accurateness of their testimony, not to mention the risk of secondary victimisation in the face of such lack of sensitivity

In addition, in some countries, such as Hungary, there is an obligation for victims to give testimony

and a threat of sanction if they fail to do so. It needs to be noted that such instances are clearly going against the rights of victims set out in the Directive.

### Hearing children victims

Regarding children victims, when they are to be heard normally their age and maturity should be taken into account<sup>105</sup>. However, in some countries the means to assess children's maturity are rather not adequate or insufficient<sup>106</sup>.

In some Member States instead of assessing children's maturity, children below a certain age are not, as a rule, allowed to be heard at all. In Bulgaria children that are less than 10 years old are not heard, but their maturity might be assessed in order to allow their hearing. In Belgium if a child is under 12 years old they might request to be heard but their hearing is not mandatory. In Germany victims' who are less than 12 years old often undergo a psychological assessment of their "competency to testify". In Poland when the victim is less than 15 years old and considering the case (e.g. the crime was committed with violence, illegal threat or it is considered an offence against freedom, sexual freedom and decency) they can only be heard as witness if the testimony is considered "crucial" to the outcome of the case.

#### GOOD PRACTICES

##### *Courthouse dogs*

Based on the model developed in the Courthouse Dogs Foundation U.S., in recent years Europe has seen the courthouse dogs service gaining momentum, with pilot projects being introduced in France, Ireland and Belgium, in varying forms.

The idea of dogs supporting vulnerable victims is based on the increasing body of research that the presence of a dog during testimony, may significantly increase victim's confidence and improve the quality of their testimony.

Dogs need to be specially trained to support victims and they can provide this support either in the courtroom or in the other premises (police stations, courts or victim shelters, for example).

105 AT, BE, BG, CZ, CY, DE, EL, EE, ES, FR, FI, HR, HU, IE, IT, LT, LV, LU, MT, NL, PL, PT, RO, SE, SI and SK.

106 AT, DE, SI and SK.

# 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.*

## UNDERSTANDING THE CONTENT OF THE RIGHT TO REVISE PROSECUTORIAL DISCRETION

Similar to Article 10, the Directive leaves to the national law of each Member State the task of regulating the procedural rules to implement the right to request for a review of a decision not to prosecute.

The core of this Article is reflected in the right of the victim to question prosecutorial decision not to pursue criminal charges. This entails the auxiliary right to receive sufficient information to be able to decide whether to request the review<sup>107</sup>. The outcome of the enjoyment of the right is the one of result, not of form. This means that victims themselves do not have the right to continue prosecution, if their request for review is successful.

Namely, the request for review may have two main outcomes: the prosecution will continue, or it will be finally dropped. When there is a decision to continue prosecution, it may be done either by the public authority or by victims themselves (alone or with the aid of a legal representative). All these matters of form are irrelevant from the aspect of the implementation of Article 11. What is important, for its substance, is that the victim will be given an opportunity to effectively question the decision not to pursue criminal charges, when they have the grounds to believe that such a decision is unjustified.

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107 European Commission (2013), p. 30.

Effectiveness of this remedy should be viewed in light of the existing legal standards for the availability and effectiveness of a legal remedy developed in the context of the European Convention of Human Rights.

This is particularly important for crimes which may amount to a violation of some of the rights the European Convention which contain the so-called 'procedural aspect' – in particular regarding the right to life, prohibition of torture, inhuman and degrading treatment and punishment or the right to private and family life and correspondence. In those instances, the state has a duty to conduct effective investigations to remedy human rights violations.

## HOW RIGHT TO QUESTION PROSECUTORIAL DISCRETION WORKS IN PRACTICE?

Obviously, it is up to the Member States and their respective legal systems to regulate the finer details of the implementation of the Directive. It is particularly important to keep the differences between the diverse legal systems in mind regarding the role of victim in proceedings pursuant to Article 10.

In some Member States, victims' have the legal entitlement to request the review of a decision not to prosecute, independently of their role in criminal proceedings<sup>108</sup>. In Sweden where this right is not wrote down in the law, it was developed through case law and praxis and it is dependent on the victims' role as injured party. Whilst in other Member States this possibility is dependent on the victims' role as an injured party<sup>109</sup>. Moreover, depending on the specific legal system and the level of involvement required, costs associated with becoming a private or subsidiary prosecutor, can vary<sup>110</sup>. In Germany, when the case concerns some minor offences, criminal procedural law does not allow for appeal against the decision to terminate the proceedings. In these cases, the victim may file for a private prosecution (*Privatklage*).

There are also some hybrid systems where the victims' role in different phases of proceedings influences their capacity to request a review of a decision not to prosecute. For example, in Bulgaria the victim can freely request a revision of a decision of the public prosecutor not to prosecute. However, to challenge decision not to prosecute taken by an investigative judge, the victim must act as a private prosecutor or a civil claimant.

Additionally, there are legal frameworks where the victim cannot request the revision of a decision not to prosecute *per se* but can, instead, request the continuation of the criminal proceedings in replacement of the public prosecutor, taking the role of private or subsidiary prosecutor (Germany – in cases of minor offences as explained above – and Croatia). The European Commission

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108 AT, EL, EE, ES, FI, HR, HU, IE, IT, LT, LU, LV, NL, PL, PT, RO and SK.

109 BE, CY, CZ, DE, FR, SE and SI.

110 European Commission. (2013), p. 31.



mentioned explicitly that this might not be “(...) qualitatively — from the perspective of victims’ interests — the same as a review set out in Article 11.”

Lastly, in some Member States, research shows that there is no possibility to request the review of a decision not to prosecute in the manner envisaged by the Directive. In Malta, it is only possible to challenge a decision not to prosecute through a procedure where one is able to complain about law enforcement, on the basis that the case was not handled in the proper manner.

Even in Member States where victims’ role in the criminal proceedings does not influence their right to request a review of a decision not to prosecute, other limitations may apply. For example, time limits for filing the request may be quite prohibitive. For example, in Hungary – 8 days, Lithuania – 7 days, Latvia – 10 days, Romanian – 20 days, Slovakia – 3 days).

Most frequently, the review of the decision is carried out by a hierarchical superior of the authority that previously carried that decision<sup>111</sup>. Same goes for Ireland, where the first decision made by the police is reviewed by a hierarchical superior. However, when the decision was carried out by an Irish public prosecutor, the review is carried out by another lawyer inside the same structure. When exercising the right set out in Article 11 of the Directive, victims in all Member States face some types of difficulties. As mentioned before, the short timeframe to request a review of a decision not to prosecute the perpetrator is a chief restriction on victims’ ability to exercise this right. Moreover, in many Member States, there is a problem with the lack of qualified legal assistance for preparing and presenting the request.

To understand whether the investigation carried out was adequate and effective and the reasons given for not prosecuting the offender are lawful requires a certain level of expertise and understanding of the law and practice. This is also true for drafting convincing legal arguments which can effectively challenge such decisions. Victims who are not trained in legal matters and who are not able to secure proper legal assistance may see their right to request a revision hindered.

Finally, in some cases, the decision to terminate criminal proceedings and/or not to prosecute the perpetrator is done through a use of standard template. Such approach comes with a risk of receiving a poorly justified decision – often containing general legal arguments. This makes it more difficult for victims to understand what made the authority take the decision not to prosecute in their particular case and respond with convincing arguments.

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111 AT, BE, BG, DE, CY, CZ, EE, ES, FR, EL, FI, IT, LT, LU, LV, NL, PL, RO, SE, SI and SK.

# 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.*

## UNDERSTANDING SAFEGUARDS IN RESTORATIVE JUSTICE SERVICE

The term 'restorative justice' is defined in Article 2, paragraph 1, subparagraph d of the Victims' Directive as a "(...) any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party." These processes can be, for example, victim-offender mediation, family group conferencing and sentencing circles<sup>112</sup>, and those can be of great benefit for the victims if there are sufficient safeguards protecting them.

The purpose of Article 12 of the Victims' Directive is, therefore, to guarantee that, where restorative justice services are available, a minimum of safeguards are in place in order to avoid further victimisation. This Article is, therefore, not intended to oblige Member States to introduce restorative justice services but merely to protect victims when those mechanisms already exist or are created<sup>113</sup>.

Studies have confirmed that most Member States are not familiar with the term 'restorative justice' and that the majority of them uses the term 'victim-offender mediation' even though other forms of restorative justice may be used<sup>114</sup>. Perhaps due to this lack of familiarity with the term and the little maturation of the restorative justice systems, these are not yet considered to strengthen victims' rights and fulfilling their needs<sup>115</sup>.

112 Recital 46, Directive 2012/29/EU.

113 European Commission. (2013), p. 32.

114 Associação Portuguesa de Apoio à Vítima – APAV. (2016). IVOR Report: Implementing Victim-Oriented Reform of the criminal justice system in the European Union. Lisbon: APAV, p. 141.

115 Ibid.

## HOW SAFEGUARDS IN RESTORATIVE JUSTICE SERVICES WORK IN PRACTICE?

Most Member States have some form of restorative justice systems in place, considering that some Member States<sup>116</sup> have mediation practices in place rather than restorative justice systems<sup>117</sup>. However some Member States have chosen not to put such systems in practice<sup>118</sup>. Among the Member States which indeed are providing restorative justice services in a systematic manner, some had already provided for safeguards when originally putting into place these services<sup>119</sup> while some others introduced safeguards with the transposition of the Victims' Directive<sup>120</sup>.

Where restorative justice systems are available, there is still a considerable lack of knowledge of this possibility both by the professionals who contact with the victim and by the victims themselves. Additionally, the training of more professionals regarding restorative justice proceedings is pointed as a necessity in most Member States.

Hence, there is a need to inform the professionals working within the criminal justice system to raise awareness on restorative justice proceedings, so these are resorted to when adequate and they safeguard victims' rights and need.

There is a special concern about the use of mediation and/or Restorative Justice Services in services, some Member States<sup>121</sup> are pressuring victims to participate in restorative justice attempts in such cases. In Finland it was stated that "it seems that there is a need for further knowledge about mediation involving intimate partner violence (IPV). To address these concerns, evaluation of mediation practices and clarification of guidelines on mediation of cases involving IPV and violence against women is included in the Government Action Plan for Gender Equality 2016-2019".

116 BE, CZ, EE, HR, HU, RO and SE.

117 EPRS – European Parliamentary Research Service. (2017). The Victims' Rights Directive 2012/29/EU - European Implementation Assessment. Brussels: European Union, p. 56.

118 BG, CY, DE, IT, LT, LU, PL, PT and SI.

119 EE, FI and SE.

120 AT, EL, ES, FI, FR, IE, LV, MT, NL and SK.

121 AT, EE, FI, RO and SI.

### GOOD PRACTICES

#### *Preliminary meetings*

In **Finland**, in order to safeguard victims from repeat victimisation, a separate preliminary meeting is organised with both parties before the actual mediation session(s). This preparatory meeting is important for victims, as it provides them with an opportunity to discuss their expectations and to consider whether they wish to attend future mediation sessions with the offender.

Lastly, the lack of legal framework on Restorative Justice Services in some Member States<sup>122</sup> has for a consequence the total lack of regulation. In Italy, for instance, these services are provided by a network of NGOs and some municipalities in an unstructured way. In this sense protocols and/or guidelines to provide with any safeguard are non-existent what makes unclear which safeguards are in practice, for whom and under which conditions.

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122 EL and IT.

# 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.*

## UNDERSTANDING THE CONTENT OF THE RIGHT TO LEGAL AID

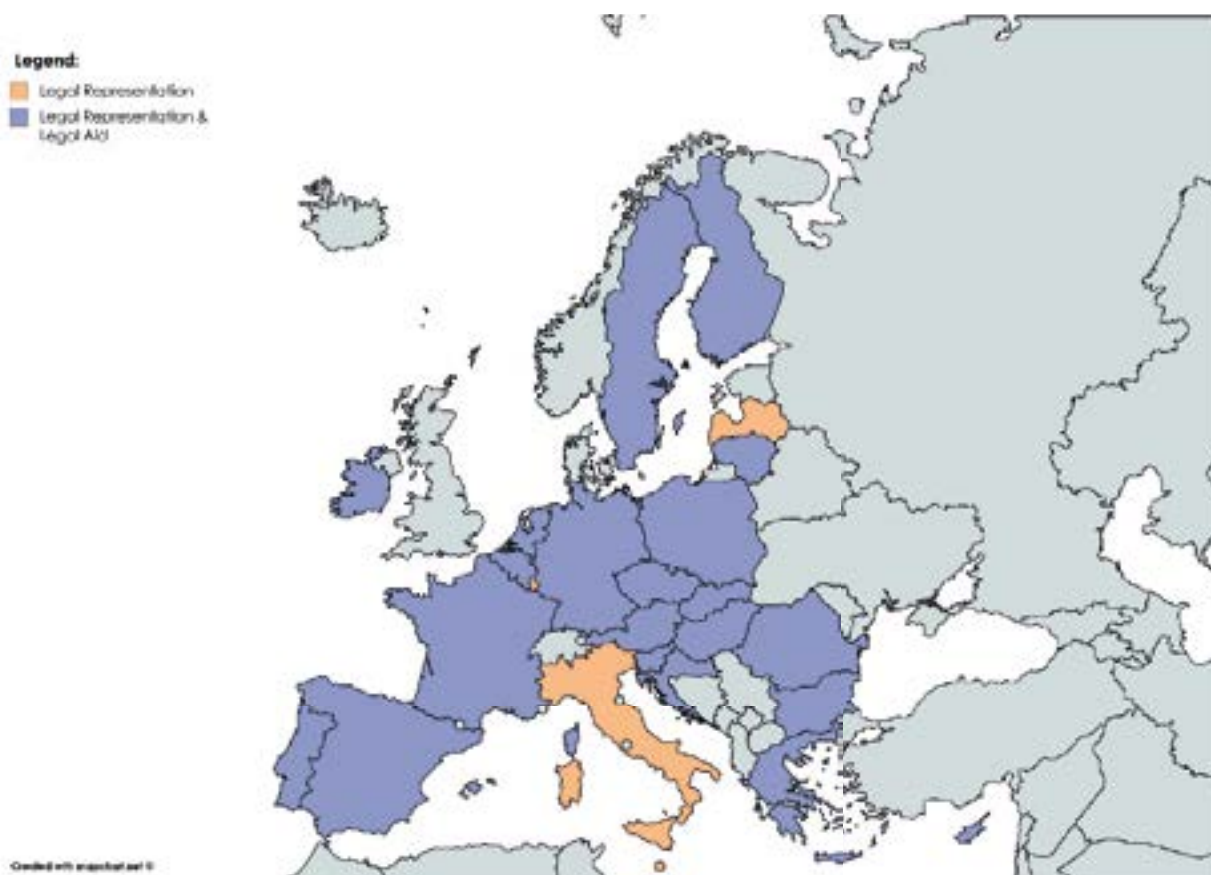
As the European Commission highlighted in relation to Article 13 of the Directive, Member States' national law must provide for the adequate legal framework which ensures that victims have the right to legal aid. This means that the national law of each Member State may prescribe conditions for accessing legal aid and what is encompassed by the provision of legal aid.

Legal aid will be reflected in two main levels of legal support: legal advice and legal representation. The difference between the two is in the level of service a victim receives. In the case of legal advice – victim receives professional opinion by a qualified lawyer about what their role and rights in proceedings are or may be. In the case of legal representation, the victim may give a power of attorney to the qualified lawyer, who can take procedural steps in cooperation with the victim or on their behalf, during the proceedings. This may include, for example, filing on behalf of the victim a complaint from Article 11 or introducing compensation claim in criminal proceedings.

As a minimum, to enable all victims to fully enjoy their rights, the provision of legal aid in all Member States should include legal advice free of charge. Furthermore, for victims who are parties to criminal proceedings, legal representation needs to be guaranteed under fair conditions, which ensure non-prohibitive access to a qualified lawyer.

## HOW RIGHT TO LEGAL AID WORKS IN PRACTICE?

All Member States have some form of legal aid in place. The following graphic illustrates which Member States provide for legal aid through either providing legal advice or both legal advice and legal representation to victims.



**Figure 20** – Existence of legal aid in Member States.

Legal aid is generally provided to victims who are compliant with certain conditions. The criteria differ among the Member States, but can commonly be split into two basic groups: those related to the victim’s circumstances and others related to circumstances of the crime. The former group of conditions is usually based on an assessment of economic insufficiency. The latter group is usually seen in some Member States<sup>123</sup> which limit legal aid to only victims of specific types of crimes. Most Member States have at least some level of limitations regarding access to legal aid depending on the victim’s financial situation. An exception is Austria where legal aid is provided to all victims despite their economic situation.

Obviously, the two sets of criteria may be combined in legal systems, hence limiting legal aid only to victims of certain types of crime with a certain level of maximum income per capita or household.

Finally, the additional differential element that may be detrimental for the provision of legal aid is the level of cost that the legal aid system will cover. In some States, legal aid might cover fully or partially the lawyer fees, depending on the results of this assessment. In Hungary, for example, depending on the level of income, victims can be granted free legal aid or legal aid under

<sup>123</sup> For example, IE, SI and RO.

favourable conditions.

Even though most Member States' legislation provide for the right to legal aid, in practice there are a lot of difficulties in ensuring the full enjoyment of this right, as different combinations of the above-mentioned criteria appear at times to present unsurmountable obstacles to victims.

Frequently, free legal aid is provided by means of a requirement for qualified lawyers to provide this type of support free of charge. However, if this is left as an option to qualified lawyers, many of them will not be willing to provide legal aid due lack of time or the fact that the provision of legal aid is paid less than their regular work, hence the pool of available qualified service providers is very small.

Some national reports further point out that the monetary criterion for attributing legal aid, where applicable, is sometimes too restrictive and even inadequate<sup>124</sup>. On the other hand, in some countries, such as Hungary, for example, even when there is a census set to qualify for legal aid, its conditions may be seen as relatively generous. Namely, in 2018 the census in Hungary was set at 226.292 Ft per member of the household, whereas minimum wage was 138.000 Ft and average wage. Consequently, a four-member household with two monthly salaries double the average, would still qualify for legal aid.

*In all Member States civil society makes different forms of free legal aid are made available to victims with little or no formality. This type of service is offered both by generalist and specialist victim support providers. In generalist victim support organisations, free legal aid is usually limited to legal advice only.*

*Specialist organisations may offer even very complex legal support and take up high level litigation involvement in some cases, including strategic litigation.*

*Often victim support organisations make this type of support possible by pro bono work of qualified lawyers. What is interesting, however, is that unlike the reluctance of lawyers to provide free legal advice when this is a requirement of the state authorities, the non-governmental sector is more successful in ensuring this type of voluntary contribution of qualified professionals.*

*In many countries, free legal aid is also offered by high profile law firms, through their programmes of pro bono support or corporate social responsibility. Such support may be provided by law firms directly, or in cooperation with victim support organisations.*

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124 For example, FI and PT.

Lastly, in Member States in which access to free legal aid is conditioned by compliance with certain criteria, access to this type of support is a matter of a formal decision by the competent authority. The research indicates that under such circumstances, there is a significant delay between the request for legal aid and a final decision on the matter. These are cases where the delay in granting legal aid might hinder victims' rights. In Portugal, for instance, this delay could impact in the preclusion of the right to effectively participate in the proceedings (e.g. the request for repetition of procedural acts is normally not accepted by judges unless the victim is represented by a lawyer), or can be detrimental to victim's effective enjoyment of a right (e.g. when there are short time-limits for certain procedural steps). In such cases, victims are pressured to either pre-finance legal support sometimes at prohibitive rates or take procedural steps themselves and thus risk to provide substandard arguments, due the lack of required legal knowledge.



## 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 Victims' Directive aims at ensuring that all victims participate actively in the criminal proceedings, independently of their financial limitations<sup>125</sup>. In addition, exposing victim to a further personal cost to participate in the proceedings may be seen as another form of secondary victimisation, which needs to be avoided. As a minimum, any expense necessary for the victim's participation in the criminal proceedings – in practice travel expenses and loss of earnings – should be reimbursed. However, as with other rights from the Directive, Member States can offer the reimbursement of other expenses.

As with other procedural elements of the implementation of the Directive, the eligibility criteria for reimbursement is left to the Member States to set out<sup>126</sup>.

Apart from costs related to the enjoyment of other rights from the Directive (e.g. translation or legal representation), in some Member States, the minimum standard for reimbursement of expenses are wider and additional costs can also be reimbursed to victims, for example, costs related to some medical services<sup>127</sup>.

The common denominator for reimbursement of costs in all Member States appears to be the reimbursement of travel costs for victims who are recognised the appropriate status in the proceedings. In addition, in some Member States, victims also have the right to reimbursement of any loss of earnings, suffered due to their participation in the proceedings<sup>128</sup>.

125 European Commission. (2013), p. 35.

126 Ibid.

127 For example, ES – where expenses incurred with psychological assistance by victims of terrorism, gender-based violence or victims of violent and sexual crimes, can be reimbursed by the State - and BE - where the State bears the cost of a medical physician present during a medical investigation in which evidence to be later presented in court will be collected.

128 AT, HR, FI, FR, DE, EE, LV, NL, PL, PT, RO, SI, SE and SK.

In Cyprus, the law foresees a general right to reimburse but it is not clear which kind of expenses are eligible, so it is left to be decided on a case-by-case basis.

National legislation of some Member States stipulates that expenses are to be supported by the losing party<sup>129</sup>. While this approach is not *per se* contrary to the Directive, it needs to be noted that in such cases reimbursement is deferred to a later moment in the criminal proceedings, which may include several instances of proceedings, before the losing party is finally determined.

Moreover, the additional complication with reimbursement from offender is that it may be left up to the victim to enforce such a decision, which, again, risks secondary victimisation.

## GOOD PRACTICES

### *Advanced payment*

In **France, Ireland and Finland**, in case of financial hardship, victims might be entitled to receive an advance payment to cover the cost of their participation in the criminal proceedings, encouraging their active participation and mitigating the financial losses of victims who are already in a dire situation.

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129 LU, CZ and SK.

# 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.*

## UNDERSTANDING THE CONTENT OF THE RIGHT TO THE RETURN OF PROPERTY

Article 15 of the Victims' Directive provides that, when victims' property was seized and is no longer needed for criminal procedures, it must be returned to the victims in the shortest period of time. The key aim of this article is to ensure a reasonable timeframe, as well as to set out conditions for this to happen.

It is unambiguous that victims' property needs to be returned as soon as no longer needed for the proceedings. Therefore, as soon as evidence is collected and secured, property can be returned. This will mean that most items will be possible to be returned already after the investigation is concluded.

While, it is not mentioned directly in the Directive, the return of property should be done at no cost to the victim and should be made at the initiative of the authorities, rather than to depend on the victim to request so. The first element is justified by the need to make sure that victim does not suffer any financial loss, due to their participation in the proceedings, while the other is a simple expression of respect and recognition for victim's suffering.

The return of property needs to be done in a respectful manner and return of any sensitive items needs to be done in view of victim's needs, while also making every effort to avoid re-traumatisation. For example, a fatal shooting victim's clothes and other personal items should be cleaned and any traces of blood removed before being returned to the family.

## HOW RIGHT TO THE RETURN OF PROPERTY WORKS IN PRACTICE?

Regardless of the Directive's requirement that it is done without delay, in some Member States<sup>130</sup> the return of property is possible only at the end of the criminal proceedings, even if it becomes unneeded before. In some others, there is no specific requirement as to when the property can or needs to be returned<sup>131</sup>. In most countries, there is no data regarding the incidence of withholding and the procedural barriers for the return of victims' property with anecdotal evidence indicating that the process is rarely victim-centred, with a number of problems recorded.

The Netherlands offers one of rare examples where an effort is made to accommodate victims even if the property might be needed in criminal proceedings. Namely, with the introduction of the institute of seizure on behalf of the injured party, the property is technically seized for the purposes of the trial, but it is returned to the victim that holds the property until the end of the proceedings. This return may be subject to certain determined conditions (e.g. victim cannot sell or otherwise dispose with the item, needs to use it in a certain way etc.).

Concerning the main difficulties victims face in regard to the return of property, there are mainly four trends identified in national research: the length of time needed for return, difficulties related to doubts about ownership, deadlines for claiming the return and sensitivity of manner of return. As previously mentioned, in many Member States the return is linked to the end of criminal proceedings. The longer these proceedings take, the longer a victim needs to wait to have their property return, even when it is no longer needed for the purposes of the proceedings themselves<sup>132</sup>.

This means that, in some cases, it may take years for victims to receive their property back, as criminal proceedings can be prolonged over a period of time.

In some Member States<sup>133</sup>, victims often face problems to prove their ownership of personal items. This is particularly the case where there is a concurring claim of ownership from another person. In such cases, proving ownership may be subject to protracted proceedings, connected to additional cost and risk significant delay in the return of property. This is particularly the case with return of items which are not subject to compulsory registration or where the victims no longer have the proof or purchase and which are often seized from perpetrators in bulk (e.g. bicycles, technical devices etc.).

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130 AT, BG, CY, HR, IE, LT, MT, PT and SI.

131 PL, SE and SK.

132 LT, MT and PT.

133 LT and CZ.

Regarding time limits to claim possession of property, in some states there are specific limits set, while in some others this remains unregulated. The consequence of failure to claim property within the time limit, in Member States where these limits exist<sup>134</sup>, is that the claim to property will be lost if no request is submitted before its expiry. Generally, these time limits may be reasonable. For example, in Croatia the owner must request the return of property within one year after the end of the criminal proceedings. In Estonia the owner must collect the property within 6 months after becoming aware of the decision to return it. In Portugal, however, this time limit is 90 days from notification to the victim that the item may be collected and after this deadline the victim will be charged for the cost of storing the item. While this time limit is normally reasonable for most victims, it may be too restrictive given that sometimes victims might not be able to collect the good or item in time, for example, if they are hospitalised for long periods of time or if they are cross border victims and already left the country where the item was seized.

In some countries, such as Hungary and Portugal, if the owner fails to claim property within the given time-frame, it will be transferred to the state and sold at a public auction. However, the victim can still claim the sales price of the item, even if they have missed the time limit to claim property. This in a way, can offset the restrictiveness of time-limits for reclaiming property.

Lastly, one of great concerns regarding the return of property is the condition in which it is being returned. In some Member States<sup>135</sup>, there are no protocols in place which ensure that seized property is delivered to victims in a sensitive manner (e.g. without traces of the crime). In the lack of a systemic approach, it is left to the professionals involved to have enough sensibility when returning objects to victims. This means that there is a likelihood for the property to be returned in a non-sensitive manner, risking secondary victimisation.

In Belgium, for example, property that was seized is returned in the presence of a judicial assistant working for the justice houses and thus a trained victim support worker. As stated on this report "Sensitivity is a main concern for them. If necessary property is cleaned unless the victim does not agree".

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134 EE, HR and PT.

135 For example, BG, PL, PT, SE, SI and SK.

## GOOD PRACTICE – RETURN OF PERSONAL ITEMS AFTER LAS VEGAS SHOOTING

*On the night of October 1, 2017, a man opened fire on a crowd of concertgoers at the Route 91 Harvest music festival on the Las Vegas Strip in Nevada. He killed 58 people and wounded 422, and the ensuing panic brought the injury total to 851. In the wake of the shooting, the investigators found thousands of personal items that needed to be returned to victims (N.B. within the meaning of Article 2 of the Directive all concert-goers would be considered victims in the EU).*

*FBI Victims' Services Division was put in charge of returning personal items. Return of easily identifiable items was relatively straight forward. However, only a small proportion of found property was easy to link with a victim (e.g. wallets containing personal documents). For some items, the FBI announced that they will not be returned, due to the difficulties in linking the item to a specific person (e.g. straw hats and vendor giveaways) or due to the difficulties in storing and preserving them (e.g. medicines and food).*

*For other items, victims were invited to fill in a questionnaire to describe their missing belongings. To facilitate the process, the FBI divided the area into squares and marked each item with the code of the location where it was found.*

*The FBI Victim Service Division has been working to catalogue and recover thousands of items left behind at the concert site by people attending the event. The items included purses, cell phones, clothing and other belongings.*

*In the immediate aftermath of the attack, victims were invited to address the Family Assistance Centre (crisis centre). Persons looking for their personal belongings were checked in at the entrance and partnered with a victim advocate who would escort them through the process. Victims were asked to describe the item or items they hoped to recover, and if possible, the general area in the venue where it may have been left. An FBI Victim Specialist would then check inventory that has arrived from the festival venue at the Family Assistance Centre and return the property if found.*

*Once the crisis centre was shut, an on-line catalogue was created, to help victims still claim their lost belongings. Access to the catalogue is not public, but limited only to persons who have demonstrated legitimate interest to be given access to the database.*

# 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.*

## UNDERSTANDING THE CONTENT OF THE RIGHT TO DECISION ON COMPENSATION

Article 16 of the Victims' Directive sets out an obligation to make sure that victims are compensated from the offender within reasonable time. This should be done within criminal proceedings or in a separate set of legal proceedings, as long as the reasonable time criterion is fulfilled. The main aim of this is to ensure that victims can claim compensation from the offender and that this right is not lost on the victim. What Article 16 fails to address is that, regardless of what type of the proceedings are undertaken to obtain compensation from the perpetrator, it should come at no cost or additional administrative or evidentiary burden for the victim. It is for this reason that the compensation claim should, by preference, be decided in criminal proceedings, unless an external set of proceedings may ensure that victim can get compensation under more favourable conditions.

Regarding the liability of compensation, Member States are not expected to substitute offenders in their duty to pay compensation to victims. However, some concerns may arise concerning the subsidiary role of the State in situations where the offenders are not able to pay compensation or when they refuse to do it voluntarily. In this sense, States might take a proactive role in establishing systems of compensation that are aimed to guarantee the effectiveness of victims' right to compensation from the offender<sup>136</sup>.

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136 European Commission. (2013), p. 37.

## HOW THE RIGHT TO COMPENSATION FROM OFFENDER WORKS IN PRACTICE?

A vast majority of Member States guarantees the right of the victim to seek compensation within criminal proceedings<sup>137</sup>.

Rare exceptions are Flanders and Greece where victims might seek compensation for damages only within the framework of civil proceedings. In Flanders, a judge may decide whether to join the compensation claim with the criminal case or handle it separately. However, regardless where the compensation claim is being deliberated, the decision always lays with the civil court judge. Sweden uses the “Adhesion procedure” whereby the criminal case and the civil case run alongside each other, and the civil compensation claim will be raised and decided alongside the criminal case regarding the guilt of the accused.

In countries where the compensation claim can be made in criminal proceedings, however, it still remains, in its nature, a matter of civil law and a civil claim always remains an option<sup>138</sup>. This will mean that, in practice, victims might have to seek compensation in a civil court, after all. The main reason is that, the law does not oblige judges to decide on victims’ compensation claims in criminal proceeding, leaving it to their own discretion. Some of them, invoking various reasons, end up referring the decision on compensation to civil proceedings. What this means for the victims, in the outcome, is that they are usually forced to go through two sets of proceedings – criminal and then civil one.

Usually, the reason for having the two elements decided in two different proceedings is justified by the fact that the criminal and civil liability require different approach to presentation and evaluation of evidence. Hence, for example, for criminal liability it is necessary to establish the facts ‘beyond reasonable doubt’, while lesser standard of proof might be required for civil liability. For criminal responsibility, the fact that a bodily injury was inflicted is a satisfactory factual finding, however for civil responsibility it might be necessary to also discuss how the injury affected private and social life of the victim. Similarly, definitions of intent and negligence may differ in national legislation, and the consequences for negligence may be excluded from criminal responsibility more often than from civil liability.

In theory, these differences should mean that the two claims – criminal and civil, can run concurrently. However, it is not uncommon that civil courts take the fact that criminal proceedings are ongoing, as a reason to suspend the decision on the claim awaiting the outcome of criminal proceedings. The consequence of such procedural decisions are multifold: this significantly delays the final decision on compensation; at civil court victims need to present

137 AT, BG, CY, CZ, DE, IE, EE, ES, FI, HR, HU, IT, LT, LU, LV, NL, PL, PT, RO, SI and SK.

138 DE, PL, SL and SK.



evidence themselves (while in criminal proceedings this can be, at least to a large extent, done by the prosecution); victims may be expected to give testimony again in civil court and can be examined in the presence or even by the perpetrator

In some other Member States<sup>139</sup> problems regarding the enforcement of the decision of compensation taken within the criminal proceedings forces victims, nonetheless, to resort to a civil court.

## GOOD PRACTICE

### Victims' Compensation Fund in France

*The Law of July 6, 1990, has created an independent compensation process for victims of crime which may be begun independently of any criminal proceedings and regardless of whether the perpetrator of the criminal act has been found.*

*This process allows the victims of voluntary or involuntary acts that have the material character of a crime to obtain compensation by bringing the matter before the Commission for the Compensation of Victims of Crime (CIVI), a special tribunal that exists at every Tribunal de Grande Instance.*

*Victims of serious crimes of trespass to the person (rape, sexual assault, murder or involuntary homicide, voluntary or involuntary violence that causes a total absence from work of more than a month, etc.), receive full compensation for damages.*

*Victims of crimes of trespass to the person that do not cause a total absence from work of more than a month and victims of trespass to property (theft, fraud, breach of confidence, extortion of funds, destruction, or defacement) have the right to a limited maximum compensation based on the conditions of their financial resources.*

*Matters must be brought before the Commission for the Compensation of Victims of Crime (CIVI) within three years after the date of the criminal act or within the year following the most recent judicial decision. The matter may be presented before the court by a simple letter accompanied by proofs of the damages suffered. The services of a lawyer are not obligatory.*

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139 IT and RO.

*The compensations set by the CIVI are paid by the Guarantee Fund for Victims of Acts of Terrorism and Other Crimes (FGTI), which may pursue recourse actions against the perpetrators of criminal acts. (It was through the recourse actions pursued by the FGTI that 23 million euros were collected by the fund in 2002.) This compensation process is open to victims who are French nationals, whether the acts were committed in France or abroad; it is also open to nationals of EU countries and foreigners legally residing on French soil, if the acts were committed in France.*

*(Taken from: Ministry of Justice, Compensation of Victims of Criminal Acts in France, available at: [http://www.justice.gouv.fr/art\\_pix/indemnisation\\_victime\\_an.pdf](http://www.justice.gouv.fr/art_pix/indemnisation_victime_an.pdf))*

## GOOD PRACTICE – COMPENSATION SCHEMES IN SWEDEN

*The Crime Victim Compensation and Support Authority are bound by previous judgements and decisions made in court regarding levels of compensation, to ensure that levels of compensation are fair and equal regardless of whether compensation is paid by the offender of the State. For instance, if a victim is awarded a set amount of compensation in court but the offender is unable to pay, the State compensation should cover the same amount. There are however some limitations that the State compensation does not cover, for instance material items as State compensation is aimed at compensating injuries to the physical body.*

Some conditions may also apply when the victims request compensation from the offender. In some Member States the request for compensation is conditioned to the victims assuming an active role in the proceedings<sup>140</sup>.

Normally, victims can file their compensation requests themselves. The exceptions are identified in Italy and Portugal, where they have to be represented by a lawyer to request compensation. In Italy, this is true in any case, while in Portugal legal representation is only mandatory when the total amount of the compensation sought is superior to 5.000€.

<sup>140</sup> AT, BG, BE, HU, IT, LU and SE.

It is worth remarking that in Italy there are legal mechanisms to encourage the spontaneous compensation by the offender. In some cases, their suspended sentence may be conditioned by a payment of compensation. Furthermore, the offender who has entirely repaired (or has offered to repair entirely) the damages caused by the offence, can benefit from the removal of criminal liability (this is, however, reserved only for offences prosecuted by private complaint).

# 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.*

## UNDERSTANDING THE CONTENT OF RIGHTS OF CROSS-BORDER VICTIMS

In the EU, as a consequence of free movement, the flow of goods services, finance, people and ideas, there a high increase of people traveling, studying and/or working in a Member State other than their country of origin. In addition, Europe is a particularly big market for tourism worldwide. In recent years, international crime and victimisation have seen an increase, due to the increasingly

important individuals' participation in online transactions and communications. Cybercrime is growing at an alarming rate, with some surveys indicating an annual incidence in cybercrime of more than 40%<sup>141</sup>. This radical change of landscape poses significant new challenges to Member States and their judicial systems<sup>142</sup>.

Starting from a correct presumption that cross-border victims will find themselves in a more difficult situation, Article 17 of the Victims' Directive foresees that Member States should make efforts to minimise the difficulties such victims may face.

Victims will often not speak the language and/or understand the legal framework and functioning of criminal proceedings of the country where the crime was committed. This specific need of cross-border victims will be to a significant extent responded to, through the implementation of Article 9 of the Directive, however more practical support will be needed to make sure that cross-border victims may participate meaningfully in the proceedings.

Furthermore, looking into needs of cross-border victims for support, it needs to be noted that their support needs will usually be additionally complicated by several factors. Cross-border victims will be away from their family and friends to turn to for immediate support and may find it difficult to go back home. For example, a simple theft of documents and credit cards may be more traumatic for a victim who is only spending a few days in the country and has a flight to catch the next day. With no credit cards, no access to cash and unable to board their flight without a document, a cross border victim will be in a much more difficult position than when the crime happens in a person's place of residence – where you can go to the bank branch to immediately cancel your cards and withdraw some cash and can immediately ask the authorities for replacement documents. The more complex a victim's situation and more serious the crime, cross-border victims' needs will exponentially grow, in comparison to those of national victims. Additionally, as the criminal proceedings advance, it will be more difficult for a cross-border victim to stay involved, as they often return to their country of residence before the end of the criminal proceedings<sup>143</sup>.

For this purpose, this article entitles victims of cross-border criminal offences to rights regarding the most common problems these situations might present, especially concerning their participation in the proceedings. This right also puts into place a guarantee of equal treatment

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141 Norton Life Lock, Cyber Safety Insights Report United States (US) Results, available at: [https://now.symassets.com/content/dam/norton/campaign/NortonReport/2019/2018\\_Norton\\_LifeLock\\_Cyber\\_Safety\\_Insights\\_Report\\_US\\_Media\\_Deck.pdf](https://now.symassets.com/content/dam/norton/campaign/NortonReport/2019/2018_Norton_LifeLock_Cyber_Safety_Insights_Report_US_Media_Deck.pdf).

142 Victim Support Europe. (2016). Cross-border Victimization: Challenges and solutions with respect to the provision of support to victims of crime in a cross-border situation. Brussels: Victim Support Europe. p. 2, available online at: <https://victimsupport.eu/activeapp/wp-content/uploads/2017/02/VSE-Cross-border-Victimisation-Report.pdf>

143 APAV. (2016), p. 59.

between own and nationals of another Member State<sup>144</sup>.

There are mainly two groups of specific obligations in this article – corresponding to two sides to cross-border victimisation. Namely, in its essence, cross-border victimisation means that the victim resides in one Member State (the country of residence), while the criminal proceedings are taking place in another (country of commission). The fact that criminal proceedings are under their jurisdiction creates specific obligations on Member States where the offence is committed – and, consequently, where it is likely to be investigated and prosecuted. In this sense, the authorities with the jurisdiction to investigate and prosecute are required to take victims' testimony immediately after the filing of the criminal complaint and to apply video/telephone-conference to take the victim's testimony whenever it is necessary (e.g. victims living abroad).

Article 17 requires Member States to ensure equality between domestic and foreign victims. This equality does not mean just a declaratory statement in legislation, ensuring equal protection for all victims. It needs to go further and to actually ensure affirmative treatment of cross-border victim, to ensure that they have equal access to justice as domestic victims. This may mean, for example, that just providing foreign victims with information in the same form and with the same delay as to domestic victims may not be adequate. Sending notification to victims only week before a hearing may work for domestic victims who can quickly and at little cost attend the local court. To a foreign victim who needs to plan travel, take days off work and organise accommodation this may require additional time and reimbursement of expenses might also be expected. In addition, assuming that international post will travel longer than local service, notifications to foreign victims need to be sent with more advance notice, to factor in the time needed to ensure delivery of any official letters (or alternatively, electronic systems of notifications by e-mail, mobile apps or SMS may be considered, to ensure expedience).

One of the means to ensure equality is ensuring that victims' statements are taken from cross-border victims as soon as the victim is filing the complaint. However, the Directive also requires Member States to put into place mechanisms to take statements using video or conference calling to hear victims. In line with the principle of equality, both these types of measures should be put into place, to ensure that the system works for victims.

## HOW RIGHTS OF CROSS-BORDER VICTIMS WORK IN PRACTICE

Victims of cross-border crimes, in practice, face many more difficulties in receiving support and getting access to justice than the national victims. Starting with issues of jurisdiction, language,

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144 Victim Support Europe. (2013). Handbook for Implementation of Legislation and Best Practice for Victims of Crime in Europe. Brussels: Victim Support Europe.

distance, lack of support, victims of cross-border crime. It may happen, for example, that what is a crime in one Member State, will not constitute an illegal behaviour in another. For example, while most Member States persons with disability are considered to be one of the protected groups in the hate-crime criminal legislation. However, in Sweden, disability groups insisted on not being included in the definition. This may complicate matters of extradition, as usually extradition rules require reciprocity in criminality of behaviour to be satisfied.

In addition, 'the rights of victims of crime are different in all EU Member States which results in different support, information or protection the victims of crime are entitled to. The difference in legal systems makes it harder for professionals supporting and assisting victims of crime to inform them about their rights as well<sup>145</sup>'.

Additionally, it needs to be emphasised, that while the Directive insists on guarantee of equal rights to own and nationals of other Member States, this only refers to victims nationals of other EU Member States. Hence third country nationals can have even less rights and access to support.

## CROSS-BORDER VICTIMISATION ON A FOREIGN VESSEL (A CASE STUDY)

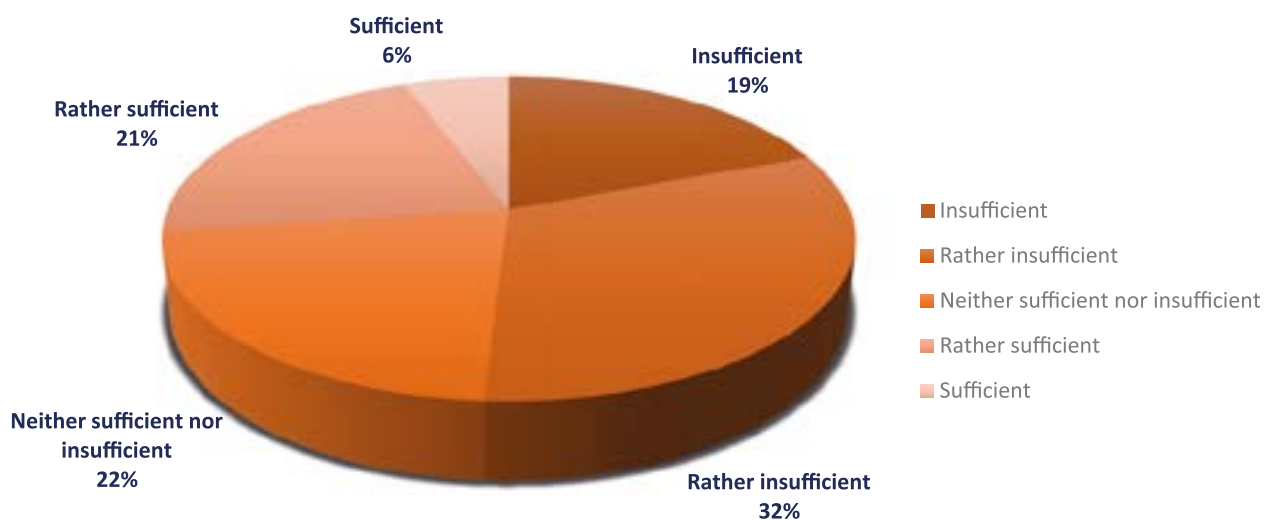
*Cross-border victimisation can become increasingly complicated, when issues of jurisdiction and duty to investigate come into play. Recently, a case was reported of a British girl having been raped by an Italian young man on board a Panamanian ship. The crime took place in international waters, only two hours before the vessel docked in Spain.*

*According to the international conventions applicable to the law of the sea, the ship captain referred the case to the first port of entry – in Spain. However, the Spanish judge found that there was no place for jurisdiction of Spanish authorities, and reportedly transferred the case to the authorities of Panama, the UK and Italy. The authorities and health services did examine the victim and safeguarded the evidence. Victim continued her journey on the vessel with her parents, while the perpetrator was held back and continued his journey by other means. Presumably, before she came back home to the UK (after a few days, at least) victim was not in a situation to receive appropriate practical, psychological or legal support.*

*At the same time, most countries also foresee a prohibition on the extradition of their own nationals. In practice, this may mean that if the perpetrator arrives to Italy, it might be very difficult for the UK to prosecute the crime and without any ties to Italy, it might be very difficult for the victim to seek justice in the perpetrator's country of nationality.*

*See e.g. the New York Times, Report of Sexual Assault on Cruise Ship Shows Gaps in International Law, April 2019, available at: <https://www.nytimes.com/2019/04/19/us/cruise-ship-crimes-laws.html> or The Telegraph, Italian teenager accused of raping British girl on cruise in international waters walks free on legal technicality, April 2019, available at: <https://www.telegraph.co.uk/news/2019/04/14/italian-teenager-accused-raping-british-girl-cruise-international/>*

The research conducted for the present report also indicates that in only 6% of cases the victim support professionals believe that competent authorities of the country of crime have all the necessary means to ensure effective processing of a cross-border victim, while more than 50% find the resources insufficient (see Figure 21 below).



**Figure 21:** Availability of resources to hear cross-border victims



In most Member States' national laws provide that the competence to investigate and prosecute belongs to the State where the facts have occurred. Considering this, as a general rule, the complaint taken in the country of residence must then be transmitted to the State where the crime occurred without delay.

There are exceptions to this rule, known as extra-territorial jurisdiction, when a Member State's national laws might provide that, despite the fact that a crime occurred outside of their territory, the competence to investigate and prosecute belongs to them. This extraterritorial prosecution is usually based on the so-called universal jurisdiction principle. The problem with universal jurisdiction, however, is that it is usually limited only to some types of most serious crimes (e.g. genocide, war crimes or crimes against humanity). Nonetheless, this principle may be an important element of preventing impunity. For example, in the past several decades, Sweden has introduced quite liberal rules regarding universal jurisdiction, aiming to end impunity for criminal behaviours by finding refuge in another jurisdiction<sup>146</sup>. Similarly, in 1998 Spain has put on trial Augusto Pinochet, who was arrested in the UK for crimes committed in Chile between 1973 and 1990<sup>147</sup>.

Regarding the general principle that demands equality of treatment between national victims and victims resident in another Member State, in some Member States that equal treatment is explicitly guaranteed<sup>148</sup>, whilst in others that is not the case<sup>149</sup>. However, this failure of explicit recognition does not have a practical consequence, as regardless of the guarantee of equality, the problems that cross-border victims are facing are still the same – hence, the guarantee of equality does not improve the level of enjoyment of rights in practice.

The most common problems found in guaranteeing this principle in practice of Member States are: the lack of interpreters and/or translators<sup>150</sup>, the lack of access to information about the proceedings' status<sup>151</sup> or even the lack of general information (e.g. information in public websites) available in another languages<sup>152</sup>.

In the implementation of the requirement to take victims statement, in some Member States this is ensured through taking the testimony immediately after lodging of the criminal complaint<sup>153</sup>, while others provide for a video/telephone-conference to take the victim's testimony at a

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146 See e.g. Amnesty International, Sweden – End impunity through universal jurisdiction, 2009, available at: <https://www.amnesty.org/download/Documents/48000/eur420012009en.pdf>.

147 Human Rights Watch, The Pinochet Precedent - How Victims Can Pursue Human Rights Criminals Abroad, November 1998, available at: <https://www.hrw.org/report/1998/11/01/pinochet-precedent/how-victims-can-pursue-human-rights-criminals-abroad>.

148 CY, DE, HU, PL, SI and SK.

149 EL, BE, ES, MT, RO and SE.

150 AT, CZ, ES, FI, PT and RO.

151 PT and RO.

152 CZ and NL. See also, Sections on Articles 3 and 4.

153 AT, HU and SI.

later stage<sup>154</sup>. However, only a few Member States actually provide for both these options, as requested by the Directive<sup>155</sup>.

In some countries, such as Belgium, it is possible to send a complaint to the police by email. Such a complaint will suffice for any person (domestic or foreign) to be registered as victim. In Finland the victim may give his/her statement through an attorney, by telephone or by other means of communication, if the investigator considers that this would not cause inconvenience or compromise the investigation. Besides, written accounts are accepted to supplement the statement. Member States, such as Germany and Finland, also provide for a possibility of recording these hearings, to make them available in future hearings in Court. This way, the need for repetition of testimony may be avoided (this is also an important element of avoiding revictimisation, hence an important part of broader victims' rights and the need to show respect to victims). In Hungary, the investigating authority may allow the victim, upon his/her request, to make a written testimony following or instead of the oral questioning which can, then, be read in court. In Portugal when the victim is about to leave the country, they can give 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 having to return to the country. It was also referred that in Cyprus the police agents might travel abroad to take testimonies.

Even if video-hearing seems to be a common practice in cases of non-resident victims, some Members States pointed out that, in practice, this mechanism is not always used due to lack or insufficiency of resources<sup>156</sup> or even lack of legal framework detailing on how this types of mechanisms could be used<sup>157</sup>. In Hungary it was stated that even if technology is available in almost all courts "it is not used", most probably due a mere preference of judges to continue in the 'traditional ways' of delivering justice – in person.

When it comes to cooperation between Member States' authorities, it was noticed that collaborative platforms for this purpose are not well established among Member States. Some of the most referred

## GOOD PRACTICES

### *Tourist Police Unities*

In **Greece** and **Portugal** there are police stations specialised in foreigner/tourist victims. These unities offer information and help to foreigners/ tourists and manage incidents reported or refer them to the competent police service.

154 CZ, FR, IE, EE, LT, RO and SE.

155 DE, EL, FI and PT.

156 AT, FR, DE, ES, LT and SI.

157 LU and MT.

actors in cooperation between Member States<sup>158</sup> are central State authorities (e.g. police, public prosecutors and/or judicial authorities), as well as embassies and consulates<sup>159</sup>. In some other Member States, special commissions, established to handle compensation regarding cross-border offences<sup>160</sup>, are also involved in facilitating the cooperation between Member States' authorities. In the Netherlands it was also referred that victim support organizations are playing a pivotal role in ensuring cross-border cooperation. Sweden referred Europol, Interpol and Joint Investigation Teams.

## INTERNATIONAL COOPERATION AT CIVIL SOCIETY AND GOVERNMENTAL LEVEL

***Victim Support Europe (VSE)** came to existence in 1990 as the European network of national victim support providers. The founding members were all European non-governmental service providers with extensive experience in ensuring generic victim support at national levels. In the past almost 30 years, VSE grew both in terms of non-European membership (now embracing members also from Israel and New Zealand, for example) and membership of governmental institutions (for example – Croatian and Hungarian Ministry of Justice and Finnish state social services are VSE members). In the past years, VSE is increasingly involved in organising international cooperation and ensuring that every victim of cross-border crime is referred to a service provider who can ensure they receive support they need. VSE remains the biggest European network of victim support organisations and remains the driver of changes at the European and national level, towards comprehensive support services for all victims of all crimes.*

***European Network for Victims' Rights (ENVR)** is a result of a recent initiative to bring together governmental institutions responsible for the implementation of victims' rights to advance the rights of victims through joint action. ENVR officially stated operations in 2018.*

*VSE and ENVR cooperate closely on advancing victims' rights policies, both from their own perspectives and with their particular focus on victims' rights from a primarily service-provider (VSE) and policy maker (ENVR) perspectives, even though some overlaps are, of course, inevitable.*

158 CZ, EL, FI, IT, LT, PL, RO and SK.

159 EL, LV and NL.

160 BE and RO.

From the research findings, it appears obvious that there is a lack of coordination – and therefore an efficient cooperation – among Member States. This threatens to affect the effectiveness of victims' rights provided by virtue of Article 17 of the Directive. There is also a general lack of knowledge, especially among local structures, about the existing cooperation mechanisms – normally very few resources are available for professionals to ensure referral and support for cross-border victims. As referred by the Netherlands, "the exchange of information between competent authorities abroad and Dutch institutions is a bottleneck". A similar opinion is given by Portugal: "judicial cooperation between the authorities in the EU Member States still needs to improve greatly".

# 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.*

## UNDERSTANDING THE CONTENT OF THE RIGHT TO PROTECTION

Article 18 of the Victims' Directive has a wide scope and refers holistically to measures aimed at protecting the victims and their family members. However, in addition to the protections from Article 18, throughout the Directive specific protection needs are mentioned in other provisions and these are addressed, in this report, in the sections corresponding to those articles. Article 18 itself aims to ensure that Member States provide to victims and their family members a wide range of protection measures, with the specific purpose of preventing the secondary and repeated victimisation, intimidation and retaliation. In accordance with this provision, Member States shall ensure the protection of victims not only from physical harm, but also from further emotional and psychological harm that they might be subject to, in the aftermath of their victimisation.

These protection measures can be criminal, administrative and/or civil in nature and should be adequate to protect victims and/or their families' life, physical and psychological integrity and/or freedom whenever they are considered to be in risk<sup>161</sup>.

In the strict sense, there are several examples of measures which can be implemented to prevent secondary and repeated victimisation, intimidation and retaliation. These measures include: prohibition of the offender from frequenting certain localities, places or defined areas where the protected person resides or normally visits; prohibition or regulation of contact, in any form, with the protected person or prohibition; or prohibition to approaching the protected person more closely than a prescribed distance.

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161 European Commission. (2013), p. 39.

**Secondary victimisation** is understood as insensitivity of the authorities and other instances involved in dealing with victims in the aftermath of crime, which causes further traumatising and increases the intensity or extends the period of crime the victim is suffering consequences of crime. Most frequently mentioned example of secondary victimisation is the so-called victim blaming in cases of sexual assault – where victim is being asked about what she was wearing, how many drinks she has had or how strongly she rejected the advances of the perpetrator. Many other instances of secondary victimisation have been mentioned throughout this report and most instances of secondary victimisation are found in more subtle, yet still important, forms of behaviours on the part of different participants in the proceedings. Some of these examples include: suggesting to the victim of domestic violence that she should cooperate with and be submissive to the perpetrator to avoid further instances of violence; setting overly complicated and excessively formalistic compensation procedures, repeatedly asking victims to provide additional evidence, returning the clothes of a violently killed family member with traces of blood still present on the clothes and many others.

Under the scope of Article 18 of the Directive, protection also includes adopting measures to guarantee that, whenever victims participate in criminal proceedings, any risk of secondary victimisation is avoided.

While the measures provided in Article 18 are primarily limited to victims' testimony and questioning at court – some forms of protection may be required during trial in general (e.g. ensuring physical protection of vulnerable victims outside of courtroom, when needed). Protection at other phases of proceedings and more specific forms of protection are foreseen in ensuing provisions of the Directive, which are to be seen as *lex specialis* to this provision.

## HOW RIGHT TO PROTECTION WORKS IN PRACTICE?

The vast majority of Member States reports that the national legislation foresees specific measures for the protection of victims and their families<sup>162</sup>. In Hungary, as the law considers most victims also to be witnesses, there are no specific victim protection regulations and the protection measures available for witnesses apply. Mostly, these measures consist of restrictions to the offender's freedom. However, some Member States<sup>163</sup> also refer to measures steered towards the victims – which can, inversely, restrict their own freedom and directly affect their lives – such as shelters for victims of domestic violence and trafficking in human beings, as well as other types of safety measures, for example, police protection, plastic surgery or change of identity.

162 AT, BG, CY, CZ, FR, DE, IE, EE, ES, EL, FI, HR, IT, LT, LU, NL, PT, RO, SI, SK and SE.

163 BG, CZ, BE, FI, LT, NL and PL.

Some Member States also introduce the possibility of extending protection measures to victims' family members<sup>164</sup>. However, this can happen when the family member is considered a victim himself/herself, according to definition of *victim*. Additionally, this can also happen when, during the course of criminal proceedings, a family members suffer direct harm and becomes victim themselves. For example, this may happen when the perpetrator threatens or stalks the family member. In Portugal this raises a concern because applying the protective measures only when the family members become victims themselves does not have a preventive, but rather, reactive effect and certainly knowing that a family member has become a victim of crime due to such circumstances will additionally traumatise and harm the 'original' victim.

In relation to the phases of criminal proceeding where protection measures should be implemented, in some Member States it is possible to do so both in pre-trial and trial phases<sup>165</sup>, whilst in Bulgaria they can only be put in place in the trial phase. In Austria and Finland these measures could benefit the victims from the moment of the complaint and in Poland they can be applied even after the end of the criminal proceedings.

In a general manner, there is an overall perception that when preventing secondary and repeated victimisation, intimidation and retaliation, most Member States' protection measures are not sufficiently effective.

Almost two thirds of victim support professionals find that victims do not receive the protection from intimidation and retaliation with sufficient regularity (12% find that it happens always and another 23% that it happens often, with the remaining 65% replying by sometimes, rarely or never – see Figure 22 below).

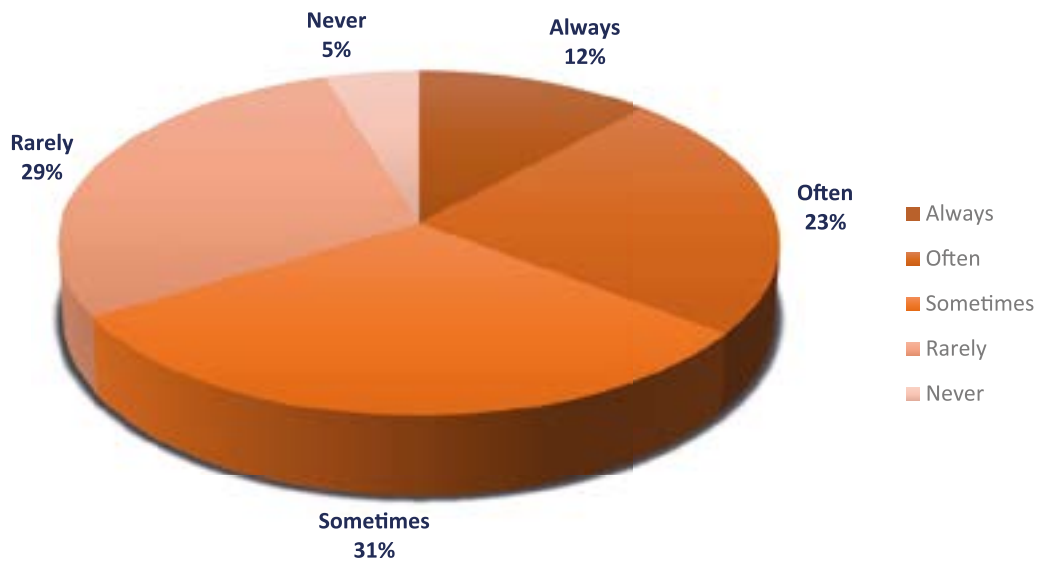
## GOOD PRACTICES

### *AWARE System*

In **The Netherlands** this system is available for victims of stalking and inter-partner violence. It offers a mobile alarm button for immediate police response in situations of threat, combined with a program of individual counselling and/or peer support, coordinated by the association of women's shelters.

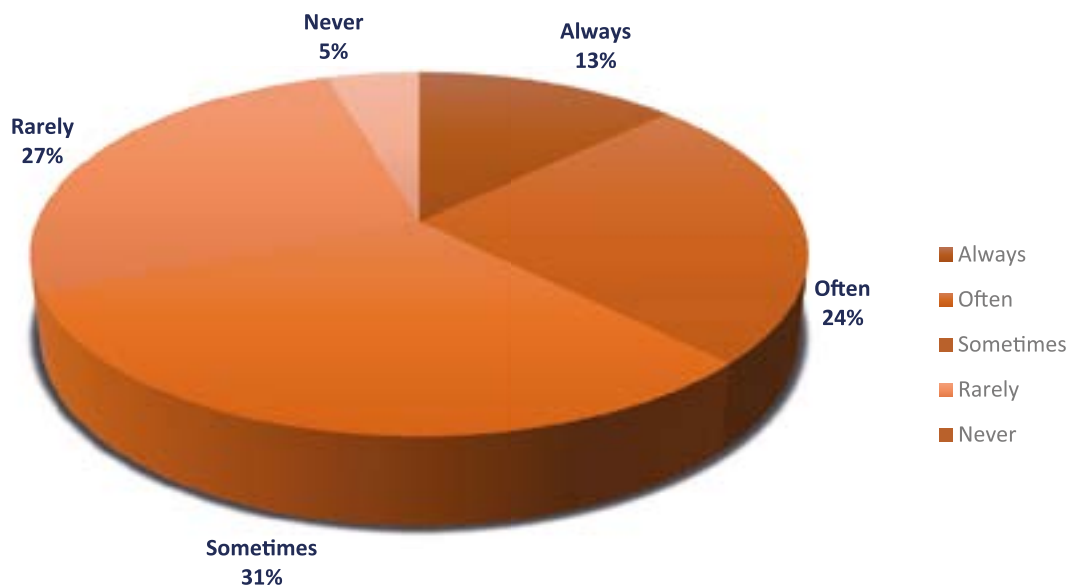
164 BG, CZ, EE, ES, EL, FI, IT, LT, LU, NL, PL, PT and RO.

165 CZ, FI, LT, LU, PL and SK.



**Figure 22:** *In your opinion, how often do victims and their family members receive adequate protection from intimidation and retaliation?*

Very similar findings are present regarding the protection from emotional and psychosocial harm, with only 37% professionals considering that victims receive adequate protection always or often (see Figure 23 below).



**Figure 23:** *Incidence of protecting victims against the risk of emotional and psychological harm*

Consequently, it would appear that protection measures only rarely function for victims who need them, which is a concerning finding, given the importance of this right to all victims of crimes.



# 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.*

## UNDERSTANDING THE CONTENT OF THE RIGHT TO AVOID CONTACT

Article 19 of the Victims' Directive establishes a specific obligation to avoid contact between victim and offender. This obligation is aimed at preventing further victimisation, intimidation or retaliation. In this sense, it is, in a way, specific form of protection in comparison to Article 18, as it prevents secondary victimisation. At the same time it serves the purpose of delivery of justice. If the victim is not under pressure to run into the offender, it helps them deliver their statement in a calmer state of mind. Finally, it can also be seen as a form of respect and showing the actual victim-centeredness of criminal justice that the directive is trying to introduce. This provision says that the court does not belong to the offender, but to a system of justice and this needs to be recognised not just in law and procedures, but also in the architecture of court buildings and other places where justice is served.

For these purposes, Member States shall create conditions to avoid face-to-face contact between the victim and the offender in all venues where criminal proceedings might be conducted. Besides the typical facilities such as police stations, prosecutor's offices and court premises, this obligation is extended to all others public facilities where the victim might encounter the offender as a result of the criminal proceedings, such as hospitals or social welfare offices<sup>166</sup>.

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166 Victim Support Europe. (2013). p. 31.

The Directive demonstrates particular concern regarding the infrastructure of these premises, especially court buildings and police stations. In this vein, it prescribes the necessity of creating amenities which increase victims' sense of security by reducing, as much as possible, the number of times victims may see or encounter the offender<sup>167</sup>. Some options are the creation, for instance, of separated entrances, waiting areas and corridors or witnesses' box.

Nevertheless, these measures should not be interpreted strictly to only be of infrastructural nature. Additional measures, including summoning victims and offenders to hearings at different times or dates are also encouraged by the Directive<sup>168</sup>. These are often taken by professionals when the premises are not yet adequate to ensure the avoidance of contact and also to avoid that the victim and the offender see each other in the proximities of the police station or court building.

One exception to the right to avoid contact between victim and offender is when the criminal proceedings require such contact. An example is the court sessions when normally victims and offenders are present. However, it is important to interpret this exception in a proportional manner guaranteeing that victims' rights are not taken less seriously than the interests of the proceedings<sup>169</sup>. In addition, when the simultaneous presence of the victim and offender in the building is necessary, measures to hold up the offender until victim is at a safe distance from the building may be introduced (e.g. the offender is authorised to leave the premises at least half an hour after victim has left).

<sup>167</sup> Recital 53 of the Victims' Directive.

<sup>168</sup> Ibid.

<sup>169</sup> European Commission. (2013), p. 41.

## GOOD PRACTICES

### *Information Centres*

In **Germany** information centres were established in courts. Working in cooperation with the police authorities, they frequently succeed in preventing an encounter of offenders and victims. They also draw attention to the available witness rooms, thus relieving the burden of the victims in the court proceedings.

### *Court's virtual tour*

Victim Support **Northern Ireland's** website contains 360-degree interactive courtrooms across the country, 'designed to take some of the mystery away from attending court as a prosecution witness.

## HOW RIGHT TO AVOID CONTACT WORKS IN PRACTICE?

Most premises in most Member States do not have different entries<sup>170</sup> or separated waiting rooms<sup>171</sup> for victims and offenders. In some Member States, however, research indicates that most facilities have different waiting rooms<sup>172</sup>. In Cyprus this is the case only in court facilities, for example, but not for other types of premises.

In some Member States<sup>173</sup> a new design for existing courts is being implemented progressively as the new court buildings are already built with different waiting areas. In Austria and Portugal, when there are no specific entrances dedicated specifically for victims, it is a common approach to ensure that victims and offenders use different entrances/exits (e.g. backdoors or emergency exits) in order to avoid their contact.

The existence of separate waiting rooms in Finland is less likely in remote areas and/or small municipalities, while in the Netherlands it is less observed in police stations than in other premises. In Lithuania, victims normally make the first oral or written complaint in the common waiting area of the police station. In any case some Member States pointed out to some creative solutions to avoid the contact between victim and offender in the absence of separated waiting rooms such as taking victims to other rooms or neutral spaces, where there are no contact with the offender<sup>174</sup>.

Regarding alternative solutions to address the problem of infrastructure in the police, it is common in some Member States, as suggested by the Directive, to schedule the presence of the victim and of the offender for different days and/or times<sup>175</sup>. However, in a few Member States this is not practiced<sup>176</sup>. In some Member States<sup>177</sup> it was referred that, even when victim and offender are scheduled to be present at different times, if these are close in time, it is not possible to avoid their encounter in the corridors or waiting areas.

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170 BE, BG, DE, EE, EL, ES, FR, HR, HU, IE, MT, NL, PL, RO, SI and SK

171 BE, BG, EE, EL, ES, IE, FR, HR, HU, IT, LT, LU, LV, MT, PL, PT, RO, SE SI and SK.

172 CZ, DE, FI and NL.

173 AT, EE, ES, FI and LT.

174 CZ, FI, IT, PT.

175 AT, BE, CZ, DE, EE, EL, FR, FI, HU, LT, PL, SI and SK.

176 MT and RO.

177 FR, HR and SI.

The research indicates that victim support professionals are not convinced about the effective implementation of all the available measures to avoid contact. In a worrying number of cases, the professionals indicate that facilities simply do not exist (separate waiting areas in more than one third of all cases, separate entrances in over 40% and even the simple measure of scheduling appointments at different times is not available in more than 16% of cases – see Figure 24 below)

	At the police	In court buildings	Does not exist
	%	%	%
Separate waiting areas for victims and offenders	22,5	32,7	<b>44,8</b>
Separate entrances within the premises	21,9	24,8	<b>53,3</b>
Appointments at different times	<b>50,3</b>	29,8	19,9
Different entrances from outside the buildings	19,8	27,8	<b>52,5</b>
Toilet facilities not close to one another	16,6	20,7	<b>62,7</b>

**Figure 24:** Are you aware of any of the following arrangements being present in your country?

The main identified difficulty in avoiding contact between victim and the offender is the overall necessity of reorganising the spaces in the buildings where criminal proceedings are conducted. The reasons underlying the delay on these reforms are diverse. In some Member States<sup>178</sup> it was pointed out that the existence of security check points at the entrances poses a practical difficulty to keep both victim and offender away from each other. In other Member States, the difficulties pointed out are linked with the structure of the buildings not being prepared for this type of space organisation<sup>179</sup> and sometimes simply because they are too old<sup>180</sup>. Also, in Portugal one difficulty found was the fact that most victims are not aware of the space before going to the court or to the police station making it more likely that they encounter the offender.

178 AT, MT and NL

179 FR and CZ.

180 IT and MT.

# 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.*

## UNDERSTANDING THE CONTENT OF RIGHT TO PROTECTION DURING INVESTIGATION

Article 20 of the Victims' Directive reinforces the right<sup>181</sup> aimed at preventing secondary victimisation for all victims throughout not only the trial itself, but also the investigation. The obligation foreseen in this article is based on the principle of reducing, speeding and easing the criminal proceedings, in order to reduce the risk of secondary victimisation for all victims of crimes.

In general terms, the measures foreseen in this article may be restricted whenever there is a strong argument or, using the directive's wording, "by a reasoned decision". The measure which specifically foresees the accompaniment by a person of the victims' choice can be restricted, when there is foundation for such decision, for example, the victims' best interest in cases where the victims would be accompanied by the perpetrator himself/herself (e.g. victims of domestic violence being accompanied by the family member that is the perpetrator). These limitations should be put in practice in strict proportionality in order not to override this victims' right.

There is also an obligation to allow victims to be accompanied by a person of their choice in all interviews with the authorities. This is a reflection of the recognition of the right to emotional and practical support as an elementary form of support to victims of crimes. The person of victims' choice is different from victim's lawyer. Namely, even in cases where the victim is represented by a lawyer, the right to be accompanied is not limited to the presence of the legal representative

<sup>181</sup> European Commission (2013), p. 42.

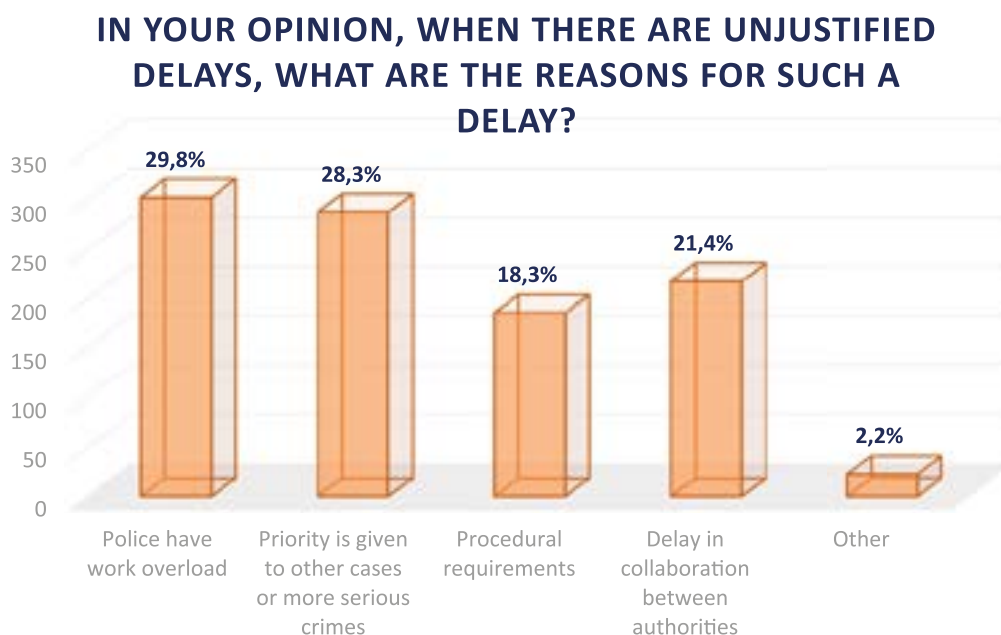
but it extends to the presence of another trusted person for moral support<sup>182</sup>. Moreover, in cases where victim is granted legal aid, they often do not get to choose their lawyer, rather lawyer is appointed from a list or by random allocation. The accompanying person, however, is always a choice of the victim. It can be a family member or a support worker, often both.

## HOW RIGHT TO PROTECTION DURING INVESTIGATION WORKS IN PRACTICE?

### Interviews of victims are conducted without unjustified delay

In some Member States, there is a legal obligation to conduct interviews without delay, right after the complaint is made<sup>183</sup>, whilst in some others this is not the case<sup>184</sup>.

Victim support professionals estimate that more than 40% of cases where victims experience delays in being interview – this is due to the lack of resources or coordination between the authorities (see Figure 25: *Reasons for delay below*). This worrying trend may be an indicator that victims’ rights are not highly prioritised in Member States.



**Figure 25: Reasons for delay in interviewing victims**

182 Ibid.

183 HR, CY, FR, ES, FI, LV, SE and SK.

184 AT, DE, EE, IT, LT, LU, PL and PT.

## Number of interviews and medical examinations

Research indicates that in some Member States referred there is a legal obligation to keep the number of interviews and medical examinations to a minimum<sup>185</sup>. In Slovakia this legal obligation exists only in relation to interviews. In some other Member States<sup>186</sup> there is no specific legal obligation to minimise the number of any of these interactions.

However, even when the obligation is imposed by national law, practice provides for a different picture. For example, in Cyprus, victims of trafficking in human beings may be required to provide repeated testimonies, in order to have their victim status officially recognised. In Bulgaria victims are subject to repeated medical examinations, performed in different stages of the proceedings. Worryingly, this behaviour is considered to be normal by the actors in the proceedings.

## Accompaniment by their legal representative and a person of their choice

Concerning the right to be accompanied by a person of choice during criminal proceedings, in majority of Member States there are legal obligations at the national level to ensure this right<sup>187</sup>. However, in some in some of these countries, this right is often restricted only to the victim's lawyer<sup>188</sup>. In some Member States<sup>189</sup>, the enjoyment of this right might also be subject to further limitations. For example, in some cases, this right is only limited to victims of certain types of crime (e.g. domestic violence and/or violent crimes). In some others<sup>190</sup>, bureaucratic procedures are indicated as an obstacle to full enjoyment of the right. In Luxemburg, restrictions are connected with the nature of the relationship between the victim and the person and victims are only allowed to be accompanied by relatives. In Malta the accompaniment is permitted only when the victim is considered to have specific protection needs. In Slovenia, this right is interpreted so that only one person may accompany the victim, whether it is a lawyer or another person of trust.

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185 CY, CZ, FR, DE, EL, ES, FI and SE.

186 AT, EE, LU, PL, RO and LT

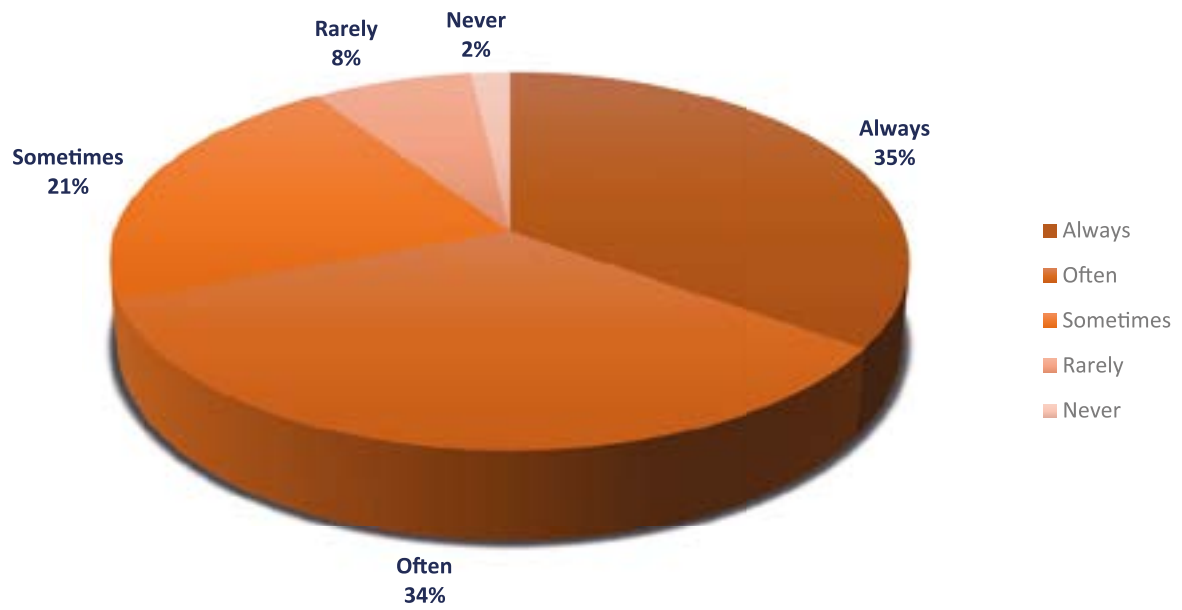
187 BG, CY, CZ, DE, EE, EL, FR, HR, HU, IE, BE, ES, FI, IT, LT, LU, MT, LV, NL, PL, PT, SE SI and SK.

188 BG, EE, LT, LU, PL and SI.

189 BE, LU and SI.

190 IE, LT and LV.

Research indicates that victim support professionals consider that in more than 30% of cases victims receive this form of support only sometimes, rarely or never (see Figure 26 below). This means that one in three victims is at risk of being refused this important and indeed simple form of support in the process.



**Figure 26:** Frequency of victims being accompanied by a person of their choice



# 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.*

## UNDERSTANDING THE CONTENT OF THE RIGHT TO PROTECTION OF PRIVACY

Victimisation may be an extremely traumatic experience, for victims, as well as their family members. This is particularly true for child victims. Protecting victim's privacy in the aftermath of a crime is, therefore, a key element of reducing the risk of further traumatising and exposure to public view and potentially secondary victimisation. Article 21 of the Victims' Rights Directive reinforces this need to protect victims and their family members' privacy during and after the criminal proceedings<sup>191</sup>. Considering this necessity, the Directive also invites states to encourage the media to adopt self-regulatory measures. In addition, it is not uncommon that some forms of disclosure of identity are subject to penalties or even criminal sanctions.

The protection of the right to privacy can sometimes be seen as confronted to the freedom of expression, and often this discussion can have grounds. On the one hand, the public has the right, and sometimes even need to know the facts, while on the other hand lays the privacy of individuals. However, understanding that neither the right to privacy nor freedom of expression are unlimited can help set the framework for the protection of victims' rights from Article 21. According to the European Convention on Human Rights (ECHR), both these rights can be limited. The right to privacy can be limited when 'necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others'<sup>192</sup>. The freedom of information, at the same time, can be interfered with when it is 'prescribed by law and [...] necessary in a democratic society [...] for the protection of the reputation or rights of others, for preventing the disclosure of information received in

191 Victim Support Europe. (2013). p. 33

192 Article 8 of the ECHR.

confidence, or for maintaining the authority and impartiality of the judiciary<sup>193</sup>. While there is plenty of jurisprudence developing these concepts and clarifying the boundaries and limitations of both the right to privacy and the freedom of information, one important element of it must be emphasised – public persons enjoy less right to privacy than others<sup>194</sup>. However, when it comes to victimisation, and the right to privacy of victims who are in the public eye, the bar still needs to be held higher, as public persons are often targeted exactly because they are more exposed, as, according to the European Court of Human Rights (ECtHR), when an individual concerned discloses details of his life, he should expect that his right to respect for his private life will be limited<sup>195</sup>.

## MEDIA SELF-REGULATION

*Self-regulation is defined as 'the possibility for economic operators, the social partners, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines at European level (particularly codes of practice or sectoral agreements. When it comes to media, self-regulation is seen as a "joint endeavour by media professionals to set up voluntary editorial guidelines and abide by them in a learning process open to the public. By doing so, the independent media accept their share of responsibility for the quality of public discourse in the nation, while fully preserving their editorial autonomy in shaping it."*

*See e.g. OSCE, The Media Self-Regulation Guidebook – All questions and answers, 2008, available at: <https://www.osce.org/fom/31497?download=true>.*

In this sense, a proportionality test, which considers all the principles to be weighted in the concrete case, is a tool to be used on whether the information should be disclosed or not. While the disclosure of generic information about the case would normally causes no harm and can be in public interest, the disclosure of more detailed information about victims and the crime is potentially harmful to the victim and should, therefore, be avoided. This purpose is best served

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193 Article 10 of the ECHR

194 See e.g. Axel Springer Ag. v. Germany, ECtHR, Grand Chamber, 2012. Full judgment available at: <http://hudoc.echr.coe.int/eng?i=001-109034>, for a summary, see e.g. Global Legal Monitor, Council of Europe: Public Persons and the Right to Privacy, February 2012, available at: <https://www.loc.gov/law/foreign-news/article/council-of-europe-public-persons-and-the-right-to-privacy/>.

195 Ibid.

through the self-regulation of the media, which is also the approach that the Directive suggests, to protect freedom of expression, information and pluralism of the media<sup>196</sup>. However, when necessary, a court order may be issued to set the ground rules of reporting in particularly sensitive cases.

## REPORTING ON CASES OF HISTORIC CHILD SEX ABUSE (CASE STUDY)

*In the past several years, a prominent catholic priest stood trial in Australia for the charges of sexual abuse of children, reaching back to previous decades. However, according to Australian legislation, privacy of victims in sex-related crimes is always protected and the media are not allowed to report on the case, using victims' identities, even if the victims made public statements prior to the trial. 'This means complainants who might have been identified in earlier coverage or proceedings are suddenly rendered anonymous from the moment the matter is "pending" – after the arrest or charging of a suspect.' (see, The Conversation, Why the public isn't allowed to know specifics about the George Pell case, March 2018, available at: <http://theconversation.com/why-the-public-isnt-allowed-to-know-specifics-about-the-george-pell-case-93651>).*

*As a result of a combination of the court order and the self-regulation of Australian media, the violation of victims' privacy (who, even though adults at the time of trial, were children at the relevant time) has not been a major concern, according to reports. This despite the fact that the case was extremely high profile and intensively controversial in the public discourse. Victims were even given an opportunity to make statements about the impact of victimisation on them, without their identity being revealed. (see e.g. ABC News, George Pell's victim responds to the cardinal's conviction for child sex abuse, February 2019, available at: <https://www.abc.net.au/news/2019-02-26/george-pells-victim-responds-to-guilty-verdict/10849832>) while the news outlets themselves asserted the need to protect victims privacy, saying that the "victim cannot be identified and his evidence was given in a closed court, which means journalists and the public were excluded" (ABC News, George Pell guilty of sexually abusing choirboys, where it is noted that, February 2019, available at: <https://www.abc.net.au/news/2019-02-26/george-pell-guilty-child-sexual-abuse-court-trial/10837564>).*

196 European Commission. (2013), p. 43

Similar issues may appear in relation to the publicity of trials – as this is one other human rights requirement to ensure the fairness of trial and the justice system as such. However, even in such situations, measures must be put into place to protect the identity of victims, even when the trial is public. This may be done by exclusion or limitation of public access to parts of trial where victim is giving statement, providing special screens and use of initials or pseudonyms to protect their identity, reading out or playing recording of victims' statements given in the pre-trial phase, or digitally blurring victims' identity, even when the statement is being directly given or transmitted by the media.

Whenever sensitive information about the victim's identity and/or life is to be publicly disseminated, consent must always be expressly given by victims. Special attention and protection shall be granted to child victims' privacy, whose identity should never be revealed.

Apart from victim's name, other means of their identification should also be restricted – such as mentioning names of their work place, school, or (for child victims) identifying their parents or otherwise providing sufficient information to compromise their privacy.

Besides media itself, any other professionals involved in the case shall also be oriented in not disclose this kind of information.

In any collection of victims' data and its dissemination, any actors in the proceedings must abide, as a matter of course, by GDPR standards.

## HOW RIGHT TO PROTECTION OF PRIVACY WORKS IN PRACTICE?

Media self-regulatory measures exist in some Member States<sup>197</sup> but not in others<sup>198</sup>. In Czech Republic and Malta, the research indicates that media is not particularly encouraged by State to take self-regulatory measures. In Greece and Finland, at the same time, self-regulatory measures are in place, however their efficiency is questionable, as many instances of victims' privacy violations had been reported.

The general rule of publicity of court hearings can be restricted in most Member States when it is adequate, necessary and proportional, including for the purpose of protecting victims' privacy. The research indicated that most of the proceedings in which the public is restricted from attending court sessions are related to cases involving child victims and sexual crimes.

It is also relevant to safeguard victims' privacy during criminal proceedings, preventing the disclosure, during court hearings, of that is not strictly relevant for the case<sup>199</sup>, even if the hearing

197 BG, CY, FR, EE, EL, BE, FI, LT, LV, NL, SE and SI.

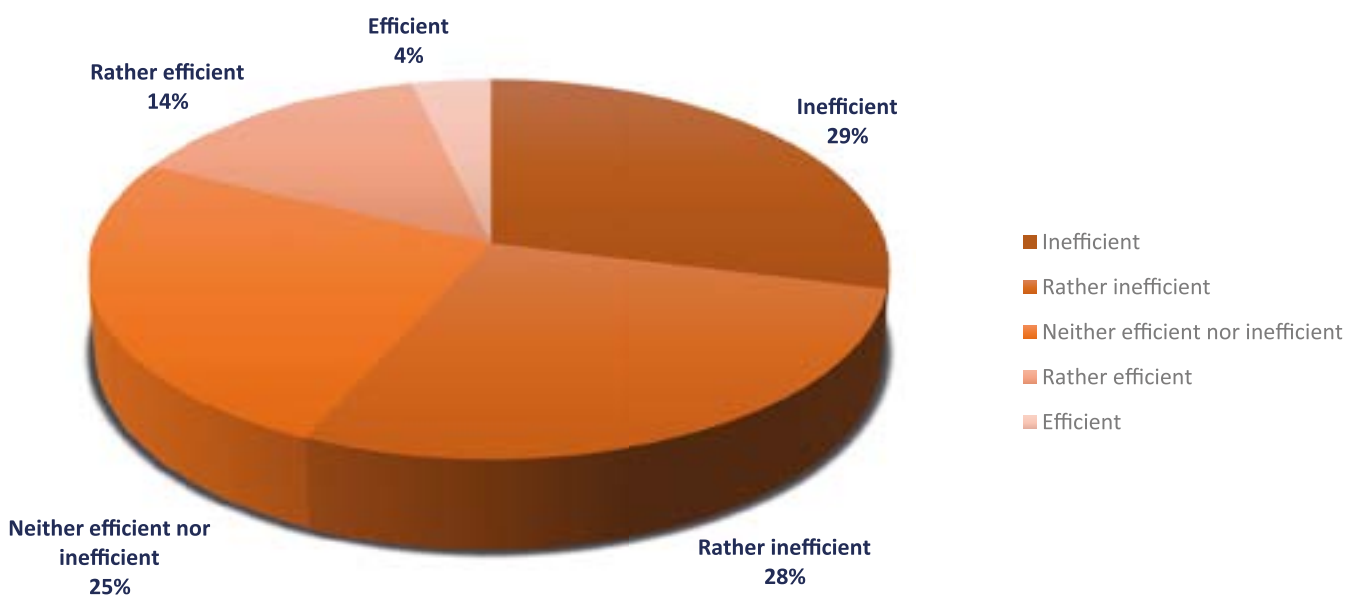
198 ES, HU, IT, MT and RO.

199 Ibid.

itself is public (in many court jurisdictions in the United States, for example, even when the hearing is public, it is not possible to bring cameras into the court room – which explains that there still is room for the profession of the court artist, in the 21st century). In great majority of Member States<sup>200</sup>, it is possible to restrict the publicity of court hearings whilst in a few others there is no such possibility, or even if there is, it is rarely happening in practice<sup>201</sup>.

In addition to the self-regulation of the media and the exclusion of the publicity at the court hearing, a number of other measures have been adopted to protect victims' privacy. In some Member States one of these measures is the imposition of anonymity of the victim/witness in criminal proceedings<sup>202</sup>, the prohibition of broadcasting during, and video recording of trials<sup>203</sup> and the civil and criminal liability of those who infringe victims' right to privacy<sup>204</sup>.

However, despite the number of measures put into place to protect victim's privacy, victim support professionals give reason for concern regarding how this right is implemented in practice – with only 4% believing that the existing measures are fully efficient, and another 14% finding these measures rather efficient. The remaining 82% of professionals believe that measures are failing victims in varying degrees (see Figure 27 below).



**Figure 27:** Efficiency of protection measures in safeguarding victims' privacy

200 AT, BE, BG, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LV, NL, PL, PT, SE, SI and SK.

201 LU, MT and RO.

202 CZ, DE, FR, HU, NL and RO.

203 DE and EL.

204 ES and PL.

The main difficulties to ensure guaranteeing victims' right to privacy identified were: attitudes of the media professionals<sup>205</sup>, the fact that privacy protection measures are only available for specific groups of victims (e.g. victims of sexual crimes or child victims)<sup>206</sup> and the lack of infrastructure (e.g. separate rooms for victims to make complaints in police stations)<sup>207</sup>. In Romania, the research indicates that the right to privacy of victims of crime is a category unknown to the Romanian stakeholders, as all information regarding victims are normally public in criminal proceedings, with some rare exceptions regarding particularly vulnerable victims.

## GOOD PRACTICES

In **Belgium**, the National Forum for Victim Policy has clustered a number of policy documents, guidelines and handbooks for journalists to make sure that the right to privacy of victims is duly respected. Furthermore, a code of conduct has been drafted by the General Society for Professional Journalists with a view to self-regulating and finding the right balance between media coverage of criminal cases and respect for the privacy of the victims.

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205 HR, BE, IT, SI and SK.

206 FR, ES and FI.

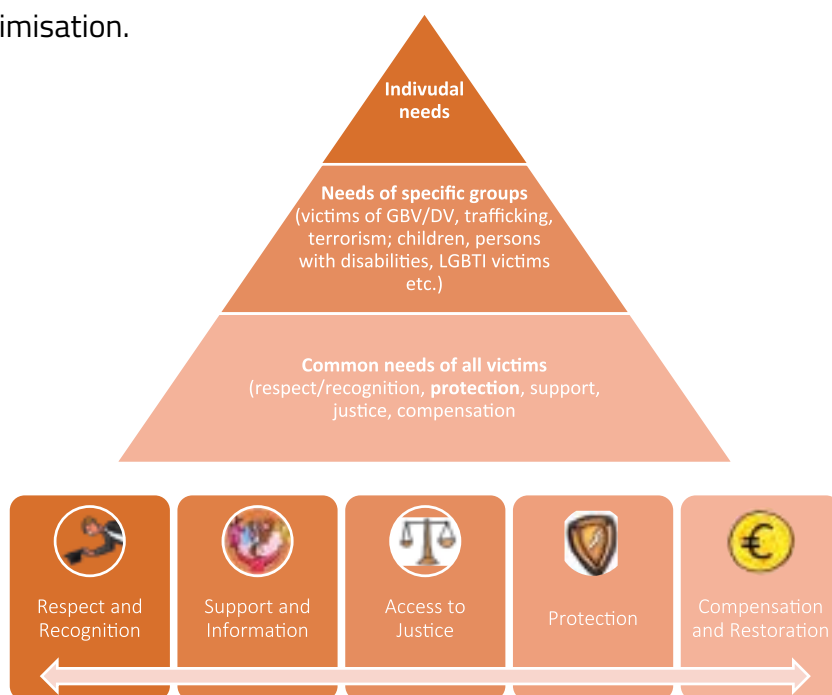
207 PT and MT.

# 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.*

## UNDERSTANDING THE CONTENT OF INDIVIDUAL ASSESSMENT

The starting point of individual assessment is understanding needs of victims of crime. As Victim Support Europe has already documented in several instances, these needs need to be understood as a complex and individualised set of specific requirements, which respond to each victim's particular situation. However, while the needs remain individual, the approach to defining them is quite well developed and starts with general needs of all victims, specific needs characteristic of certain groups of victims with the end result of identifying needs of each individual victim, based on such common approach. A look at the pyramid of victims' needs helps understand that protection needs are only one part of the totality of what needs to be ensured in a comprehensive response to victimisation.



**Figure 28:** Pyramid of victims' needs

Individual assessment of protection needs is, therefore, only one element of a broader necessity to assess the entirety of victim’s support needs, regardless of whether the victim chooses to report the crime, and when they do – to respond to these needs before, during and after criminal proceedings. Article 22 of the Victims’ Directive introduces the most relevant novelty in terms of victims’ rights – the individual assessment of victims’ specific protection needs. This article is based on the idea that, based on personal characteristics, nature, type and the circumstances in which the crime was committed, everyone reacts differently to a crime<sup>208</sup>. Also, the actual circumstances in which a crime was committed is unique, and an individual assessment will ensure that each victim’s specific needs are identified, assessed and then adequately responded to, throughout the proceedings. Based on this approach, a two-step case-by-case evaluation should be conducted. In the first step, the assessment must be conducted to determine whether a victim has specific protection needs based on the criteria listed in paragraph 2 of Article 22 of the Directive<sup>209</sup>. Secondly, if these specific protection needs exist, protection measures must be determined with the purpose of to prevent secondary and repeated victimisation, intimidation and retaliation<sup>210</sup>.



**Figure 29:** Two-step process in the individual assessment procedure

It is important to keep in mind that this assessment, even when it starts from common needs or shared issues of all or a group of victims, remains strictly personal and needs to be conducted for each victim individually, even if their victimisation is a consequence of same criminal act (e.g. needs of a mother and her children, who are all victims of the same situation of family violence, will be different – as the perpetrator may present different levels of threat towards each of them). Therefore, the individual assessment must lead to identification of potential vulnerabilities of each individual victim.

Against this background, the Directive does single out some groups of victims (victims of trafficking in human beings, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, victims with disabilities and child victims) where there is a presumption of specific protection needs<sup>211</sup>.

208 Victim Support Europe. (2013). p. 21

209 (a) the personal characteristics of the victim; (b) the type or nature of the crime; and (c) the circumstances of the crime.

210 European Commission. (2013), p. 44

211 Recital 57 of the Victims’ Directive.



However, even in these cases, the second step of the individual assessment must be applied and the case must be evaluated individually in order to establish which measures under articles 23 and 24 (in the case of child victims) are more adequate. Regardless of the need for the case-by-case approach, procedures to assess protection needs are to be flexible and appropriate in extent and scope, adapted to the severity of the crime and the degree of apparent harm the victim has suffered<sup>212</sup>. Victims' wishes must also be taken in consideration, as foreseen in paragraph 6, meaning that protection measures will address victims' preferences and also that an informed victim has every right to refuse protection measures, if they so decide.

To conduct individual assessment, existence of specific questionnaires, protocols, guidelines or other tools is a necessary precondition to ensuring that the process that is conducted taking into consideration the entirety of victim's situation and appropriately responds to their actual needs. While formality and asking unnecessary questions should be avoided and approach should be individualised, it is still important to have tools to help navigate the process and to make sure that all important and necessary issues are being identified and responded to in the process.

It is also important to keep in mind that victims' needs change. Therefore, victims' protection needs shall be not only timely but also reassessed through the proceedings as they might change meanwhile and, for this purpose, Member States shall establish clear and objective procedures, ensuring periodic review of victims' assessment needs. While it is difficult to say when exactly this review should happen, and at which intervals, it is certain that a review, or at least a need for a review, should be conducted as the case advances through criminal proceedings – e.g. when the investigation is concluded and charges brought, when the trial has started and when it has been completed in the first instance, pending the execution of criminal sanction and at perpetrator's release from prison. Furthermore, review should be conducted when victim's personal situation changes (for example, risk of repeated victimisation may increase when a victim of domestic violence files a claim for divorce in civil proceedings or when such a victim decides to start a new relationship, which may be an indicator for a review of protection measures).

To ensure that individual assessment is completed and victim's needs appropriately taken into account, in addition to the requirements of Article 25, specific training has to be provided to professionals who are assigned with conducting individual assessment. This is a very demanding task, which needs to be done right to properly respond to victims' needs. In particular, given the possible consequences of failing to do so.

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212 European Commission. (2013), p. 44.

## HOW INDIVIDUAL ASSESSMENT WORKS IN PRACTICE?

Many national reports indicate that a specific procedure has been established to conduct individual assessment of victims in order to identify their specific protection needs<sup>213</sup>, even though, in a significant number of countries, this procedure is absent<sup>214</sup>. However, in some Member States<sup>215</sup>, it was referred that it is partially implemented or that there are pilot projects ongoing<sup>216</sup>.

In a few countries, protection needs are assessed only for some types of crimes, such as domestic violence or human trafficking<sup>217</sup>.

The research indicates that the legal provisions regarding the individual assessment follow the requirements of the Directive for a two-step approach in most Member States where it is put into place<sup>218</sup>. In some Member States<sup>219</sup>, the elements which are considered as the basis to determine whether victims have special protection needs are in line with those foreseen in paragraph 3 of the Directive, while in others they differ slightly or significantly, as is the case of Germany<sup>220</sup>. However, despite these differences in approach, in the outcome, the German system of individual assessment through different means achieves the same goals – that victims who need protection are granted the protection they need, when the assessment is properly done.

### GOOD PRACTICES

#### *EVVI Project*

In partnership with French authorities and some French and international NGOs, EVVI project was developed to assist Member States in the implementation of this article. It was aimed to guide and, in particular, create a questionnaire to be disseminated among police forces and judicial practitioners. This project was focused mainly in Member States where authorities are looking for clear guidance on how to do this or where no efforts were done for this purpose.

213 AT, BG, DE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LV, PL, PT and SE

214 CZ, BE, EE, LU, MT, RO, SI and SK.

215 e.g. CY and NL.

216 A currently running project, coordinated by VILIAS (Lithuania), and with the participation of VSE, APAV, as well as Libra (Italy) and Actedo (Romania) is aiming at developing tools for an individual needs assessment, including the needs for protection. The project is ending in 2020.

217 BE, SI and SK.

218

219 FR, EL, IE, ES, FI, IT, LT, LV, PL, PT and SE.

220 For example, according to the German law, these criteria are: 1. Whether an imminent risk of serious detriment to the victim's welfare requires a separate and audio-visual interview; 2. Whether overriding legitimate interests of the victim require the exclusion of the public, and; 3. In which extent non-essential questions relating to the personal life of the victim may be dispensed with. The same happens in Austria where these elements are 1. If there has been a violation of their sexual integrity and personal autonomy; 2. If the victim might have been subject to violence at home; 3. If victims are minors.

Research also indicates that re-assessment is performed only in Spain, where the assessment of victim protection needs takes place both at the trial and the pre-trial phases. In Italy, a second interview might be done just when there is information missing.

As the Directive emphasises, the procedures for conducting the individual assessment must be determined by each Member State in their national law or regulations. This includes the definition of which authority is responsible for conducting the individual assessment<sup>221</sup>. The research indicates that the authorities usually responsible for carrying out the assessment are the police officials<sup>222</sup>. Some Member States reported a wider range of authorities in pre-trial phase, such as investigative authorities in general<sup>223</sup> or both police officers and prosecutors as in Poland. In Bulgaria, the individual assessment can be conducted both by public prosecutors and court officials. In Ireland, it might also be conducted by an Ombudsman Commission and in Spain by the Victims Assistance Offices (VAOs). In Spain and Italy, when it is performed in the trial phase, the assessment needs to be conducted by a judge.

Regarding the training of the authorities who perform the individual assessment, only Austria and Poland referred that assessment is conducted by trained professionals. In Bulgaria, the individual assessment of a victim is conducted by an expert in one specific field (e.g. a psychologist) without specialised training. At the same time, in Italy staff performing individual assessment receives specific training. In Ireland, police is provided with memory aids to help them guide victims through assessment, even though 'there is no single inter-agency form or procedure available to professionals in all the sectors to use in assessing victims' needs<sup>224</sup>'. This reflects a lack of inter-agency cohesion, and needs to be improved to meaningfully comply with the Directive. In Hungary, police officers were trained on how to fill in the assessment form, when the respective legislation entered into force. However, but has been provided as a single training effort, and a follow-up training has not been provided to police officers who were assigned to work on the

## GOOD PRACTICES

### *Needs Assessments*

In **Hungary**, the police performs an individual assessment of victims' specific protection needs by filling in a simple form (with tick-boxes). This form was suggested by the Office of Justice – now functioning within the Ministry of Justice – and is based on the individual assessment tool created in the context of project EVVI.

221 European Commission (2013), p. 45.

222 AT, FR, DE, HU, IE, LT and LV.

223 ES, DE, PL and SE.

224 Developing Directive-compatible practices for the identification, assessment and referral of victims – National Report for Ireland, 2017, available at: [https://victimspactices.eu/wp-content/uploads/2017/02/National-Report-Ireland-Victims-Project\\_final.pdf](https://victimspactices.eu/wp-content/uploads/2017/02/National-Report-Ireland-Victims-Project_final.pdf)

issues in the meantime. Finally, in some Member States there is no special training<sup>225</sup>.

The findings further indicate that victims' wishes on whether they wish to benefit from special protection measures, are not always taken into consideration<sup>226</sup>, even though in a significant number of countries, it is to be taken into account<sup>227</sup>. In Italy, for example, victim's wishes and preferences are taken into consideration – when possible. However, this should not be always understood as disrespect of victims' wishes – sometimes it is not possible to not protect one victim, while protecting another. For example, it may be decided that it is in the interest of the child to introduce protection measures, even if parents might disagree with the measure being applied to themselves – as it will be difficult to protect a child and not protect a parent, when they are going to school together.

In some of the Member States where individual assessment is taking place<sup>228</sup>, groups of victims singled in paragraph 3 are being singled out for particular consideration. However, this is not the case in all countries which have a system in place<sup>229</sup>. In Austria this is restricted to victims of human trafficking, in Czech Republic the target groups are victims of human trafficking and terrorism and in Greece particular attention is given to victims of terrorism, organised crime, trafficking, racist violence, domestic violence, sexual abuse and hate crime. Child victims are presumed to have specific protection needs in many Member States<sup>230</sup> whilst in a few others not specifically<sup>231</sup>. This, of course, does not mean that in countries where there is no specific mention of particular vulnerable groups, they are being left out of the process. However, there may be a risk of them falling out of focus when legislators and policy makers fail to recognise them, as a matter of principle.

Considering the procedures on how the individual assessment is conducted, no major trend was identified. In some countries assessment is conducted with the use of questionnaires, memory aids and/or handbooks<sup>232</sup>. In some other cases, it is conducted on a case-by-case basis, without much formality<sup>233</sup>.

This is a worrying trend, given that the importance of a structured process and a targeted approach is necessary to properly identify victim's needs and respond to them.

The main difficulties which arise in relation to the practical implementation of Article 22 of

225 FR, LT and PT.

226 AT and BG.

227 CY, EE, ES, FI, HR, HU.

228 HR, CY, IE, IT and LV.

229 BG, LT, PT and SE.

230 AT, CY, EL, FI, HR, HU, IT, LT and LV.

231 BG, ES and SE.

232 AT, IE, HU, PL and SI.

233 FI and IT.

the Victims' Directive, the research emphasises the lack of specific guidelines and/or practical protocols<sup>234</sup> and the lack of training for professionals conducting these assessments<sup>235</sup>. An additional difficulty is the lack of awareness of professionals regarding the importance of this assessment<sup>236</sup>. In Portugal the inadequate transposition of Article 22, jeopardises its implementation<sup>237</sup> and in Bulgaria the fact that an expert in a single specific field is the conductor of the assessment normally ends up in a one-sided and incomplete assessment of victim's needs and the consequent protection measures suggested.

Individual assessment is one of the main novelties introduced by the Victims' Directive and the majority of the Member States did not achieve to establish a practical procedure - in the way it is foreseen by the Article 22 - so far. As a result a systematic exercise of individual assessment is a shortcoming in the majority of Member States.

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234 AT, CY, CZ, EE and PT.

235 HR and FI.

236 EE, FR, LT and PL.

237 In fact, particularly vulnerable victims are also defined in two other laws, namely the already mentioned Law no. 93/1999 on Witnesses' Protection and Law no. 112/2009 concerning the prevention of domestic violence and the protection of its victims. 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 norms.

## 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.*

## UNDERSTANDING THE CONTENT OF PROTECTION FOR VICTIMS WITH SPECIFIC NEEDS

Article 23 of the Victims' Rights Directive extends the protection provided by Article 22, by foresee some specific protection measures for victims whose special protection needs are identified during the first step of the individual assessment<sup>238</sup>. When making these measures available, Member States shall consider not only their necessity but also their adequacy and proportionality. However, the application of measures proposed in this provision comes with an important limitation – if the measure is difficult to implement, due to operational or practical constraints; if it may cause harm to the victim and/or third parties, or if it jeopardizes the course of the proceedings. This limitation sets out a proportionality principle – emphasising that some elements of accommodations made available to victims can, at certain situations be sacrificed, in a way, in the interest of justice. However, what needs to be emphasised is that, while these limitations exist, the overall victim's wellbeing and interest need to prevail.

Article 23§2 and 3 require that these special protection measures to be taken during criminal investigations, whilst Article 23§4 provides measures intended to be applied during court proceedings.

### HOW RIGHT TO SPECIAL PROTECTION WORKS IN PRACTICE?

Regarding protection measures listed under paragraph 2(a) it has been reported that in some Member States interviews with victims were being carried out in premises designed or adapted

<sup>238</sup> As explained in the section on Article 22 of the Directive.

### GOOD PRACTICES

#### *Victim Statements*

In **Czech Republic**, a victim may be excused from obligation to participate in the court hearings and instead, have their written testimony presented.

In **Portugal**, a system called "statement for future memory" allows vulnerable victims to be heard in the investigation as if they were to be heard in the final hearing, but in more informal settings. This hearing is convened in a smaller room where all parties to the procedure are present, namely the judge, the defendant's lawyers, the prosecutor and the victim support worker accompanying the victim, or his/her lawyer. The recording of the victim's testimony in these circumstances is more threatening than an actual courtroom with the presence of the public and supposedly less stressful environment can be used as evidence in trial, thus avoiding a stressful experience.

for that purpose<sup>239</sup>. At the same time, in some countries, like Austria, for example, victim-friendly rooms for adult victims simply do not exist. Similar situation is reported in Hungary, where special rooms are reserved for children under the age of 14. In Spain, despite the existence of some adapted facilities, they are not available in most locations. However, in the majority of countries, this requirement is mostly not being met.

The protection measure foreseen in Article 23§2(b), requiring the victim interview to be conducted by a trained professional are more commonly applied in practice. For example, in Belgium, police officers who interview the victims are specifically trained. In the Netherlands, apart from the trained professional, when interviewing victims with intellectual disabilities, the presence of a psychologist is usually recommended. However, while a number of countries report presence of this measure<sup>240</sup>, it is far from being systemic and available to all victims in all interviews, as required by the Directive. Nonetheless, some promising initiatives are being put into practice.

Protection measures foreseen in Article 23§2(c), which require all interviews with the victim are conducted by the same person, are only rarely systematically applied by some Member States<sup>241</sup>. In Spain, for example, it is foreseen by national law but rarely applied in practice.

The requirement that interviews with victims of sexual violence, gender-based violence or violence in close relationships to be conducted by a person of the same sex as the victim, as foreseen in Article 23§2(d) – is reported to be taking place in 17 Member States<sup>242</sup>. However, in the remaining nine, this is not or is rarely available in practice.

Considering protection listed on Article 23§3, measures to avoid visual contact on site were mentioned by the majority of the Member States<sup>243</sup> and the most common measures are excluding the offender from participating in the trial session and the use of video-hearing. Some Member States also introduced specific measures to avoid unnecessary questioning concerning the victim's private life<sup>244</sup>.

It is quite concerning, however, that only a minority of victims receive the protection measures they need. This is quite a worrying result of the survey, which indicates that, for example, only 10,7% of professionals consider that all victims that need special protection are interviewed by professionals specifically trained for the purpose, while another 36 find that this happens often. Similarly, only in 12,9% of situations, vulnerable victims are always interviewed by the same

239 CY, CZ, FR, DE, EE, ES, NL, LV and SI.

240 AT, CY, CZ, FR, DE, EL, BE, EE, ES, FI, IT, NL, LT, PL, PT, SE SI and SK.

241 BG, HR, CY, EE, FR, FI, DE, LV and PT.

242 AT, CY, DE, EE, ES, FI, FR, HR, HU, LT, LU, LV, PL, PT, RO, SI and SK.

243 AT, BE, BG, CY, CZ, DE, EE, EL, IE, FI, HR, HU, IT, LT, LU, NL, PL, PT, SI and SK.

244 HR, CY, CZ, IE, FI, PT and SE



person, if more than one interview is needed during the investigation, with another less than 25% interviewed by the same person often. Findings are not more optimistic in either of the categories of situations foreseen by Article 23§2 (see Figure 30 below).

Figure 29 and Figure 30 below illustrate the survey respondents' perception in relation to the implementation of protection measures in cases where the victims have special protection needs.

	Always	Often	Sometimes	Rarely	Never
	%	%	%	%	%
Interviews with the victim carried out in premises designed or adapted for that purpose	18,6	<b>36,8</b>	26,6	14,4	3,6
Interviews carried out by or through professionals trained for that purpose	12,7	<b>42,4</b>	29,3	12,7	3,0
All interviews are conducted by the same person	15,9	<b>38,0</b>	29,1	14,1	2,9
All interviews with victims of sexual violence, gender-based violence, etc. are conducted by a person of the same sex as the victim	18,8	<b>31,6</b>	28,5	14,8	6,4

**Figure 30:** Ability of victims with specific protection needs to benefit from protection measures during criminal investigations

Knowing that only vulnerable victims, those who have special protection needs, have to be provided with this type of approach, and only in the investigation stage, this finding indicates that even the most vulnerable victims are too often not adequately questioned in the proceedings. While the situation is slightly better during trial, still only in 19,4% situations victims are perceived to always be granted measures to avoid visual contact with the perpetrator, while more than 17% (or one in every five to six victims) are never or only rarely granted this measure.

Even the simple measure of avoiding unnecessary questioning about victim's private life is not being provided in a worrying proportion of situations (see Figure 31 below).

	Always	Often	Sometimes	Rarely	Never
	%	%	%	%	%
Measures to avoid visual contact between victims and offenders	15,0	28,0	24,6	26,6	5,8
Measures to ensure that the victim may be heard in the courtroom without being present (use of communication technology)	26,9	<b>29,2</b>	23,2	17,5	3,3
Measures to avoid unnecessary questioning concerning the victim's private life not related to the offence	30,9	34,4	23,2	9,1	2,5
Measures allowing proceedings to take place without the presence of the public	<b>33,4</b>	28,8	19,7	13,9	4,2

**Figure 31:** *In your experience and opinion, are victims with specific protection needs able to benefit from the following measures during court proceedings?*

Regarding the main difficulties in implementing protection measures the results are diverse. Some Member States referred that these difficulties are mostly linked to the lack of an adequate individual assessment<sup>245</sup> whilst others mentioned problems in the legal transposition of the Directive<sup>246</sup>, the lack of formal protocols<sup>247</sup> and the lack of awareness of professionals involved in the criminal justice system about the importance of protection measures<sup>248</sup>. In Italy difficulties felt are predominantly linked with the lack of infrastructure. In Sweden problems are mostly related to formalism and resistance to new rules, as it was stated that “Swedish judges wanted all evidence, including witness statements, to be presented in person ‘before their eyes’ in Court”.

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245 BG and FI.  
 246 RO and PT.  
 247 BE, LT and MT.  
 248 SI and SK.

## 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 Victims' Directive comprises complementary protection measures specifically designed for child victims during criminal proceedings. It is important to notice that these measures are not to be applied indistinctly to all child victims. Instead, there must be a combination of the measures provided for in Articles 23 and 24, according to an individual assessment done in a case-by-case basis, as already mentioned.

All Member States reported that special measures have been adopted to protect child victims. However, taking into account that Human Trafficking<sup>249</sup> and Child Sexual Exploitation Directives<sup>250</sup>, means that transposition of these protections happened before the Victims' Rights Directive, hence giving child protection a prominent role in advance of its entry into force<sup>251</sup>.

249 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

250 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA

251 European Commission. (2013), p. 47

## GOOD PRACTICES

### *Facility dogs*

A facility dog is a professionally trained assistance dog. There are many types of assistance dogs - a guide dog assists a blind person, a hearing dog alerts his deaf handler to important sounds in the environment, a service dog provides assistance to a person with limited mobility. A facility dog is one type of an assistance dog - a facility dog works alongside a professional in a service capacity to assist other people. Typical situations in which a facility dog works include special education classrooms, physical therapy clinics, and hospitals.

*Facility dogs that work in the legal system can provide a sense of calm, security, and non-judgmental support during investigative and legal proceedings when the professionals have to respond to children in an impartial and reserved manner. Their task is to sit close to victim and through their presence provide the sensation of calm and security that vulnerable victims need. Facility dogs are primarily trained to support children victims, but can also support other very vulnerable persons (such as persons with intellectual disabilities or other vulnerable victims)*

*For example, in 2004 an assistance dog named Jeeter offered comfort to two child victims. Kelly, whose 7-year-old daughters Erin and Jordan were sexually molested by their father, describes how Jeeter made such a difference.*

*"Jeeter provided an extra layer of support on the level that the girls welcomed. The victim advocate was warm and loving and a mother herself and the girls picked up on that and I liked her instantly, but the girls were still reserved in that situation because she was still "one of them" so they were only willing to give so much. But with Jeeter it was unconditional love from moment one, he had nothing to gain, they didn't fear him or his position at all, it was just trust and love from the first moment... Jeeter helped Erin and Jordan find their words."*

(adapted from: Courthouse Dogs Foundation, Facility Dogs at Children's Advocacy Centres and in Legal Proceedings – Best practices, available at: <https://courhousedogs.org/wp-content/uploads/2017/02/Facility-Dogs-at-CACs-Best-Practices-Final-2-18-15.pdf>).

Considering the special protection measures provided in Article 24, the research has showed that in many Member States audio-visual recording of interviews, taken at the pre-trial phase, might be used as evidence during the whole criminal proceeding. This way, the need for repeating the victims' testimony during trial is being rendered obsolete<sup>252</sup>. In Austria, while recording itself cannot be used as evidence in trial, the transcript of the recorded statement still can, hence achieving the same function by different means. In Germany, the use of video recordings of interviews is discretionary but in practice it is done in most of cases. In Lithuania, only around 50% of child victims are interviewed by the pre-trial judge, which means they would have to be heard again in trial. In Portugal, due to budgetary restrictions not all prosecutor's offices and court rooms have the necessary equipment to take such recordings.

Research indicated that, in many Member States, authorities conducting criminal investigations and/or proceedings might appoint special representatives to children who are unaccompanied or whose holders of parental responsibility are found to be in conflict of interest<sup>253</sup>. However, this is not always the case. In Greece, the extent of this right's enjoyment was referred as uncertain, while in Flanders it is, reportedly, not always the case. In Lithuania in many cases, officers in charge appoint an agent of a local child rights services as a child's personal representative, a practice that is considered controversial, as providing representation services is not one of the service's functions, and they do not have the necessary knowledge and qualifications to carry it out. Additionally, when the bearers of the parental responsibility find themselves in a situation of the conflict of interest in some Member States, child victims can also have the right to a lawyer in their own name<sup>254</sup>.

From the above experiences, it would appear that despite numerous legal instruments and rather high awareness of the authorities and other stakeholders about the importance of providing additional support and protection to child victims, there still are significant failures in the implementation of Article 24.

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252 BG, CZ, FR, DE, EE, EL, BE, ES, LT, LV, LU, MT, NL, PL, PT, RO and SE.

253 AT, BE, DE, EE, EL, ES, FI, FR, HR, HU, LT, LV, MT, NL, PL, PT, RO and SE.

254 DE, HU, LT, LV, PL, PT and SK.

# 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.*

## UNDERSTANDING THE CONTENT OF THE OBLIGATION TO PROVIDE TRAINING

Article 25 of the Victims' Rights Directive aims to ensure that Member States provide mandatory generic and specialist training on victims' rights and needs to professionals who are likely to come into contact with victims.

Article 25 sets out two types of obligation: training for lawyers, judges and prosecutors, which needs to be both general training of victims' rights, but also include a specialist aspect of has to be made available by the State, according to this provision of the Directive. What the Directive does not say, but what constitutes an important element of establishing a system of victim-centred justice, is that a certain level of training needs to be made compulsory for those professionals who are directly assigned to work with victims and be assigned to work on issues concerning victims. Moreover, while the Directive speaks of training for professionals involved in criminal

proceedings, some level of training or awareness raising should also be made to professionals working on other elements of victim care – for example judges or other officials deciding on victims' compensation claims in civil or other types of compensation proceedings.

The other type of training is the one for victim support and restorative justice professionals, which is foreseen only as an encouragement, and not a requirement. This is somewhat rectified by the Istanbul Convention<sup>255</sup>, which is force in 20 Member States covered by this research, which requires the states to provide or strengthen training of all professionals working with victims of gender based violence. Given that the Directive is only giving minimum criteria, the approach from Istanbul Convention is a model to be striving to in the implementation of the provision of Article 25.

In practice, training for professionals should be understood at three levels. Two levels of training needs to be provided to all professionals working directly with victims. These professionals need to receive a compulsory induction training and be provided with ongoing opportunities for continuing improvement of their knowledge and skills. In addition to this type of training, other professionals who come into contact with victims through their work (e.g. court ushers, finance staff who deals with reimbursement of victims' expenses or bailiffs delivering summonses to victims) should also receive the basic sensitisation training, which will enable them to recognize victims and to treat them in a respectful, professional and non-discriminatory manner<sup>256</sup>.

What the Directive also envisages, under Article 25, is a requirement which is extremely important and greatly related to Articles 8 and 9 of the Directive. Namely, Member States have an obligation of ensuring that victim support professionals observe quality standards to ensure that victim support services are provided in an impartial, respectful, and non-discriminatory manner.

## **HOW OBLIGATION TO PROVIDE TRAINING WORKS IN PRACTICE?**

All Member States have in place different forms of training which are required to be completed by different professionals who, in criminal proceedings, come in contact with victims of crimes. Judges, prosecutors, police officers, social workers – they all need to comply with different requirements regarding their knowledge and skills in their areas of expertise when they entering the job or even throughout their careers. However, while most of these professions have to complete some compulsory training modules in different areas, they are rarely required to complete a comprehensive training module which is dedicated to victims' rights and needs, or a training module which aims to sensitise them regarding issues relevant to victims of crimes. Police officers in the vast majority of Member States covered by the present project, receive at

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255 Council of Europe Convention on preventing and combating violence against women and domestic violence, art. 15

256 Victim Support Europe. (2013). p. 10

least some level of training on victims' rights and needs<sup>257</sup>, which is not always mandatory<sup>258</sup>. Nonetheless, there still are some Member States where police officers do not receive any structured training in this respect<sup>259</sup>.

In some Member States it is common that training courses are focused mainly on specific groups of victims. Additionally, a common problem found in some Member States is the lack of systematic approach to providing training<sup>260</sup>. Hence, training on issues relative for victims of violence in intimate relationships is provided in Austria, victims of domestic violence in Portugal and Malta, or victims of homophobic hate crimes in Lithuania.

Regarding training courses provided to judges, it seems that in many Member States these exist<sup>261</sup> - and in a few cases they are mandatory<sup>262</sup>. However, similarly to the training of police officers, in some countries, training is not provided to judges<sup>263</sup>. In some of these Member States these training courses are also available for public prosecutors<sup>264</sup>.

Concerning lawyers' training, in some Member States<sup>265</sup> training courses on victims' rights and needs are provided, but they are only mandatory in Poland. In the Netherlands, training is mandatory for lawyers operating under the State-funded legal assistance program for victims of sexual and violent crimes. In Slovenia, these training courses are also available to public prosecutors. In Lithuania, the courses are only focused on domestic violence, while in Ireland they focus on domestic violence, as well as other vulnerable victims.

Bearing in mind that in many cases Member States are failing in their duty to provide training on victims' rights, NGOs have been filling this gap by developing and providing giving specific training to legal practitioners and victim support workers. For example, Hate No More project, coordinated by APAV and developed in a partnership with Austria, United Kingdom, Malta, Sweden, and Italy has developed and provided training on hate crime victims to 147 law enforcement agents, 164 public prosecutors and 81 victim support workers in the six project countries.

In Germany some efforts have been done to fulfil the gap in training, as the Academy of Weisser Ring has been organising courses on victims' protection for many professionals.

Finally, considering the training of victim support workers, in some Member States, NGOs are

257 AT, BE, BG, CY, CZ, DE, EE, EL, FR, HR, HU, IE, ES, FI, LT, LV, LU, MT, NL, PL, PT and SK.

258 It is only mandatory in BE, FI, HU, LU, MT, PT and SE.

259 IT, RO and SI.

260 HR, CY, EL and LT.

261 BG, DE, IE, EE, ES, FI, HU, IT, LV, LU, MT, NL, PL, PT, SE and SK.

262 LU, MT, and PL.

263 AT, CY, CZ, BE, SI and RO - with SI and RO not providing either form of training.

264 ES, LV, MT, PL and SE.

265 FR, IE, EE, ES, FI, LT, MT, NL, PL, PT, SE and SI.



providing training on victim's rights and needs<sup>266</sup>. In majority States with national victim support services established, in line with Article 8, victim support professionals receive both initial induction training, as well as an ongoing training through their careers. In Spain and Lithuania, training for support workers is, however, exclusively focused on domestic violence. In Belgium and Malta, general finding was that victim support workers need further training. In Hungary, state victim support officials receive training provided by the Legal Academy of Justice Services and, two years after starting their assignment they are submitted to an exam which contemplates topics such as the legal framework of victim support, trauma management, crime prevention, victimology, social law, criminal law, mediation, child protection, document management and data protection.

In general, training courses are normally provided both by State and NGOs in most Member States<sup>267</sup> while in some others these training courses are mostly provided by NGOs<sup>268</sup>. In addition to State and NGOs, bar associations were also referred by some Member States<sup>269</sup>, as well as another professional associations<sup>270</sup> and universities<sup>271</sup>.

Another matter, that has not been observed by the present report is – quality of training and the ensuing quality of service and constant evaluation.

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266 CZ, BE, EE, ES, FI, LT, LV, LU, NL, PT, SE, SI and SK.

267 BG, CZ, DE, ES, FI, LT, LV, MT, NL, PL, PT and SK.

268 FR, BE and SE.

269 IE, ES and MT.

270 BE, IT and NL.

271 FI, NL and SE.

# 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.*

## UNDERSTANDING THE CONTENT OF THE OBLIGATION TO COOPERATE

Article 26 of the Victims' Directive aims to reinforce the need for coordination among Member States and coordination of action on victims' rights at national level. This cooperation and coordination shall ensure victims' access to the rights foreseen in the Victims' Directive and shall be specially targeted to (1) the exchange of good practices; (2) consultation regarding individual cases; and (3) assistance to European networks on victims support<sup>272</sup>.

In addition, Member States are also to take measures to raise awareness on the rights foreseen in Victims' Directive, aiming to promote a behavioural change in social and cultural patterns of behaviour that may cause victimisation and also the understanding of the impact of crime and the need to prevent secondary and repeat victimisation, intimidation and retaliation<sup>273</sup>.

This important provision directs Member States to each other to cooperate and learn from each other. The general finding of this report indicates that there are great differences in different Member States not only in the level of development of services, but in the level of recognition of

272 Cooperation among Member States is also analysed in the section on Article 17 of this Synthesis Report.

273 Victim Support Europe. (2013). p. 13.

the importance of victims' rights. This provision importantly instructs countries to work together for the benefit of all victims, as it still is a number of countries where it is much 'better' to become a victim of crime than in some others.

## HOW COOPERATION WORKS IN PRACTICE?

Considering the existence of measures to raise awareness on the rights set out in the Victims' Directive, the vast majority of the Member States has been taking steps towards implementing at least some elements of this provision<sup>274</sup>. Although, in Bulgaria awareness campaigns are just focusing on trafficking in human beings, while in Slovakia they are just focused on domestic violence. In Lithuania despite of the total inexistence of governmental initiative and/or participation, NGOs are promoting campaigns for these purposes, which is an indicative example of how it works in other countries.

It seems to be a common problem that these campaigns normally just focus on certain types of victims/types of crime<sup>275</sup> and that governments are not very active in promoting them even if they play some specific role when other entities are promoting them<sup>276</sup>.

Looking at the larger picture of cooperation, Victim Support Europe (VSE), as the European network of victim support is principally an organisation set up by NGOs. However, in the thirty years of its existence, VSE opened to membership of State authorities and institutions – hence the Croatian and Hungarian Ministry of Justice are members, as is the Mayor of London and Northern Irish Victims' Rights Commissioner, to name a few. European Network of Victims' Rights (ENVR) is a more recent network of State institutions responsible for victims' issues, however, working closely with VSE and other NGOs. There are different initiatives, mostly based on project work, where different authorities of different Member States come together to work on certain issues (e.g. there are some initiatives currently being developed to bring together Maltese and Belgian police to work on the rights of victims of gender-based violence, or some others where authorities of Lithuania work with national and European NGOs to develop certain services to victims).

However, it remains that there is plenty more to be done to ensure full cooperation and a functioning European cross-border referral mechanism. VSE is trying to fill in this gap by supporting individual victims on a case-by-case basis, but the need for cooperation is much larger than a single organisation with very limited resources can achieve at present moment.

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274 AT, BG, DE, EE, EL, HR, CY, CZ, FR, IE, ES, FI, IT, LV, LU, MT, NL, PL, PT, RO, SI and SK.

275 BE, BG, ES, IT, PT, RO and SK.

276 EL, PT and SK.

## SECTION III - CONCLUSIONS & RECOMMENDATIONS

The present Synthesis Report presented the most significant trends and gaps regarding the practical implementation of the Victims' Directive in 26 Member States of the EU, using as a source the 26 National Reports which were developed in the context of **Project VOCIARE: Victims of Crime Implementation Analysis of Rights in Europe**.

As illustrated by the national reports and this synthesis report, the enjoyment by victims of the rights provided for in the Victims' Rights Directive is not yet absolute as many issues regarding the transposition but, most importantly, also the practical implementation of the Directive still remain. Worryingly, none of the Articles of the Directive are fully and satisfactorily implemented for all victims across the EU. Neither is there a single country that offers full implementation of the entirety of the Directive to all victims on their territory. The main conclusion of the present exercise remains – that there still remains plenty to be done to make victims' rights a reality for all European victims.

In relation to **Article 2** of the Victims' Directive and, particularly, the definition of *victim*, most Member States' national legislations embraced the criteria enshrined in the Directive. Nevertheless, in some Member States, the term *victim* was added to the national law and now coexists with other terms, like *injured party*, *offended person*, *civil party*, etc. Often the rights attributed to one figure and the other do not coincide. Member States must, therefore, ensure that the juridical figure of the *victim* enjoys the same rights, independently of the term used in law to describe him/her. In some Member States it is not clear which family members can be considered as *victims* and what rights they are entitled to. Member States should make efforts to ensure that at least the spouse, the person 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 are able to enjoy the rights provided for in the Directive .

In addition, there are situations in which victim status is conditioned by formal requirements, such as legal residence on a Member States territory. This is a concerning trend of denying legal rights to victims based on their residence status, in direct contravention with the Directive. It dehumanises victims in irregular migration status and further exposes them to victimisation as it in a way promises impunity to perpetrators.

With regard to **Article 3** of the Directive, the right to understand and be understood, it was noted that information is often provided in a standardised way. While this might be suitable for

some victims, other have specific communication needs. Victims can be children, older persons, deaf or mute, they may only speak a foreign language or they may be illiterate, for example. These circumstances impair their understanding and limit their ability to make themselves understood if State authorities and victim support services are not ready to address their particular communication needs. Several efforts have already been made, primarily by NGOs, targeting certain groups with specific communication needs. Nevertheless, Member States should devote resources to the adaptation of information available to victims of crime. This must always be done not only in what concerns the content of information – a piece of written information to be delivered to an adult victim must differ in length and complexity from written information for children and youngsters –, but also in terms of means used to provide this information. Interactive videos, phone apps, sign languages services and so forth are tools which can and should be explored as innovative manners of providing information to victims which have the potential to adapt to specific communication needs. Another way to ensure that victims understand and are understood is to allow them to be accompanied by a person of their choosing who is not only able to provide interpretation, if necessary, but also to absorb the relevant information and help the victim in a first stage and throughout the criminal proceedings.

**Article 4** of the Directive sets out the type of information victims have the right to receive from their first contact with the competent State authorities. Having knowledge on the set of information listed under Article 4(1) of the Directive is crucial for positively participating in the criminal proceedings and for recovering better from the negative consequences of the crime. The research showed that even though the obligation to provide all these instances of information is provided in the national legislation of almost all Member States, not rarely victims do not receive full information. Hence, Member States provide this information to victims through different means, using a simple language instead of excessively legalistic terms, adapted to the individual communication needs of the victim. To ensure that once information is provided, victims have effectively understood it, Member States should also guarantee that, in cases where it is deemed necessary – for example, due to the type and nature of the crime, or the victim's circumstances which indicate him/her needs more attention – there is a follow-up contact. This will not only allow the competent authorities to ensure that victims know their rights and are familiar with the next steps of the proceedings, but also to provide them with information which was not relevant in a first contact but it is so later on.

**Article 5** of the Victims' Directive establishes victims' right to receive a formal acknowledgement of the complaint and to present criminal charges in a victim he/she understands. These are two rights which seem to be, according to the present research, impaired by lack of knowledge both on the victims' side and on the authorities' side. Member States should, thus, enact an awareness effort in order to make these rights, and the way their exercise can positively impact victims' participation in the proceedings, more visible. This is true not only for the general public

but especially for law enforcement and judicial authorities who often contact with victims in the aftermath of a crime. These should be should be adequately trained and have sufficient awareness as regards to the importance of their proactive role in ensuring the enjoyment of certain rights of victims.

The proactive role of State authorities, namely police officers and public prosecutors, is also of great importance in relation to **Article 6** of the Victims' Directive which establishes the right to receive information during the criminal proceedings. The research showed that the timely provision of information about the case, the status of the offender and other important issues related to the criminal proceedings often fails. This not only jeopardises victims' safety in some cases, but it generally detaches victims from the justice system. Member States should, therefore, create systems which allow the fast communication with victims and ensure that the most relevant information about their case reaches them in a timely manner.

With regard to **Article 7** of the Victims' Directive, all Member States' legal framework prescribe right to interpretation and translation free of charge. Nonetheless, this is one of the victims' rights where the gap between law and practice seems to be larger. The lack of certified interpreters and translations is a problem pointed out in all Member States. This difficulty has been addressed in some Member States, for example in Finland, through the creation of registers for certified interpreters and translators to which competent authorities can resort to when the victim speaks a foreign language. This sort of mechanisms not only guarantee a consistent data base of interpreters and translators who can be called upon to cooperate and provide their services within the criminal proceedings, but it also guarantees that the services are provided by trained and qualified professionals.

It is rather concerning that **Article 8** is not fully implemented across Member States. Indeed, there still is a few countries in which there a complete absence of generic victim support services is being registered, while in few more, the support is fragmented and hardly available. At the same time, without appropriate and well distributed services, it is difficult to ensure that all victims receive support they need. Importantly, there is almost unanimity among professionals who work with victims in different capacities (both from non-governmental and governmental side of things), that further funding is needed across the board, to ensure better victim support. To ensure victims' access to support, it is important to firstly establish needs of victims, to which end it is of utmost importance to conduct victim surveys which will, at least: provide information about non-reported versus reported crime; identify number of victims who report crimes; enable distinction between victims of different types of crimes (e.g. cybercrime, gender based violence, fraud, terrorism etc.) and different victims' vulnerabilities (e.g. record victims' gender, family status, disability, language spoken, employment status, housing situation etc.), as well as needs for different types of support. Ideally, there will be a single EU-level methodology for

these surveys, to enable comparative analyses and mutual learning. Such surveys would then serve to develop additional services based on victims' needs. Moreover, Victim Support Europe is already developing a methodology to map victim support services across Europe and create an interactive map of services, to be used by for referral by professionals, as well as for information to victims. However, it will be critical not only to create the map, but also to maintain its accuracy and relevance, which will depend on resources.

In this regard, it is important to keep in mind that victim support is not a single service or a single project, as already recognised by **Article 9**. It is a complex system of different elements that need to be put into place, different services which need to be sensitised and trained on victims' issues, even when they seemingly are not meant to be dealing with victim support. The survey, suggested above, should also serve to establish which generic and specialist services are needed and should further be developed to ensure victim support for all victims that need it. Moreover, different elements of victim support systems need to be brought in line and organised to ensure understanding of victims' needs and to sensitise different actors to victimisation. Awareness raising initiatives for professionals in different sectors, in particular those which traditionally have not been targeted through different campaigns – e.g. healthcare, education or businesses, should be developed and training programmes at least for professionals most likely to be in contact with victims, offered systematically. Moreover, a programme of psychological first aid should be made broadly available to help build resilient societies, which are sensitive of victims' needs and can appropriately respond to victimisation.

As part of their right to participate in the criminal proceedings, victims are granted the right to be heard by **Article 10** of the Directive. It is part of the legal framework and practice of the majority of Member States that victims are heard during the investigation, pre-trial phase and trial phase in order to provide their statement and evidence. When being heard by the competent authorities, especially by the judge during the trial where the perpetrator is most likely present, potentially exposes victims to secondary victimisation and intimidation. To mitigate these risks, different mechanisms can be adopted for taking the victim's statement. Examples are the resort to communications technologies, e.g. recordings, phone and/or video-conference. Additionally, the use of Victim Impact Statements has been having good results in the Member States where it is implemented and other Member States should consider studying this practice and adopt it as well.

The practical implementation of **Article 11** of the Directive (rights in the event of a decision not to prosecute) is highly dependent on each Member States' national law. This is due to the fact that the Directive itself establishes that victims have the right to a review of a decision not to prosecute depending on their role in the proceedings, which is left to be decided at the national legislative level. As a minimum, the Article 11(2) of the Directive provides that victims of violent

crimes should always be granted this right. This can be true to these victims, and even extended to others, provided that Member States develop clear, transparent and not too bureaucratic procedures which allow victims to be properly informed and request the review of a decision not to prosecute, if they so wish.

In relation to **Article 12** (the right to safeguards in the context of restorative justice services), researched showed that some Member States have not yet put national restorative justice services in practice. These Member States should establish such services in accordance with the safeguards listed under Article 12 and develop national service delivery standards which regulate the restorative justice procedures and their quality. Once these services are established, and where these services already exist, Member States should ensure that victims are aware of the possibility to resort to them. Moreover, Member States should invest in the training of professionals, not only those who are directly involved in restorative justice practices, but also others (e.g. police officers, prosecutors, judges, lawyers and victim support workers) who can become part of referral arrangements for victims who wish to resort to restorative justice services.

The right to legal aid, which must include legal advice and legal representation, is established by **Article 13** of the Victims' Directive. Similarly to what happens in Article 12, the Directive stipulates that the conditions under which victims have access to legal aid shall be determined by Member States' national law. Independently on the specific national regulations, the research shows that in Member States where legal aid is provided by lawyers in a *pro bono* regime, the number of available lawyers is reduced. Member States should, therefore, consider to establish an obligation to provide a minimum hours of *pro bono* services and guarantee that, in case a *pro bono* lawyer cannot be found in a timely manner, the State subsidiarily covers the costs of legal aid. Another difficulty pointed out by the research is the delay between the request for legal aid and a final decision – usually administrative - on the matter. Member States should adopt or reform their administrative procedures for granting legal aid and these procedures should be transparent and swift in order not to impair the victims' participation in the proceedings or the enjoyment of any other right.

**Article 14** of the Victims' Directive establishes the right to reimbursement of expenses. The researched allowed the conclusion that there is a general lack of knowledge on how this right functions in practice. Therefore, Member States should try to grasp whether the reimbursement of expenses is provided in a timely and adequate manner, by inquiring judicial authorities, victim support workers and victims themselves. A more profound and quantitative study of this matter will, then, allow Member States to perfect their administrative processes whereby victims can request reimbursement of expenses.



The practical difficulties in implementing **Article 15** (the right to the return of property) are similar to those mentioned above in relation to Article 13, namely the length of the (administrative) procedures whereby the return of the property is determined. Thus, Member States should regulate their procedures for the return of property in a manner that allows the fastest return as possible considering, of course, the contours of the case and the importance of the object/good as an evidence. The research also indicated that often there is a lack of sensitivity in what concerns the way and conditions in which the object/good is returned. In situations where the type and nature of the crime or the personal circumstances of the victims justify it, Member States should consider adopting the strategy applied in Belgium where property is returned to the victim in the presence of a trained victim support worker. In this sense, Member States should have in place, or consider developing, an effective administrative procedure to guarantee that the authority holding the victims' property contacts them as soon it is no longer necessary for the proceedings and deliver it in proper conditions and without entailing any cost.

Regarding the right to compensation, established by **Article 16** of the Victims' Directive, the research pointed out that oftentimes it is difficult to guarantee compensation from the offender. Currently, compensation from the State is viewed as a solution of last resort. Member States should follow a model whereby the State pays the full amount of compensation owed to victims upfront and then retrieves the same amount from the offender. The European Commission itself should consider the adoption of a unified system throughout the EU by which this model is applied.

**Article 17** (the rights of victims resident in another Member State) deals with the specific issues related to cross border victims. The research indicated that their rights are not guaranteed often because the victims themselves are not aware how the criminal proceedings function in the State where the crime was committed. To overcome this challenge, Member States should ensure information is provided in as many languages as possible being advisable the identification of priority languages based on the most common needs, or population type. One of the barriers cross border victims face when participating in criminal proceedings in a State other than their State of origin or residence is language. Cross border victims' right to interpretation and translation should be guaranteed as mentioned above in relation to **Article 7** of the Victims' Directive.

In relation to victims and their family members' right to protection from secondary and repeat victimisation, intimidation and retaliation - established by **Article 18** - it seems that protection measures are fairly established in national legislations. Nevertheless, Member States should devote more efforts to provide the competent authorities with appropriate training on the available protection measures and on their timely and adequate implementation. Which victim (and his/her family members) has specific protection needs and the competent authorities must be trained to determine the implementation of the protection measures which are more suited to these needs

and as early as possible. In this instance, measures as providing training to professionals, so as to ensure they treat victims in an adequate manner, limiting the number of times victims can be questioned, and limiting cross-examination, for example, are to be considered. When victims are witnesses within the criminal proceeding, all the measures specifically designed for witnesses' protection might also be applied.

The protection of victims from repeat victimisation, intimidation and retaliation is also strictly connected to **Article 19** (the right to avoid contact between victim and offender). The researched showed that oftentimes this right is not respected and victims are placed in situations where they are obliged to see the offender. Member States should try to reform the different spaces where procedural acts take place, namely police stations, public prosecutors' offices and court facilities, in a manner which allows victims to have private spaces where he/she is not confronted with the offender. Member States should also be particularly attentive when new facilities are designed to guarantee that there are different entrances for victims and offenders, different waiting rooms and other type of facilities, for example, separate toilet facilities.

On the other hand, the protection of victims from secondary victimisation is foreseen in **Article 20** of the Directive. The researched revealed that not all measures prescribed by this Article are consistently applied in all Member States. Here too, the training of all professionals is essential. Member States should guarantee that professionals who come into contact with victims, namely police officers, public prosecutors, lawyers, victim support workers, lawyers, forensic medics, etc., are properly trained on how they should carry out the procedural acts they are involved in or responsible for in a manner which is respectful of victims and avoids secondary victimisation.

In what concerns the protection of the privacy of victims and the practical implementation of **Article 21**, Member States where measures for the protection of privacy are only available for some groups of victims should ensure other victims are also able to enjoy these measures. Additionally, Member States should actively encourage media and communication channels to adopt self-regulations to guarantee that victims' privacy is dully considered and respected.

The major difficulty identified in relation to the implementation of **Article 22** (individual assessment of victims to identify specific protection needs) is the lack of regulation and guidelines on how, when and who should conduct the individual assessment. In all Member States where these not exist already, national models for the individual assessment of victims should, thus, be created. Subsequently, professionals/authorities who will conduct the assessment should be clearly identified and properly trained on the procedure to follow.

The setup of a model of individual assessment of victims' protection needs is intrinsically linked with **Article 23** (right to protection of victims with specific protection needs during criminal

proceedings). Member States should ensure that professionals carrying out the individual assessment are adequately trained in order to guarantee that when a victim is considered to have specific protection needs, adequate protection measures are swiftly determined and implanted. In what concerns **Article 24** (right to protection of child victims during criminal proceedings), Member States should ensure that the criminal proceedings accommodate the measures prescribed by the Directive to protect child victims. Member States should aim particularly at making use of communication technologies to record the testimony of victims. Specific training on how to deal with child victims should also be guaranteed and the example of many Member States which are adopting the model of child-appropriate rooms and enquiries should be followed by those States where such measures are absent still.

As highlighted not only in this section but throughout the present report, **Article 25** (training of practitioners) is of great importance. The training on victimology, victims' rights and needs and other specific issues related to victims is not part of the mandatory curricula of professionals who will or who already are in contact with victims of crime. Member States should not forgo the importance of training on these matters. Therefore, Member States should aim at including these subjects on the mentioned curricula and, on the other side, provide more funding to NGOs who are on the forefront of the provision of training in many Member States.

Finally, the research on **Article 26** (cooperation and coordination of services) of the Directive, indicated that on issues like coordination, exchange of best practices, awareness and training, NGOs are constantly fulfilling the gap created by governmental inaction. Member States should, on one hand, share the load taken up by civil society organisations and become accountable for the implementation of victims' rights and, on the other hand, improve its support to these organisations which are already fulfilling the States' role.

As illustrated by the National Reports and this Synthesis Report, the enjoyment by victims of the rights provided for in the Directive is not yet absolute. There are still a number of issues already regarding the transposition. Most importantly, however, the practical implementation of the Directive is still wanting for much to be done.

More visibility has been accorded to victims within the criminal proceedings, more care with the provision of information to and communication with victims has been denoted, and more resources have been allocated to the creation of support services. However, the lack of practical procedures, of training, of awareness raising initiatives, of practical and effective mechanisms for cooperation across and inside borders, are some of the obstacles victims face when, often after experiencing a traumatic situation, get involved in criminal proceedings.

Every one of us can become a victim of any crime and it is our responsibility to ensure that we are walking towards a perfected criminal justice system. A criminal justice system where victims are not only heard as instrumental pieces but are, in fact, respected as an integral part of the path to justice. A criminal justice system where their recovery is dully considered before, during and after all stages of the criminal proceedings.

# ANNEX I

## METHODOLOGY

**Project VOCIARE:** *Victims of Crime Implementation Analysis of Rights in Europe* consisted on a collective research effort enacted by professionals from 26 EU Member States and coordinated by Victim Support Europe (VSE), an umbrella organisation representing 54 national member organisations providing support and information to victims of crime, and the Portuguese Association for Victim Support (APAV).

The first phase of the project was dedicated to the development of the research tools which would later be used by the national researchers. To assist the creation of the research tools, a comprehensive matrix, which aimed to identify the indicators related to the practical application of the Victims' Rights Directive, was developed by the project's core team.

Using the matrix and the indicators specified in it, three templates were produced: the survey, the semi-structured interview template and the national research template.

These three templates correspond to the three different phases of the research to be carried out at the national level by the partner organisations: desk research, interviews with stakeholders and analysis of data from survey responses.

Each national organisation carried out desk research in order to analyse and collect information from primary and secondary sources regarding the practical implementation of the Victims' Directive within their own jurisdiction. Then, after selecting the most relevant issues about which information gathered through the desk research was not sufficient, a number of interviews with national stakeholders were carried out by national researchers in order to complement such gaps using the experience of professionals working within the criminal justice system or otherwise establishing contact with victims of crime. The interviews carried out at national level were based on the semi-structured interview template created for the purpose. The template comprised a number of questions for each article of the Directive related to aspects of the practical implementation of the Directive which are potentially more connected and/or dependent on the practice of the professionals selected for the interviews. The fact that the interviews were semi-structured meant that the national researcher could use the interview template as they saw fit, including by selecting the more relevant questions considering the information they had already gathered through desk research and the information which was still lacking. It also allowed researchers to add other pertinent questions to their national context and/or adapt the

questions to the better suit the interviewee and his/her role in contacting with victims. In total, 130 interviews were conducted.

Parallel to these two steps, data had been collected in the answers provided by professionals to the online survey. The survey comprised several questions focusing on the practical implementation of Articles 3 to 12 and 17 to 26 of the Victims' Directive. It was disseminated by researchers during the research, and the results were analysed and introduced in the respective National Report. The national organisations and researchers were recommended to disseminate the online survey among professionals working in the criminal justice system, victim support workers and other professionals who establish contact with victims in the aftermath of a crime (e.g. health professionals, social security workers, teachers, etc.).

All National Reports were subject to a quality assurance process secured by the project's core team from VSE and APAV. Once the national research phase of the project ended, the matrix created in the beginning of the project was filled in with the information contained in all 26 National Reports. The complete matrix – containing information on fact based, problem based, data based and progress based indicators – was the basis used by the project officers at APAV to write the present Synthesis Report. The online survey answers collected in the different Member States were merged and analysed collectively. In total, 773 survey answers were collected.

# ANNEX II

## LIST OF NATIONAL RESEARCHERS

Country	Organisation	Researcher(s)
Austria	Weisser Ring Austria	Dina Nachbaur Tobias Körtner
Belgium	SAM, Steunpunt Mens en Samenleving	Kurt De Backer
Bulgaria	Bulgarian Centre for Not for Profit Law (BCNL)	Marieta Dimitrova (main researcher) Nadia Shabani (Editor) Anna Adamova (Assistant)
Croatia	White Circle Croatia	Matea Anić Anja Frankić
Cyprus	Association for the Prevention and Handling of Violence in the Family – SPAVO	Iro Michael Caterina Argyridou
Czech Republic	FORUM	Šárka Dušková Maroš Matiaško
Estonia	Estonian Human Rights Centre	Kelly Grossthal Egert Rünne Liina Rajaveer
Finland	Rikosuhripaivystys - Victim Support Finland	Susanna Lundell
France	France victimes	Isabelle Sadowski Pauline Okroglic
Germany	Weisser Ring Germany	Alexander Herr Linda Wischrath
Greece	European Public Law Organization (EPLO)	Iro Michael
Hungary	-	Gábor Veisz

Ireland	<b>Crime Victims Helpline</b>	Michele Puckhaber MariaMcDonalds
Italy	<b>Associazione LIBRA Onlus</b>	Mauro Bardi Giovanni Galvani
Latvia	<b>Ilona Kronberga</b>	Ilona Kronberga Endija Logina
Lithuania	<b>Human Rights Monitoring Institute</b>	Natalija Bitiukova Kristina Normantaitė
Luxembourg	-	Silvia Allegrezza
Malta	<b>Victim Support Malta</b>	Charlotte Portelli
Netherlands	<b>Slachtofferhulp Nederland</b>	Alex Sas Esther Zuiderveld Laura Hinrichs Renée S. B. Kool Sonja Leferink
Poland	<b>SOS for the Family Association</b>	Marzena Piechowiak
Portugal	<b>Portuguese Association for Victim Support (APAV)</b>	André Carpinelli Inês Carvalho Mafalda Valério Marta Carmo
Romania	<b>ACTEDO</b>	Alexandra Columban
Slovakia	<b>FORUM</b>	Šárka Dušková Alexandra Dubová ( Adam Máčaj
Slovenia	<b>Association for non-violent Communication</b>	Nina Rapolane Obranc
Spain	<b>University of Lleida/UdL</b>	Josep Tamarit Sumalla Carolina Villacampa Estiarte Nasserine Montornés Mataoui (Collaborator)
Sweden	<b>Victim Support Sweden</b>	Frida Wheldon



# ANNEX III

## LIST OF COUNTRIES ABBREVIATIONS

<b>AT</b>	Austria
<b>BE</b>	Belgium
<b>BG</b>	Bulgaria
<b>CY</b>	Cyprus
<b>CZ</b>	Czech Republic
<b>DE</b>	Germany
<b>EE</b>	Estonia
<b>EL</b>	Greece
<b>ES</b>	Spain
<b>FI</b>	Finland
<b>FR</b>	France
<b>HR</b>	Croatia
<b>HU</b>	Hungary
<b>IE</b>	Ireland
<b>IT</b>	Italy
<b>LT</b>	Lithuania
<b>LU</b>	Luxembourg
<b>LV</b>	Latvia
<b>MT</b>	Malta
<b>NL</b>	Netherlands
<b>PL</b>	Poland
<b>PT</b>	Portugal
<b>RO</b>	Romania
<b>SE</b>	Sweden
<b>SI</b>	Slovenia
<b>SK</b>	Slovakia

# ANNEX IV

## VOCIARE SURVEY

<p><b>ARTICLE 3 - RIGHT TO UNDERSTAND AND BE UNDERSTOOD</b></p> <p>3_1 In your opinion are there sufficient measures to help all the practitioners involved to recognize the individual communication needs of the victims?</p> <p>a Insufficient b Rather insufficient c Neither sufficient nor insufficient d Rather sufficient e Sufficient</p> <p>3_2 Are there regular inquiries to ensure that victims have understood the information they are provided with?</p> <p>a Always b Often c Sometimes d Rarely e Never f No answer</p> <p>3_3 Is information adapted to be understood, in particular, by the following groups of victims (more answers possible)?</p> <p>3_3a Children</p>	<p>a Always b Often c Sometimes d Rarely e Never f No answer</p> <p>3_3b People with hearing impairments</p> <p>a Always b Often c Sometimes d Rarely e Never f No answer</p> <p>3_3c People with intellectual disabilities</p> <p>a Always b Often c Sometimes d Rarely e Never f No answer</p> <p>3_3d Persons who do not speak the language in which the proceedings are conducted</p> <p>a Always b Often c Sometimes d Rarely e Never</p>	<p>f No answer</p> <p>3_3e Illiterate people</p> <p>a Always b Often c Sometimes d Rarely e Never f No answer</p> <p>3_3f Blind and partially blind people</p> <p>a Always b Often c Sometimes d Rarely e Never f No answer</p> <p>3_4 How often are victims accompanied by a person of their choice?</p> <p>a Always b Often c Sometimes d Rarely e Never f No answer</p> <p>3_5 How often are the following reasons used to refuse accompaniment for the victims?</p> <p>3_5a Contrary to the interests of</p>
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the victim  
a Always  
b Often  
c Sometimes  
d Rarely  
e Never  
f No answer

3\_5b The course of the proceedings would be prejudiced  
a Always  
b Often  
c Sometimes  
d Rarely  
e Never  
f No answer

3\_5c Other. Which?  
Open question.

3\_6 In your experience and opinion, do the authorities use language that is easy to understand in their communication with victims?

3\_6a The entire communication is made easy to understand  
a Agree  
b Partially agree  
c Neither agree nor disagree  
d Partially disagree  
e Disagree

3\_6b All authorities use language that is easy to understand  
a Agree  
b Partially agree  
c Neither agree nor disagree  
d Partially disagree

e Disagree  
3\_6c Easy-to-understand language is used throughout the country  
a Agree  
b Partially agree  
c Neither agree nor disagree  
d Partially disagree  
e Disagree

3\_6d Other. Which?  
Open question.

#### **ARTICLE 4 - RIGHT TO RECEIVE INFORMATION FROM THE FIRST CONTACT WITH A COMPETENT AUTHORITY**

4\_1 Do victims receive the information required from the Directive upon first contact with the relevant authority?

a Full information  
b Most information  
c Partial information  
d Little information  
e No information

4\_2 When a victim comes into contact with an authority, how often is information provided through the following means (please select the options that are applicable to your national context):

4\_2a Internet (grading answers for each line: all the time, often, etc.)

a Always  
b Often  
c Sometimes  
d Rarely  
e Never  
f No answer

4\_2b Orally  
a Always  
b Often  
c Sometimes  
d Rarely  
e Never  
f No answer

4\_2c Leaflets, brochures or similar  
a Always  
b Often  
c Sometimes

d Rarely  
e Never  
f No answer

4\_2d Video  
a Always  
b Often  
c Sometimes  
d Rarely  
e Never  
f No answer

4\_2e Other. Which?  
Open question.

4\_3 Is the information offered without the need for a request from the victim?  
a Yes  
b Depends on the victim's role in

the proceedings  
 c No  
 d No answer

**ARTICLE 5 - RIGHTS OF VICTIMS WHEN MAKING A COMPLAINT**

5\_1 To your knowledge, do victims receive a written acknowledgment of their formal complaint?

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

5\_2 From your experience, are victims enabled to make a complaint in their own language?

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

5\_3 From your experience, are victims enabled to make a complaint through receiving linguistic assistance?

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

**ARTICLE 6 - RIGHT TO RECEIVE INFORMATION ABOUT THEIR CASE**

6\_1 Are victims informed of their right to receive information about their criminal proceedings?

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

6\_2 How often do victims receive information when they request it?

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

6\_3 How often is information not provided to victims, based on their role in the criminal justice system?

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

6\_4 In your opinion, do victims find the reasons provided for any decision generally sufficient?

- a Always
- b Often
- c Sometimes

d Rarely  
 e Never  
 f No answer

6\_5 Are victims informed about their right to be notified of the release or escape of the offender?

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

6\_6 Upon their request, are victims notified of the release or escape of the offender?

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

**ARTICLE 7 - RIGHT TO INTERPRETATION AND TRANSLATION**

7\_1 In your experience, are interpreting services made available (more than one choice possible):

- a At police interviews
- b During investigations
- c Before the prosecutor
- d During the entire trial
- e Only during their testimony
- f Not available
- g No answer

7_2 Are interpreting services free of charge?	I Do not know	Open question.
a Yes, fully	7_4 Which?	7_9 In your opinion/experience, which are the main problems with respect to translations?
b Yes, up to a certain amount	Open question.	a Information not being deemed essential for translation
c Yes, for certain steps in the proceedings	7_5 In your experience, which of the following documents are considered essential to be translated and made available to the victim in translated form?	b Denial of the right to translation
d Yes, but with limitations	a Information to be provided from first contact	c Lack of availability of translators
e No	b Decisions not to proceed with or end an investigation or not to prosecute	d Poor quality of translations
f No answer	c Notification of time and place of trial	e Available but not in a timely manner
7_3 In your opinion, what are the main problems you can identify with ensuring the right to interpreting services?	d Final judgement	f Restrictions in the documents with respect to their translatability
a Denial of the right to interpreting services	e Reasons for decision not to prosecute or to end the investigations	g Risk of translator bias
b Lack of availability of interpreters	f Reasons for final judgement	h Translations are available but not free of charge
c Poor quality of interpretation	g Information on the status of the criminal proceedings	i Translations are provided in a language other than the victim's own language
d Interpreting services available only under limited circumstances (conditional to active participation)	h None of the above	j False assumption that victims understand the language of the proceedings well enough
e Interpreting services do not address victims' vulnerability (e.g.: woman victim of sexual violence with interpretation services by a male interpreter)	i All of the above and others. Which?	k Essential documents are translated orally in a manner that, in practice, does not guarantee fulfilment of the victim's rights
f Risk of interpreter bias	j No answer	l Translation not provided to avoid delays in proceedings
g Interpreting services are available but not free of charge	7_6 Which?	m Other
h Interpreting services are provided in a language other than the victim's own language	Open question.	n Do not know
i False assumption that victims understand the language of the proceedings well enough	7_7 Are translations provided free of charge?	7_10 Which?
j Interpreting services are not provided to avoid delays in proceedings	a Yes	Open question.
k Other	b Yes, but with limitations. Which?	
	c No	
	d Do not know	
	7_8 Which?	

**ARTICLE 8 - RIGHT TO ACCESS VICTIM SUPPORT SERVICES**

8\_1 In your opinion, how often are victims referred to victim support services by the competent authorities?

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

8\_2 In your opinion, do victim support services meet the needs of victims of crime?

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

8\_3 In your opinion, what is needed to improve victim support services in your country (more than one choice possible):

- a More funding
- b Better legislation
- c Better policies
- d More government involvement in providing offers of support
- e More involvement of non-governmental organisations in providing offers of support
- f Better geographical coverage
- g More professionals
- h More training offers

- i More volunteers
- j Quality standards for services
- k Better services for certain groups of victims (which – open question)
- l Do not know.

**ARTICLE 9 - SUPPORT FROM VICTIM SUPPORT SERVICES**

9 To the best of your knowledge and experience, do all victims receive the following services?

9\_1 Information, advice and support relevant to the rights of victims

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

9\_2 Information about direct referral to existing relevant specialist support services

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

9\_3 Emotional and psychological support

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never

- f No answer
- 9\_4 Advice relating to financial and practical issues associated with the criminal offence

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

9\_5 Advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

**ARTICLE 10 - RIGHT TO BE HEARD**

10\_1 To the best of your knowledge and experience, how often are victims heard and enabled to provide evidence during criminal proceedings?

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

10\_2 To the best of your knowledge and experience, is the right of the victim to be heard limited in certain phases of the proceedings (e.g. investigation proceedings, institution of proceedings, main proceedings)?

a Yes.  
b No  
c Do not know

10\_3 Which?  
Open question.

10\_4 In your opinion and experience, is the right of the victim to be heard limited by the role of the victim in the proceedings (e.g. witness, injured party, civil party in criminal proceedings)?

a Yes.  
b No  
c Do not know

10\_5 Which?  
Open question.

10\_6 In your opinion and experience, where a child victim is to be heard, how often is the child's age and maturity taken into due account?

a Always  
b Often  
c Sometimes  
d Rarely  
e Never  
f No answer

10\_7 In your opinion/experience, are there sufficient measures to assess a child's age and maturity?

a Insufficient  
b Rather insufficient  
c Neither sufficient nor insufficient  
d Rather sufficient  
e Sufficient

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

12\_1 Are restorative justice services available in your country?

a Yes.  
b No  
c No answer

12\_2 If the previous answer is yes: In your opinion, are there sufficient safeguards in place, which protect the victim from secondary and repeat victimisation, intimidation and retaliation, throughout the restorative justice process?

a Yes, comprehensively  
b No, they are not protected from secondary and repeat victimisation  
c No, they are not protected from intimidation  
d No, they are not protected from retaliation

e Not at all  
f No answer

#### **ARTICLE 17 - RIGHTS OF VICTIMS RESIDENT IN ANOTHER MEMBER STATE**

17\_1 To the best of your knowledge and expertise, how often are competent authorities in a position to take a statement immediately after a victim resident in another Member State makes a complaint?

a Always  
b Often  
c Sometimes  
d Rarely  
e Never  
f No answer

17\_2 In your opinion and experience, do competent authorities have all the necessary available means (i.e. videoconference, telephone conference calls or other) for the purposes of hearing a victims who is a resident abroad?

a Insufficient  
b Rather insufficient  
c Neither sufficient nor insufficient  
d Rather sufficient  
e Sufficient

17\_3 In your opinion/expertise, how often are victims resident in your Member State granted the

right to make a complaint to your national competent authorities if they were unable to do so in the Member State where the crime was committed?

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

17\_4 In your opinion, are victims who are residents in another Member State treated differently from national victims?

- a Yes.
- b No
- c No answer

17\_5 If the previous answer is yes: In your opinion, do the differences in treatment between national and cross-border victims affect the successful access to rights of the latter?

- a A lot
- b Significantly
- c Moderately
- d A little
- e Not at all

**ARTICLE 18 - RIGHT TO PROTECTION**

18\_1 In your opinion, how often do victims and their family members receive adequate protection from intimidation and

from retaliation?

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

18\_2 In your opinion, how often do victims and their family members receive adequate protection against the risk of emotional or psychological harm?

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

18\_3 In your opinion and experience, are victims and their family members treated by the authorities in a respectful manner and with dignity?

- 18\_3a At questioning by the investigating authorities
- a Always
  - b Often
  - c Sometimes
  - d Rarely
  - e Never
  - f No answer

18\_3b At questioning by the prosecuting authorities

- a Always
- b Often
- c Sometimes

- d Rarely
- e Never
- f No answer

18\_3c When testifying

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

**ARTICLE 19 - RIGHT TO AVOID CONTACT BETWEEN VICTIM AND OFFENDER**

19 Are you aware of any of the following arrangements being present in your country?

19\_1 Separate waiting areas for victims and offenders

- a At the police
- b In court buildings
- c Does not exist
- d Do not know

19\_2 Separate entrances within the premises

- a At the police
- b In court buildings
- c Does not exist
- d Do not know

19\_3 Appointments at different times

- a At the police
- b In court buildings
- c Does not exist
- d Do not know



19\_4 Different entrances from outside the buildings

a At the police  
b In court buildings  
c Does not exist  
d Do not know

a Always  
b Often  
c Sometimes  
d Rarely  
e Never  
f No answer

a Always  
b Often  
c Sometimes  
d Rarely  
e Never  
f No answer

19\_5 Toilet facilities not close to one another

a At the police  
b In court buildings  
c Does not exist  
d Do not know

20\_3 In your opinion, when there are unjustified delays, what are the reasons for such a delay?

a Police have work overload  
b Priority is given to other cases or more serious crimes  
c Procedural requirements  
d Delay in collaboration between authorities  
e Other  
f Do not know

20\_7 If the answer to the previous question is not "always": In your opinion, which are the most likely obstacles for victims to not be accompanied by a person of their choice: Open question.

19\_6 Other. Which?  
Open question.

20\_8 In your experience and opinion, are medical examinations kept to a minimum and only carried out where strictly necessary for the purposes of the criminal proceedings?

**ARTICLE 20 - RIGHT TO PROTECTION OF VICTIMS DURING CRIMINAL INVESTIGATIONS**

20\_4 Which?  
Open question.

20\_1 In your opinion and experience, are interviews with victims of violent crimes conducted without unjustified delay?

a Always  
b Often  
c Sometimes  
d Rarely  
e Never  
f No answer

20\_5 In your opinion and experience, is the number of interviews of victims kept to a minimum and are interviews carried out only where strictly necessary for the purposes of the criminal investigation?

a Always  
b Often  
c Sometimes  
d Rarely  
e Never  
f No answer

a Always  
b Often  
c Sometimes  
d Rarely  
e Never  
f No answer

20\_2 In your opinion and experience, are interviews with victims of non-violent crimes conducted without unjustified delay?

20\_6 In your experience, are victims able to be accompanied by a person of their choice?

**ARTICLE 21 - RIGHT TO PROTECTION OF PRIVACY**

21 In your opinion and experience, how often do competent authorities take all necessary, appropriate and lawful measures to ensure protection of victim's privacy?

a Always  
b Often

- c Sometimes
- d Rarely
- e Never
- f No answer

21\_2 To the extent of your knowledge and expertise, are protective measures applied only to victims of certain crimes?

- a Yes
- b No
- c No answer

21\_3 Which?  
Open question.

21\_4 In your opinion, to what extent do you consider existing protection measures effective in safeguarding the victim's privacy?

- a Inefficient
- b Rather inefficient
- c Neither efficient nor inefficient
- d Rather efficient
- e Efficient

21\_5 In your opinion and expertise, how often do competent authorities take legally permissible measures to prevent the public dissemination of any information that could lead to the identification of a child victim?

- a Always
- b Often
- c Sometimes
- d Rarely

- e Never
- f No answer

21\_6 To the extent of your knowledge and expertise, are the media encouraged to adopt self-regulatory measures to ensure the victim's privacy?

- a Yes
- b No
- c No answer

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

22\_1 In your opinion and experience, how often are victims provided with an individual assessment of their protection needs?

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

22\_2 In your opinion and experience, are the wishes of victims (including whether or not they wish to be granted special measures of protection) taken into account in this process?

- a Always
- b Often
- c Sometimes
- d Rarely

- e Never
- f No answer

22\_3 Is a risk and threat assessment also conducted?

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

22\_4 Is there the possibility to adapt the assessment later on?

- a Yes
- b No
- c No answer

22\_5 (Only if the answer to question 4 is A) What criteria are used as a basis for a decision to adapt the assessment later on?

- a Severity of the crime
- b Degree of apparent harm suffered
- c No answer
- d Other

22\_6 Which?  
Open question.

22\_7 What measures are in place to ensure that unnecessary interactions are kept to a minimum and interactions with authorities are made as easy as possible?

- a Practical protocols
- b Templates

c Questionnaires	f No answer	that the victim may be heard in the courtroom without being present (use of communication technology)
d Additional psychological examining methods	23_1c All interviews are conducted by the same person	a Always
e None	a Always	b Often
f No answer	b Often	c Sometimes
g Other	c Sometimes	d Rarely
22_8 Which?	d Rarely	e Never
Open question.	e Never	f No answer
	f No answer	

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

23\_1 In your experience and opinion, are victims with specific protection needs able to benefit from the following measures during criminal investigations?

23\_1a Interviews with the victim carried out in premises designed or adapted for that purpose

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

23\_1b Interviews carried out by or through professionals trained for that purpose

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never

23\_1d All interviews with victims of sexual violence, gender-based violence, etc. are conducted by a person of the same sex as the victim

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

23\_2 In your experience and opinion, are victims with specific protection needs able to benefit from the following measures during court proceedings?

23\_2a Measures to avoid visual contact between victims and offenders

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

23\_2b Measures to ensure

23\_2c Measures to avoid unnecessary questioning concerning the victim's private life not related to the offence

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

23\_2d Measures allowing proceedings to take place without the presence of the public

- a Always
- b Often
- c Sometimes
- d Rarely
- e Never
- f No answer

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

24\_1 To the extent of your knowledge and expertise, how

often are interviews with child victims recorded audiovisually?  
 a Always  
 b Often  
 c Sometimes  
 d Rarely  
 e Never  
 f No answer

e Never  
 f No answer

insufficient  
 d Rather sufficient  
 e Sufficient

**ARTICLE 25 - TRAINING OF PRACTITIONERS**

24\_2 To the extent of your knowledge and expertise, where there may be a conflict of interest and/or the holders of parental responsibility are precluded from representing a child victim, how often is the child appointed a special representative by the competent authorities?

25\_1 In your opinion and experience, do the following professionals receive sufficient training regarding the needs of victims?

25\_1e Victim support workers  
 a Insufficient  
 b Rather insufficient  
 c Neither sufficient nor insufficient  
 d Rather sufficient  
 e Sufficient

a Always  
 b Often  
 c Sometimes  
 d Rarely  
 e Never  
 f No answer

25\_1a Police officers  
 a Insufficient  
 b Rather insufficient  
 c Neither sufficient nor insufficient  
 d Rather sufficient  
 e Sufficient

25\_1f Other professionals (administrative authorities, first responders, etc.)  
 a Insufficient  
 b Rather insufficient  
 c Neither sufficient nor insufficient  
 d Rather sufficient  
 e Sufficient

25\_1b Prosecutors  
 a Insufficient  
 b Rather insufficient  
 c Neither sufficient nor insufficient  
 d Rather sufficient  
 e Sufficient

**ARTICLE 26 - COOPERATION AND COORDINATION OF SERVICES**

24\_3 To the extent of your knowledge and opinion, how often is a child victim granted 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?

25\_1c Judges  
 a Insufficient  
 b Rather insufficient  
 c Neither sufficient nor insufficient  
 d Rather sufficient  
 e Sufficient

26\_1 To your knowledge and experience, has the government of your country initiated, sponsored or otherwise ensured awareness-raising campaigns?  
 a Yes  
 b No  
 c No answer

a Always  
 b Often  
 c Sometimes  
 d Rarely

25\_1d Lawyers  
 a Insufficient  
 b Rather insufficient  
 c Neither sufficient nor

26\_2 (If the answer to question 1 is yes): In your opinion, how adequate and efficient were these campaigns?

- a Inefficient
- b Rather inefficient
- c Neither efficient nor inefficient
- d Rather efficient
- e Efficient

26\_3 To your knowledge and in your experience, has your government initiated, sponsored or otherwise supported or ensured research and education programmes?

- a Yes
- b No
- c No answer

26\_4 If the answer to question 3 is yes: How adequate and efficient were these programmes in your opinion?

- a Inefficient
- b Rather inefficient
- c Neither efficient nor inefficient
- d Rather efficient
- e Efficient

# ANNEX V

## OVERVIEW OF STANDARDS

An overview of VSE’s standards and compliance requirements are listed below. This overview is part of a more in-depth guidance available to VSE members with links to more information.



### STANDARD 1

#### Make services accessible to victims of all type of crime

VOCIARE SYNTHESIS REPORT

Engagement	Compliance with this standard						More Information
<b>1.1 Services are offered to all victims.</b>	1.1.1	Victim Support organisations offer support to all victims of crime, regardless of the type of crime or whether the crime has been reported or not and regardless of their age, cultural background, language etc.					Support to all victims of crime
	1.1.2	Victim Support organisations respect equality and non-discrimination principles.					Equality and non-discrimination principles
	1.1.3	Basic support offered by Victims support organisations is free of charge.					Support will be free of charge
Evidence to provide to show the standard has been put into place	<i>Constitution</i>	<i>Mission statement</i>	<i>Equality policy</i>	<i>Training</i>	<i>Publicity</i>	<i>Website</i>	
<b>1.2 Services are accessible, visible and well publicized.</b>	1.2.1	Victim organisations make the services as accessible as possible to all victims.					Being accessible
	1.2.2	Victims Support organisations provide information about their organisation.					Information and awareness
	1.2.3	Victims Support organisations raise awareness about victims’ rights and the services provided.					
Evidence to provide to show the standard has been put into place	<i>Publicity</i>	<i>Leaflets</i>	<i>Posters</i>	<i>Website</i>	<i>Annual report with information about organisation</i>		

<b>1.3 Services take specific measures to reach out to vulnerable groups of victims.</b>	1.3.1	To ensure Victim Support services are accessible to all victims, Victim Support organisations engage in activities that focus on specific groups of victims.	Vulnerable groups of victims			
Evidence to provide to show the standard has been put into place	<i>Publicity</i>	<i>Training</i>	<i>Service procedures</i>	<i>Website</i>	<i>Report activities</i>	<i>Specific policies or strategies for different groups</i>

 **STANDARD 2**

**Respecting victims and treating them with courtesy and dignity**

Engagement	Compliance with this standard		More Information		
<b>2.1 Ensure our staff and volunteers treat victims with respect and dignity.</b>	2.1.1	Victim Support workers communicate with victims using a victim-sensitive approach.	Communication	Respectful	
	2.1.2	Victim Support workers treat victims respectfully, kindly and politely.	Complaints strategy		
Evidence to provide to show the standard has been put into place	<i>Policy</i>	<i>Training</i>	<i>Complaint strategy</i>	<i>Service procedures</i>	<i>Welcome pack new staff</i>
<b>2.2 Ensure that infrastructure and organisation of services are geared to victims' needs.</b>	2.2.1	Respond to victims within a reasonable time and in a clear precise manner.	Respond to victims	Premises are pleasant	
	2.2.2	Ensure that premises are pleasant, clean and comfortable. (cleaner, toys)	Privacy provided for the victim		
	2.2.3	Ensure there is private space available when talking to a victim and discussing cases.			
Evidence to provide to show the standard has been put into place	<i>Pictures of infrastructure</i>	<i>of Having a cleaner</i>	<i>Services procedures</i>		



## STANDARD 3

### Working to ensure victims are safe

Engagement	Compliance with this standard	More Information
<b>3.1 Assess victims' safety, requirements, identify risks and provide advice to victims.</b>	1.1.1 Put a risk assessment procedure in place to identify risks to victims.	Risk assessment
	1.1.2 Have in place clear procedures for when risks are identified.	Build a network Risk assessment in training/intake
	1.1.3 Include risk assessment in training and intake procedures.	
Evidence to provide to show the standard has been put into place	<i>Risk assessment</i>	<i>Training on risk assessment</i> <i>Network agreements</i>
<b>3.2 Work to provide a safe and secure environment where victims are supported</b>	3.2.1 Take measures to control premises to make them safe and secure.	Safe and secure Inform victims of safe and secure
	3.2.2 Inform victims about the steps taken to make the premises safe and secure	
	3.2.3 Put into place safety and security measures, including basic standards of safety for victims within the premises.	
Evidence to provide to show the standard has been put into place	<i>Pictures of premises</i>	<i>Safety plan</i> <i>Escape plan</i>
<b>3.3 Protect victims' data and confidentiality while respecting the requirements of national legislation.</b>	3.3.1 Establish data protection protocols which conform with national and international law.	Clear and transparent Recording and sharing information Data protection
	3.3.2 Ensure information on client victims is recorded and can be shared in an easy and safe way within the organization and with partner organisations.	
	3.3.3 Be transparent about how services are confidential and to what extent.	
Evidence to provide to show the standard has been put into place	<i>Service procedures</i>	<i>Policy</i>





## STANDARD 4

### Responding to individual victims' needs

Engagement	Compliance with this standard	More Information		
<b>4.1 Tailor services to respond to the individual needs of victims.</b>	4.1.1 Needs assessment in place to identify victims' needs.	Basic needs Specific needs of certain groups		
	4.1.2 Support offered on basis of assessment.	Individual needs Needs assessment and training Basis of Assessment (BoA) BoA, Stepped Care and Watchful Waiting BoA, Outreach, Psychological and Victim-centered		
		4.1.3 Establish policies to ensure maximum flexibility to support victims based on their needs.	Policies	
	<b>4.2 Provide services which can respond to victim's different abilities and vulnerabilities</b>	4.2.1 Seek and provide solutions to support vulnerable victims according to their needs.	Support vulnerable victims Support vulnerable victims, cross-border and minority groups	
4.2.2 Seek and provide solutions to support victims with different abilities and disabilities according to their needs.		Support victims with different abilities		
Evidence to provide to show the standard has been put into place	<i>Needs' assessment</i>	<i>Training</i>	<i>Service procedures</i>	<i>Specific strategies for vulnerable victims</i>



**STANDARD 5**

**Support victims through different services**

VOCIARE SYNTHESIS REPORT

Engagement	Compliance with this standard	More Information
<p><b>5.1 Provide victims with the opportunity to request help electronically, by telephone and face-to-face, etc.</b></p>	<p>5.1.1 Offer services through a range of means such as office-based support, helplines, mobile service, online services.</p>	<p>Request services</p> <p>Offer services through a range of means</p> <p>Train personnel</p> <p>Provide victims with information</p>
	<p>5.1.2 Get people trained to offer these services.</p>	
	<p>5.1.3 Provide victims with information about the different services offered by the Victim Support organisation.</p>	
<p><b>5.2 Offer a diverse range of services.</b></p>	<p>5.2.1 Offer at least the following services</p> <ul style="list-style-type: none"> <li>• Emotional support;</li> <li>• Information;</li> <li>• Advice and/or support to access compensation;</li> <li>• Referral;</li> <li>• Psychological support or referral to psychological support</li> <li>• Advice relating to financial and practical issues;</li> <li>• Advice relating to the risk and prevention</li> </ul>	<p>Diverse range of services</p> <p>Provide tools to staff and volunteers</p>
	<p>5.2.2 Victim Support organization to provide tools for staff and volunteers to offer these services.</p>	
<p>Evidence to provide to show the standard has been put into place</p>	<p><i>Service procedure      Policy      Website      Leaflet      Training</i></p>	



## STANDARD 6

### Delivering for victims through referrals and co-ordination

Engagement	Compliance with this standard	More Information
<b>6.1 Inform victims about other services and service providers</b>	6.1.1 Victims receive information about services and service providers	<p>Services and service providers</p> <p>Services and service providers (first element)</p> <p>Services and service providers (second element)</p> <p>Services and service providers (third element)</p>
Evidence to provide to show the standard has been put into place	<i>Leaflet</i>	<i>Service procedures</i> <i>Website</i>
<b>6.2 Refer victims for support to known, trusted, quality partner organizations.</b>	6.2.1 Develop networks with other organisations.	6.2.1 Develop networks
	6.2.2 Work with other organisations to refer victims onward in an appropriate fashion whilst confirming the case has been taken on	<p>Work together with other organisations (part 1)</p> <p>Work together with other organisations (part 2)</p> <p>Work together with other organisations (part 3)</p>
	6.2.3 Work together with other victim support organisations to facilitate the appropriate inward referral of victims.	Work together to facilitate the referrals to your organisation
Evidence to provide to show the standard has been put into place	Summary of network meetings      of Network protocols	Service procedures      Follow up system social map



## STANDARD 7

### Ensuring good governance structures

Engagement	Compliance with this standard		More Information			
<b>7.1 Comply with national laws and regulations on the establishment of NGO's and charities.</b>	7.1.1	Governance rules, policies in place accordance to national law.	Governance rules and policies			
	7.1.2	Governance and financial control mechanisms must be clear and transparent.	Governance and financial control			
Evidence to provide to show the standard has been put into place	<i>Constitution</i>	<i>Statutes</i>	<i>National requirements and evaluation</i>	<i>National recognition</i>	<i>Annual Report</i>	<i>Website</i>



**STANDARD 8**

**Achieving quality through training**

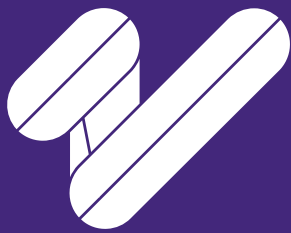
Engagement	Compliance with this standard	More Information
<p><b>8.1 Ensure that all staff and volunteers receive an agreed level of training according to the nature of their contact with victims.</b></p>	<p>8.1.1 Ensure basic training is provided for new recruits.</p>	<p>Basic training</p> <p>Ongoing training</p> <p>Victim sensitive courses</p>
	<p>8.1.2 Ensure ongoing training is offered to existing personnel in accordance with their contact with victims and the nature and the type of crime involved.</p>	
	<p>8.1.3 Ensure that victim-sensitive courses are provided for staff who do not work directly with victims.</p>	
<p><b>8.2 Training will, as a minimum aim, ensure that victims are treated with dignity and respect, that the support provided responds to the victim's needs and that no further harm is caused.</b></p>	<p>8.1.4 Training covers all required topics.</p>	<p>Training covers all required topics</p> <p>Training will be renewed</p> <p>Qualified trainer</p> <p>Organisations provide sufficient resources</p>
	<p>8.2.1 Training will be renewed and updated at regular intervals.</p>	
	<p>8.2.2 Training is provided by a qualified trainer</p>	
	<p>8.2.3 Organisations provide sufficient resources, time and tools to support the delivery of training.</p>	
<p>Evidence to provide to show the standard has been put into place</p>	<p><i>Training package      Training procedure</i></p>	



## STANDARD 9

### Improving our services through monitoring and evaluation

Engagement	Compliance with this standard	More Information
<b>9.1 Evaluate services at least once every two years.</b>	9.1.1 Work out a range of tools to evaluate services.	Evaluate our services
	9.1.2 Ensure that victims' opinions are heard and taken into account.	Victims' opinions are heard
Evidence to provide to show the standard has been put into practice.	<i>Evaluation tools</i>	<i>Update and summary of the evaluation</i>
<b>9.2 Have in place a complaint system, which enables victims to give feedback and seek redress.</b>	9.2.1 Work out a complaint system for victims.	Complaint system
	9.2.2 Provide victims with information about the complaint system.	Provide victims with information
Evidence to provide to show the standard has been put into practice.	<i>Complaints strategy and procedures</i> <i>Service Procedure</i>	<i>Information tools for victims to learn about complaints procedures</i>



**VOCIARE**

Victims of Crime  
Implementation Analysis  
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