

Victim Support Europe Contribution

DIGITALISATION OF JUSTICE IN THE EUROPEAN
UNION



About Victim Support Europe

Victim Support Europe (VSE) is the leading European umbrella organisation advocating on behalf of all victims of crime, no matter what the crime, no matter who the victim is. VSE represents 62 member organisations, providing support and information services to more than 2 million people affected by crime every year in 30 countries.

Founded in 1990, VSE has been working for 30 years for a Europe, and a world, where all victims have strong victims' rights and services, whether they report the crime or not. We work towards this mission through advocacy to improve European and international laws, through research and knowledge development and through capacity building at the national and local level.

Introduction

VSE warmly welcomes the initiative of the European Commission to enhance the digitalisation of justice in the European Union. We believe that any change in this field is of prime significance to victims of crime and victim support organisations. **We stand ready to actively engage with the EU institutions and all stakeholders** regarding the further development of European justice systems.

Digital technologies have rapidly become part of our everyday life with a direct impact in all sectors, including the justice system. It is increasingly recognised that digitalisation and innovation are becoming the main drivers of change in the functioning of justice institutions and service-delivery models. The current pandemic has also highlighted the increasing need to use new technologies to connect with each other, in the work environment but also in our private lives.

Our justice systems need to adapt, to evolve, to changing times. Emerging technologies have a strong potential to enhance access to justice by creating new avenues and closing gaps to advance integrated, inclusive and people-centred ecosystems. Making sure that the voices of victims and witnesses are heard is crucial for a fair and effective justice system, and supporting them should be a central part of the digitalisation of justice. The **digitalisation of justice should improve the victims' experience of the justice system while minimising secondary victimisation and protecting their personal data**. This means that victims of crime need more than simply efficient and effective justice. Equally digitalisation must achieve more than video links and a paperless court. In the 21st century, justice systems need to be victim-centric and ensure the safety of victims or witnesses. **We call on the European Commission to think in broad terms on the objectives of justice to encompass a safe environment for victims**, where they feel comfortable to speak out, actively participate in the proceedings, are heard and understood, and receive enough information.

Victims' experience of the justice system can be very traumatising. It is therefore crucial that the **European Commission incorporates a victim-centric approach to the digitalisation of justice, to the tools and new technologies used , to improve the victim's experience**.

Same standards for safe and empowering participation in proceedings should apply for criminal, civil (e.g. compensation claims in civil courts, family disputes where domestic violence is relevant) and administrative proceedings (e.g. State compensation). In preparing and promoting any tools, the rights

of all parties and participants of the justice process should be recognised and within criminal justice systems, in particular the fair trial rights of both defendants and victims.

Ultimately, digitalisation should be an enabling tool for all. It should take into account equality and non-discrimination values to ensure equal and fair access to justice no matter where the crime or proceedings take place and no matter the personal background or circumstances of those taking part in the justice system.

In considering the importance of the digitalisation of justice in the EU, VSE calls on the European Commission to take into account the following issues:

- **Maximise victims' access to justice:** safe reporting with the possibility of online and anonymous reporting, reduce safety/ fear barriers, administrative burdens and physical accessibility issues, increase awareness of rights and knowledge on how to report a crime.
- **Minimise secondary victimisation and the trauma of participating in justice by improving victims' treatment and improving their protection:** use digital services to better coordinate the organisation of justice (minimise number of interviews, digital tools for needs assessment and decision making around victims, sharing of information to minimise repetition), improve co-ordination between police, prosecutors and lawyers (defence and victim) to reduce victim burdens (repetition, develop online training platforms as part of training system for justice professionals, enable digital versions of evidence, administrative documents to be used rather than only original copies, use digital services to inform victims of delays and other problems) – to minimise unnecessary attendance of postponed trials. Digitalisation of the justice system should facilitate access to justice in cross border situations and the development of online and digital case management systems which provide access to victims so they can obtain information on their rights, progress in the case, trial dates, relevant decisions, issues they have to respond to or rights they can claim, contact points etc.
- **Facilitate access to compensation:** Ideally, most victims would be able to fill an initial form out online via an online case management system, allowing the victim to manage the entire application process electronically, including the submission of evidence, as well as any questions, guidance and support as needed.
- **Facilitate the collection of data:** digitalisation of the justice system can also bring an increased transparency in the justice system.
- **Restrictions and safety that need to be taken into account:** It is important to keep in mind that numerous restrictions limit the availability of these options such as limited access to internet and/or new technologies, vulnerable victims (persons with disabilities, elderly people). Transformative change should be supported by clear guidelines and safeguards.
- **Activities beyond technical capability are required to achieve change and innovation in the justice systems in the EU:** specific training for professionals in the judiciary working with victims, a shift in perception, exchange of best practices, etc. These are need to support the application, adoption and use of new technologies.

VSE has provided further non-exhaustive details on these key issues below

I. Digitalisation of justice – a way to uphold victims’ rights and improve their treatment in the justice system

The digitalisation of the justice systems in the European Union present a number of benefits but also restrictions that VSE highlights in the following sections.

A. Maximise victims’ access to justice

Access to justice is critical for victims. It covers both the initial reporting of the crime as well as full participation in the process. Technology can help to **actively lower and overcome a range of access barriers** (e.g. cost-related, structure-related, social barriers, knowledge etc.), yet such technology is inconsistently used.

Those barriers are wide ranging and include the fact that victims may not understand they are victims, they may not know their rights, and may not know how to report a crime. Equally many victims do not want to go to the police station for several reasons (fear of authorities, fear of retaliation, because of their immigration status, because of their link to the offender, language barriers, etc.). Or they may be prevented from attending a police station due to controls by the perpetrator or physical or financial limitations. It is possible to report a crime committed in an EU member state in the home Member State of the victim. Yet, often police are not aware of this possibility or do not have an effective system for transferring the complaint to the country of the crime.

Digitisation and new technologies can help to overcome these barriers by:

- Improving the population’s awareness of what the justice system is and how it operates;
- Helping them to determine if they are a victim;
- Providing multiple avenues for reporting a crime; and
- Simplifying the process for reporting.

A number of countries offer online tools (e.g. one-stop entry portals, automated forms, online and anonymous reporting) that provide their citizens with information, reporting capability and services throughout the whole justice process; yet such tools are not used consistently across the EU.

This is why an **EU digitalisation agenda must consider all aspects of digitalisation**. Technological solutions for awareness raising, for example, are essential, and not only video links, or e-forms. . Helping victims to understand how the proceedings will work e.g. through interactive court walk through, virtual tours and video descriptions can put victims at ease and more comfortable with attending or testifying. The more that victims are offered different avenues for providing evidence, having statements recorded, submitting requests or hearing evidence, in accordance with their role in proceedings – the easier it is for them to participate and exercise their rights. Digitalisation is an essential element of this approach.

A range of solutions may also require legal barriers to be overcome e.g. on anonymous reporting. **EU toolkits which cover all aspects of implementing technologies will offer the greatest benefits.**

New technologies can also play a significant role in **improving access to justice in cross border situations**. Victims of a crime in a country other than their own often face a variety of challenges that leave them particularly vulnerable. Victims may not speak the language of the country in which the crime takes place. They may be unacquainted with the host country's legal system or the national rights they have as a victim of crime, and have often returned to their country of residence before the trial takes place. These myriad challenges diminish the possibility of the victim to exercise their rights to participate in the criminal proceedings.

The **European Commission should support Member States to provide citizens and legal professionals easier access to justice in cross-border processes**, as well as make cross-border collaboration between courts and authorities easier and more efficient. Solutions such as digital exchange of evidence, online communications on case progress, video conferencing, and the use of AI systems for unofficial translations can greatly improve timely access to information for victims whilst reducing burdens and costs on them. Language barriers are often one of the greatest impediments to foreign victims to understanding and enjoying their rights as well as to their effective participation in proceedings. The digitalisation agenda offers not only the possibility for automated translations but also improved options to link human, qualified, interpreters from around the world to proceedings.

B. Minimise secondary victimisation and the trauma of participating in justice by improving victims' treatment and improving their protection

Once victims have entered the criminal justice system, they are exposed to secondary victimisation and further trauma. **Digitalisation of justice must be used to reduce such trauma, in particular by supporting the implementation of existing victims' rights**. Supporting victims in this way will enable their voice to be heard, improve testimonies and facilitate their participation in the process.

At the core of digital solutions in this respect are **digital and/or case management systems**. Such systems enable victim information to be recorded, easily retrieved and acted on, and can facilitate better co-ordination between authorities, minimise repetition and be used by victims to remain informed of case progression. Whilst respect data protection rules, these can make the system significantly more efficient and transparent for victims.

An important benefit of such a system would be the incorporation of victim needs assessments. These could be carried out, recorded and shared with appropriate authorities to improve the efficiency of the process, reduce the risk of recommendations or findings not being sufficiently shared between appropriate authorities and reduce the risk of unnecessary repeated questions where information is already obtained by others.

Taking into account that often the police carry out needs assessments but many protection measures will be approved by the prosecution or judge and made available during trial, **efficient systems for sharing this information are particularly important**. With respect to the protection measures themselves, in several EU Member States, vulnerable victims and witnesses can already give evidence from behind a screen, or over video link.

The digitalization of the case management system will ideally **be extended to the provision of information to victims**. Online, protected systems, which can be accessed by victims are an effective

means of empowering victims to remain informed of case progress, know about their rights, identify contact points and more. Through the development of App and interactive websites victims can be notified and stay up to date about cases they're involved in.

Victim support organisations play a key role in supporting victims accessing and participating in the justice system (e.g. administrative support, emotional support before, during and after proceedings, legal aid, etc.). Digitalisation of justice should also take into account their involvement and facilitate their access to case information and up to date developments. **Digitalisation and new technology in the justice system should also benefit victims in accessing victim support services such as through online referral mechanisms.**

C. Improve victims' access to compensation

Victims' claim for and **access to compensation** should be facilitated by new and online technologies. Digital case management systems, allowing a victim to manage the entire application process electronically, including the submission of evidence, as well as any questions, guidance and support should be an option for victims. As a minimum, victims should have the **possibility to complete applications and provide some evidence digitally or online to facilitate and speed the process.** As with criminal proceedings this is particularly important in cross border cases.

An online case management system provides for online guidance and support through various mediums, including video, image and audio explanations, specific guidance on how to fill out an application, what evidence must be provided, and information pertaining to any foreseeable deadlines or delays. An online chat box allows for direct, live support provided by trained support staff. All information pertaining to the application is maintained in this secure system, accessible to any appropriate person/authority in order to facilitate the processing of the application, whilst respecting the victim's confidentiality and information sharing restrictions, in accordance with GDPR.

Another important issue to improve, under the active supervision of EU, is the **coordination between the Member States and national authorities to deal effectively with cross-border cases in the access to compensation.** National compensation authority contact points handling cross border applications should be provided with common digital solutions to facilitate the transfer and handling of cases including the completion of forms and provision of evidence such as medical examinations carried out in the Member State of residence

D. Increase the collection of data

Digitalisation of the justice system can also bring an **increased transparency in the justice system.** Developments should be accompanied with specific solution to **collect more quantitative data** (types of cases heard at each Court; the time different types of cases take to be heard; what kind of outcomes result; how many cases are waiting to be heard; and how many trials fail to go ahead as planned.) which enable more evidence based to assess the justice system and victim's participation.

E. Restrictions and safeguards

It is important to keep in mind that numerous restrictions limit the availability of the aforementioned options. Firstly, the **technical hardware is not always available** – especially in smaller courts, often in

more rural areas. The protection measure of e.g. video testimony is therefore geographically limited, preventing some victims from exercising their legal rights.

Equally, there may be **restrictions on the location of the video conferencing suite**. For example, it may be based in the court room. Whilst recognising that security and other measures have to be in place, practices which enable a broader scope of locations to be used should be identified and promoted.

Moreover, the establishment of the technical link alone is in itself insufficient. Whilst technology has greatly improved the quality of video testimony, it is arguably not as powerful as 'live' testimony and can be more difficult for a judge or jury to follow. The EU should support **improvements in the way such technologies are applied including research on best methodology for the use and the development of new technologies to improve video link experience**. Allowing vulnerable victims and witnesses to pre-record their evidence ahead of the trial taking place is also an important element. We encourage the EU to support its Member States in developing such systems and to use new technology to allow safe participation of victims in the criminal proceedings. Despite evident benefits of the digital solutions, a **fast change could leave certain groups behind** and reinforce barriers in accessing justice. This could be particularly the case for persons with disabilities and the elderly. Accessible alternatives to digital services and formats, and reasonable accommodations based on the individual needs of the victim should be developed. At the same time, with a proper focus, such digitalisation can in fact improve access to persons with disabilities.

This transformative change should be **supported by clear guidelines and safeguards**. The enhanced use of technology and online solutions also requires specific measures to respect individual rights and to ensure the protection of personal data.

II. Key activities to support the digitalisation of justice in the EU

Digitalisation of court processes is fundamental to providing efficient and equitable justice in the 21st century. VSE acknowledges that it will call for some **adaptability and a willingness to embrace new technology**, but this effort needs to be done both at the national and European level. The Victims' Rights Directive is aimed at enhancing the role of victims in criminal proceedings, a shift in perception of the role of victims in the criminal proceedings is therefore essential.

It is important for professionals in the judicial system to understand what the victims need, what are the gaps, how they can achieve this change, and what are the existing good practices to help them improve. We encourage EU Member States' institutions involved in training the judiciary and, at the European level, the European Judicial Training Network to **promote training** for the judiciary on the rights of victims of crime as human rights and the impact of the criminal proceedings. It is crucial to understand the impact that proceedings can have on a victim, and therefore the role of the judiciary in minimising the stress and trauma of the situation. New technology plays an important role in this regard and justice practitioner must understand the linkages and how to maximise the use of digitalisation for the benefit of victims. Equally, the must be made aware of the limitations and risks, where such exist, to empower them to make balanced and informed decisions on the most appropriate use and situations for the new technologies.

VSE believes that **partnership with the private sector** in the development of the digitalisation of justice is very important. However, **civil society should also be included in this process** in order to make sure that victims' issues and fundamental rights are taken into account with the development of such applications. It is a fundamental flaw in the EU's innovation, research and legislative action if civil society actors are not seen both as potential beneficiaries of the digitalisation of justice but also as contributors to the design of the technology. Victims support services and victims' associations should be consulted and listened to, to ensure that the voices of victims are included in the process and are able to assess the changes.

Exchange of good practice at the European level should also be considered. Professionals learning from other countries in what works and what can be improved will be able to bring change in their own country. The organisation of conferences, webinar, staff exchange can be considered.