

JUSTICE



Sanctions that do justice

Justice for victims
of violent crime
Part III



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Justice for victims of violent crime Part III

Foreword

Imagine you were brutally beaten or sexually assaulted, and someone was later charged with this crime. How would you feel if police officers, defence attorneys, prosecutors and judges barely registered your presence in the proceedings to follow – or even treated you like a nuisance?

It's an experience shared by all too many victims of violent crime. With crime primarily seen as an offence against the state, criminal proceedings are centred around prosecutors as representatives of the state and defendants. Victims risk being overlooked.

But violent crime is, of course, committed against people. It represents a severe violation of victims' dignity. This insight has prompted a shift. Increasingly, victims are seen as rights-holders – who are owed certain responses by the states in which they live. The European Convention on Human Rights, the EU Charter of Fundamental Rights, as well as the Victims' Rights Directive have all contributed to this change. They provide strong bases for victims' rights, including to access justice.

How are these rights playing out in practice? Are victims of violent crime properly seen, informed, empowered and heard? Do they tend to feel that justice has been done? Our four-part report series takes a closer look at these questions, based on conversations with victims, people working for victim support organisations, police officers, attorneys, prosecutors and judges.

This report – Part III – takes a look at sanctions, scrutinising whether the outcomes of proceedings deliver on the promise of justice for victims of violent crime. Taken together, the four reports reveal a wide gap between the law 'on the books' and the law in practice. Many victims still feel marginalised – often more so in countries with laws that accord them extensive rights. This underscores that delivering justice is about more than introducing the right legislation. Changing perceptions of victims' rights – and what these mean for victims' role in criminal justice processes – is equally vital.

We hope this series encourages policymakers to take steps to ensure that victims of violent crime receive the attention, support and consideration to which they are entitled – and so make good on states' promise to provide access to justice.

Michael O'Flaherty
Director

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Glossary

Charter	Charter of Fundamental Rights of the European Union
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
General support organisation	Organisation providing support services to all victims of crime
Istanbul Convention	Council of Europe Convention on preventing and combating violence against women and domestic violence, CETS No.210
Partner violence	A form of gender-based violence directed from a male offender against a female intimate partner or ex-partner with a view to controlling her behaviour; partner violence is interpreted as a consequence and expression of as well as reinforcing an unequal societal distribution of power and status disadvantaging women
Repeat victimisation	A victim's experience of suffering repeatedly human rights violations by criminal conduct
Secondary victimisation	Being treated in the aftermath of a victimisation in a manner that reinforces the experience of not being respected and in control of one's situation
Specialist support organisation	Organisation providing support services to a particular group of victims, for instance to women as victims of partner or domestic violence
Support organisation	Organisation providing support services to victims of crime
Type 1 country	A country that perceives the victim as the person whose rights are violated by the criminal offence and grants comprehensive participation rights ¹
Type 2 country	A country that perceives the victim as having been harmed as a consequence of the criminal offence and grants only limited or no participation rights
Type 3 country	A country that perceives the victim as having suffered damage as a consequence of the criminal offence and grants participation rights to the extent necessary to allow the victim to claim compensation
Support services	Services provided by support organisations to victims of crime, including information, advice as well as practical, financial, emotional and psychological support relevant to the rights of victims and their role in criminal proceedings
Victimisation	A person's experience of suffering a rights violation by a criminal offence; offences against the person are understood as violating individuals' rights protected by criminal law.
Victims' Rights Directive	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
Vulnerable victim	A victim in a disadvantaged societal position in terms of power or social status; the term 'vulnerable' refers to the situations and relations that people find themselves in and does not intend in any way to locate problems in victims.

¹ The concept is explained in more detail in Chapter 3 of Part I of this series of reports.

Key findings and FRA opinions

This report is the third in a series of four reports that, on the basis of evidence collected in the field, assesses criminal justice from the perspective of (adult) victims of violent crime and practitioners working in criminal justice systems.

The interplay of the Victims' Rights Directive and the EU Charter of Fundamental Rights in theory provides victims with a right to participate in criminal proceedings to a considerable extent, and to be empowered to use this right. However, knowledge about how victims' rights are actually applied throughout the EU in practice is scarce. This research aims to help close this gap.

Building on previous research, the European Union Agency for Fundamental Rights (FRA) in 2017 conducted social fieldwork on the situation of rights of victims of violent crime in criminal justice systems in Austria, France, Germany, the Netherlands, Poland, Portugal and the United Kingdom. In the course of this project, FRA's multidisciplinary research network, **FRANET**, interviewed:

- 148 practitioners, including staff of victim support organisations, lawyers advising victims, police, public prosecutors and criminal judges; and
- 83 adult victims of violent crimes, including two interviews with mothers of victims killed in November 2015 in the course of the terrorist attacks in Paris.

This report focusses on how victims view the 'outcome' of criminal proceedings, which is not restricted to the punishment of offenders, but comprises:

- finding the truth,
- convicting the offender,
- sentencing,
- and sanctions, including
- compensation to victims.

Overall, whether victims of violent crime view the results of criminal proceedings as doing justice depends on whether these results capture and mirror the wrong done to them in terms of the victims' human rights violated by offenders. What victims hope for is recognition – that the criminal court, by convicting and sanctioning the offender, attests to the victim's social status as holder of rights that are to be respected by all other members of the legal community.

Sanctions that rehabilitate

A number of victims interviewed in the research expressed a keen interest in sanctions that are shaped to help offenders understand that what they did was wrong and change their behaviour. Victims' preference for sanctions that rehabilitate is consistent with the overarching obligation on Member States to secure the rights of individuals living under their jurisdiction, including by appealing to the ability of individuals to understand a normative order based on human dignity and human rights and to assume responsibility for their conduct. Therefore, attention – of legislators and criminal courts – should be devoted to sanctions that support offenders in developing as accountable persons who respect others as persons and their rights. Such sanctions could include anti-violence (or 'anti-aggression') training,² offenders living in 'semi-freedom' under conditions of supervision and probation,³ offenders compensating victims, and victim-offender mediation following the conviction of the offender.

FRA opinion 1

Member States are encouraged to (further) develop sanctions that have a potential to rehabilitate offenders and to support them in developing as accountable and respectful persons. This includes anti-violence trainings, probation and victim-offender mediation when implemented on the basis of the offender's conviction.

Those Member States that have not done so already are encouraged to consider introducing anti-violence training as a criminal sanction.

Acknowledging offender compensation as part of criminal justice

That offenders should compensate victims of violent crime is part of the effective remedy owed to victims under Article 13 of the ECHR. Where crimes against the person are involved, the Charter is applicable, and so such a remedy is also required under Article 47 of the Charter. Therefore, offender compensation should be dealt with as a matter of criminal, not civil, justice. It is for criminal courts to order compensation and for state authorities to execute the courts' decisions. The

² On anti-aggression training and their effectiveness, see the contributions to the volume edited by Logar et al. (2002); Flood (2015).

³ On probation as a sanction, see Duff (2003); Dearing (2017), pp. 352-355.

expectations expressed by a vast majority of the victims interviewed – that state authorities should ensure that victims are compensated for all the pecuniary and non-pecuniary disadvantages incurred as a consequence of the violent offence – should be recognised as an essential aspect of what doing criminal justice means from the perspective of victims of violent crime. Instead of treating compensation as the victim’s private matter – by referring the victim to a civil court or by requiring the victim to act as a civil party alongside criminal proceedings – the necessary procedural steps to enable the criminal court to award compensation by means of a court decision should be taken *ex officio* in proceedings relating to crimes against the person. Consequently, the enforcement of compensation should be ensured by state authorities and not be left to the victim.

Drawing inspiration from legislation enacted in Poland, consideration should be given to reinforcing compensation as a criminal sanction by adding elements of punitive damages. This could also be a means to relax complexities involved in the calculation of damages.

Criminal courts should decide, within the course of criminal proceedings, on the compensation of victims of crimes against the person. In designing compensation orders, Member States should take into account the experiences gained in other Member States – including the United Kingdom, Poland and Portugal.

The interviews conducted with judges suggest that criminal judges are at times not comfortable with taking decisions on compensation. One way of overcoming this challenge is by enhancing training of criminal judges, enabling them to better understand the civil law basis of restitution and how to measure amounts of compensation. In addition, or alternatively, procedural means could be found to enable a criminal court to draw on the expertise of their civil law colleagues from the same court rather than requiring the victim to instigate civil proceedings next to criminal proceedings.

Efforts should be stepped up to ensure that victims of crimes against the person are informed about the possibility of pursuing compensation from the offender.

FRA opinion 2

As concerns crimes against the person, Member States should recognise compensation as part of justice owed to victims. Avenues should be explored to allow criminal courts, to the widest extent possible, to decide on the compensation of victims of crimes against the person in the framework of criminal proceedings. If necessary, criminal judges should be able to draw on the expertise of judges dealing with civil law cases.

Member States should consider introducing compensation orders issued of the court’s own accord with the victim’s consent. Provisions of substantive law should make it easier for courts to include the moral damage suffered by the victim or an element of punitive damages.

Member States should step up efforts to ensure that victims are informed and advised, in an effective manner, about offender compensation.

Institutions involved in the training of prosecutors and judges should offer training that promotes an understanding of compensation as an element of criminal justice and enables prosecutors and criminal judges to deal with civil law aspects of offender compensation.

Making state compensation work

A main reason for victims not benefiting from state compensation is that relatively few apply for such benefits. The most important reasons for not applying, according to the interviews with victims and practitioners, are:

- Victims not being informed in an effective manner about the possibility to apply for state compensation; this is – across all Member States researched – by far the main reason for victims not applying;
- Lengthy and bureaucratic proceedings, discouraging applications;
- Narrow preconditions that render victims of violent crime ineligible, as was stressed by interviewees in Austria, Germany and Poland; for example, in Austria a victim of domestic violence was denied state compensation because she had ‘only’ suffered a fractured nasal bone.

While currently victims in practice benefit from offender compensation only rarely and with considerable delays, all victims of violent crime should have effective access to swift state compensation paid as an advance to the compensation owed by the offender. As a normal course of events, a victim of violent crime, when reporting to the police, should be informed that they are entitled to offender and state compensation. If they apply for state compensation they should not have to wait for long until they receive such payment.

In criminal proceedings the court should, to the extent that the state has advanced the payment of compensation, order the offender to indemnify the state and, for the rest, pay compensation to the victim.

According to several victims interviewed in the project, making a victim wait for a long time period for payments made by the offender should be avoided. If the offender does not compensate the victim swiftly, the state should step in, advance the compensation due to the victim and make the offender settle their debt to the state. It should be for the state to use its leverage to ensure that payments are made effectively, and not left to victims.

FRA opinion 3

Member States should ensure an effective and unbureaucratic system of state compensation that swiftly grants victims advances covering the compensation they are to receive from offenders.

Where offenders fail to comply with their obligations as defined by the criminal court, the state should step in to compensate the victim on the offender's behalf, entitling the state to recourse against the offender.

Raising awareness of the police, prosecutors and criminal judges of what justice means for victims of crimes against the person

Whether victims interviewed in the project believed that criminal proceedings were successful in doing justice relates to the following factors:

- whether victims experienced the police as committed to investigating carefully and swiftly;
- whether victims sensed that the authorities gave due consideration to their views;
- whether victims felt that the offender's conviction captured correctly the essence of the wrong done to them and accepted the sentence as correctly mirroring the severity of the offence;
- whether sanctions are fit to make offenders understand that what they did to victims was wrong and to, accordingly, reconsider their behaviour and attitudes;
- whether victims were swiftly compensated as one element of righting the wrong done to them.

To be able to consider the rights and concerns of victims of crimes against the person, all practitioners acting in criminal justice systems should be trained to understand the rights and legitimate interests of victims and what doing justice means from their perspective. Findings from this research and other evidence should be taken into account in this process. Such knowledge can help overcome myths of victims as vindictive and irrational, which in turn can help practitioners overcome their resistance to victims' participation in criminal proceedings.

FRA opinion 4

Member States should enhance the training of practitioners involved in criminal justice systems, to enable them to better understand the rights and legitimate interests of victims of crimes against the person.

Introduction: Assessing the results of criminal proceedings as doing justice to victims of violent crime

This publication forms the third part of a series of four reports that, on the basis of evidence collected in the field, assess criminal justice from the perspective of (adult) victims of violent crime and practitioners

working in criminal justice systems (staff members of support organisations, lawyers advising victims, police officers, public prosecutors and criminal judges).

Project on 'Justice for Victims of Violent Crime'

Building on previous research, in 2017, FRA's multidisciplinary research network, **FRANET**, conducted social field-work on the situation of the rights of victims of violent crime in criminal justice systems in Austria, France, Germany, the Netherlands, Poland, Portugal and the United Kingdom. In the course of this project, FRANET interviewed:

- 148 practitioners active in criminal proceedings – staff members of victim support organisations, lawyers advising victims, police officers, prosecutors and criminal judges;
- 83 adult victims of violent crimes, including two interviews with mothers of victims killed in November 2015 in the terrorist attacks in Paris.

Among other aspects, practitioners were asked about their views on the role of victims in criminal proceedings, what can be done to enhance victims' participation, and how they assess victim compensation. Victims were questioned about the information and support they received, their means of actively participating in the proceedings, whether they sensed that their participation made a difference, how content they are with the result of the proceedings in general and with compensation received in particular, and, overall, whether they felt recognised and respected by how their concerns and rights were considered and dealt with in criminal proceedings.

The results of this project are presented in four reports.

- Part I is on 'Victims' rights as standards of criminal justice.' It contextualises the project by sketching the historical development of victims' rights in Europe and by bringing a consistent human rights perspective to the discussion of victims' rights. It clarifies and spells out the human rights standards applied by Parts II to IV in assessing victims' access to justice in the seven Member States researched. The tensions and contradictions that surface throughout this series of reports reflect the current transitional state of criminal justice systems, which are undergoing the difficult passage from authorities geared towards upholding public interests and public order to institutions protecting the human rights of individuals.
- Part II is on procedural justice. It applies the standards of victims' rights in assessing the procedural aspects of criminal justice. Thus, the organisation of this series of reports reflects the distinction between procedural and outcome justice, where 'procedural justice' in general relates to such aspects as the fairness of proceedings, whether all available evidence is taken into account, and whether respect is shown for the parties of the proceedings, their rights and concerns. Hence, this report looks into whether authorities are committed to conducting effective proceedings, whether victims have a voice in and can contribute to the proceedings, as well as whether state actors pay due attention to the contributions made by victims.
- This report – Part III – is on 'sanctions'. It applies the standards of victims' rights in evaluating whether the results of criminal proceedings deliver on the promise of criminal justice to victims of violent crime – by convicting, sentencing and punishing offenders and by ensuring that victims are compensated for the damages incurred as immediate consequences of violent crimes.
- Part IV zooms in on one particular group of victims, namely on women as victims of gender-based violence in general and of domestic partner violence in particular. It analyses the specific meaning of criminal justice to victims of forms of violence that express or reinforce societal discrimination. In addition, while Parts II and III deal exclusively with the right of victims of violent crime to criminal justice, Part IV is concerned with the interplay of justice and a victim's right to protection against repeat victimisation. The situation of women as victims of domestic partner violence is a good example.

The fundamental rights basis of the rights of victims of violent crime

This series of reports is founded on a human rights-based approach to criminal justice. It assumes that victims of violent crime have at least two fundamental rights: a right to justice and a right to protection against repeat victimisation.

- Criminal justice serves to right the wrongs done to victims. If an offender, by committing a violent crime, calls the victim's rights into question, the victim can legitimately expect the legal community to come to the defence of the victim as a person and of the victim's rights. As an effective remedy (Article 13 of the ECHR, Article 47 of the Charter), criminal proceedings assert the victim's rights as much as they preserve the identity of a community of law based on human dignity and human rights. Criminal proceedings confirm the victim's status and rights by effectively identifying, convicting, sentencing, and punishing offenders (outcome aspects of criminal justice) as well as by, over the course of the proceedings, recognising victims, treating them with respect and giving due consideration to their views and concerns throughout the investigation and the court trial (procedural aspects of criminal justice).⁴
- In addition to justice, victims are entitled to protection against repeat victimisation, which forms part of an individual's wider right to security. The fact that a violent crime has been committed begs the question whether the danger that materialised in the offence still exists. Therefore, victims of violent crime have a right to an assessment of any remaining risks of repeat victimisation and to protection measures if such risks are established.

Part I of this series of reports further clarifies the fundamental rights basis of criminal justice as it appears in the case law of the European Court of Human Rights (ECtHR).

Article 13 of the European Convention of Human Rights

Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

⁴ The significance of 'procedural justice' has been consistently brought to the fore and elaborated by Tyler (2006), (2011); Tyler/Blader (2018); Tyler/Trinkner (2018).

The most relevant strand of the ECtHR's case law relates to Article 13 of the European Convention on Human Rights (ECHR). It maintains that, when an individual can argue that their convention rights were severely abused by a violent offender: "Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible, including effective access for the complainant to the investigation procedure."⁵

This formula spans three elements:

- the payment of compensation where appropriate,
- an investigation capable of leading to the identification and punishment of offenders and
- effective access for the victim to the procedure.

The essence of Article 13 of the ECHR is incorporated into EU primary law by the EU Charter of Fundamental Rights ('the Charter'). The Charter is applicable whenever authorities act within the scope of EU secondary law, including prominently the Victims' Rights Directive⁶ and the Compensation Directive.⁷ According to Article 52 of the Charter, Charter rights that correspond to rights under the ECHR are to be interpreted as providing at least the protection granted by the Convention. Hence, Article 47, paragraph 1, of the Charter captures at least the contents of Article 13 of the ECHR.

Article 47 of the EU Charter of Fundamental Rights

Right to an effective remedy and to a fair trial

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.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

⁵ ECtHR, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], No. 47848/08, 17 July 2014, para. 149.

⁶ 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, OJ L 315, 14.11.2012, p. 57.

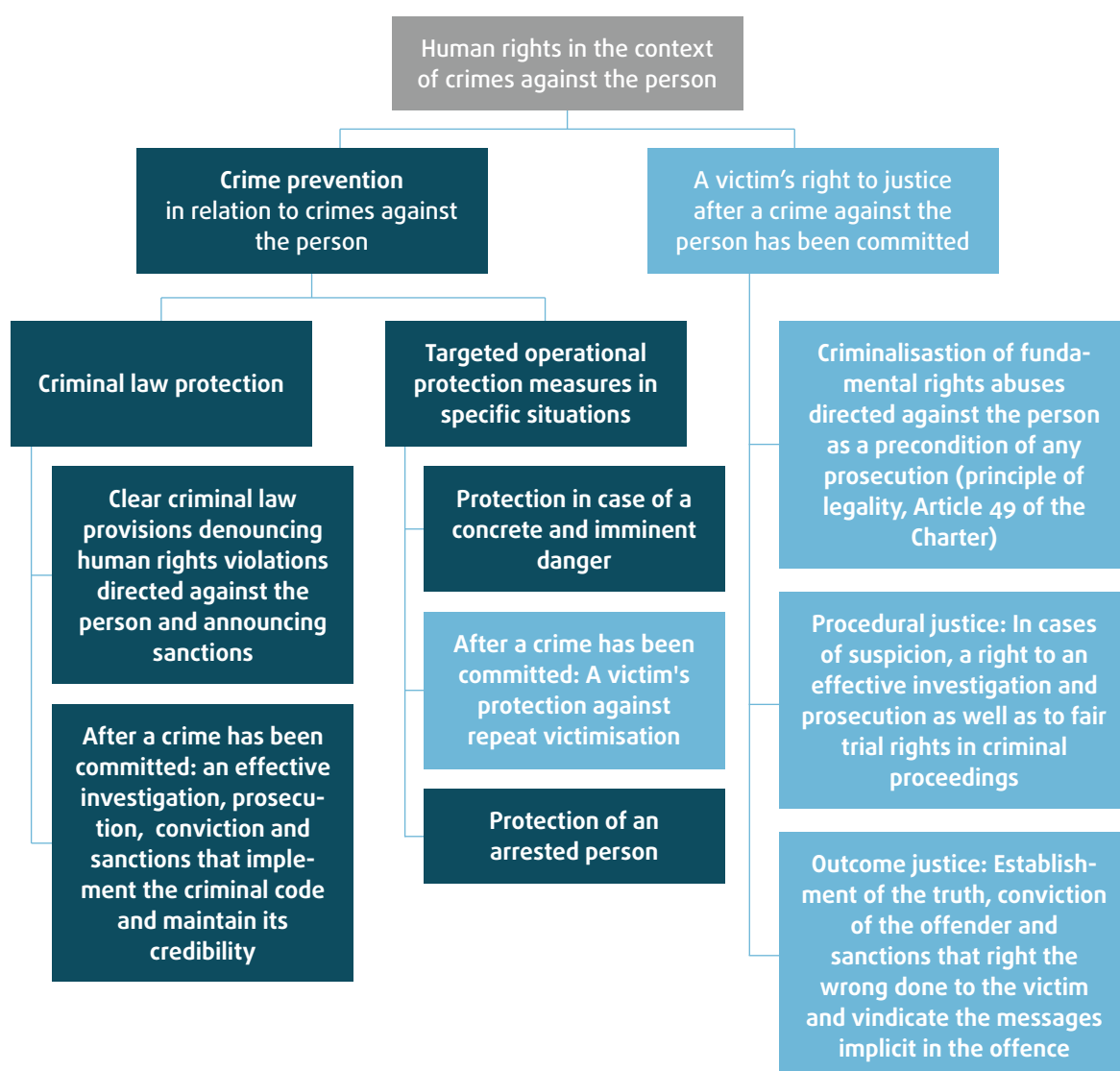
⁷ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6.8.2004, p. 15–18.

It follows that Article 47, paragraph 1, of the Charter grants to victims of violent crime:

- a right to proceedings that aim to identify, convict and punish offenders; and
- a right to be compensated within the criminal proceedings where a victim of violent crime under substantive law is entitled to compensation.

To place the two rights of victims – to protection against repeat victimisation and to justice – in a wider context of the rights of individuals to the protection of their rights against crimes, two strands of rights can be distinguished. The first strand involves protection rights to the *prevention* of future crimes. The second involves a remedial right to justice that reacts to the commission of a crime against the person and aims to *defend* and reassert human rights against their denial – and to minimise the destructive impact of the offence and reconfirm the status of the victim as a person and a holder of rights that are to be respected.

Figure 1: Human rights in the context of crimes against the person



Source: FRA, 2019

In Figure 1, the two specific rights of victims are framed in light blue colour, while the rights to preventive measures to which all persons are equally entitled are coloured dark blue. The diagram shows that criminal proceedings fulfil two functions. Firstly, they preserve the credibility of the condemnation of the human rights violation expressed by the criminal code and of the announcement made that the authorities will not allow offences to pass with impunity; this is the preventive function of criminal proceedings. Secondly, as a matter of justice, they redress the wrong done to the victim, which is the responsive and remedial function of the proceedings. (To further complete the diagram, in addition to the victim's rights to justice, the rights of the offender to recognition and to fair trial rights under Article 6 of the ECHR and Article 48 of the Charter could be added.)

What this report contains

This report explores the outcomes of criminal proceedings that are relevant from the victims' perspective – that offenders are identified and punished, and that compensation is paid where the victim has suffered damage as an immediate consequence of the violent offence and asks for compensation. In so doing, it reflects on the outcome aspects of what doing justice can mean to victims of violent crime.

The general assumption is that 'doing criminal justice' is about asserting the dignity and rights of an individual in response to the violent offence and about restoring the victim as a person and rights-holder. The violent offence calls into question the status of the victim as a member of a community of law and rights and undermines respect for the victim's rights. Criminal justice aims to reassure the victim and restore their status as a rights-holder and person partaking in human dignity. To this end, criminal justice acknowledges the victim as a stakeholder in criminal justice entitled to effectively participate in the proceedings – the procedural aspects of criminal justice – and – in terms of the outcome aspects of criminal justice – to criminal proceedings that achieve their objectives to:

- find the truth and authoritatively establish the facts and circumstances of the offender's conduct;
- convict the offender, thus making it clear that what the offender did wronged the victim and that the offender, not the victim, is to blame for this wrong;
- sentence and punish the offender, thus insisting that the offender contributes their fair share to the costs of maintaining the authority of a social order based on human rights;⁸
- redress the illegitimate consequences of the offence by compensating the damage suffered by the victim and confiscating the illicit profits gained by the offender(s).

Chapter 1 looks into the meaning of establishing the truth and of convicting, sentencing and punishing offenders as perceived by victims of violent crime. Victims are heard on whether they feel that the criminal proceedings in their cases ultimately delivered on the promise of criminal justice.

Chapter 2 deals with victim compensation by the offender and by the state. The evidence gathered in the project demonstrates a state of widespread 'system failure' resulting, in the end, in only few victims actually receiving restitution or compensation. Based on this evidence, this paper argues for an alternative approach to restitution and compensation. These should not – as is the case today – be seen in terms of civil law in the case of restitution, or in terms of administrative law as concerns state compensation. Instead, these should be seen as an element of the redress that offenders and the state owe to victims of violent crime as a matter of criminal justice, in accordance with Article 47 of the Charter.

Chapter 3 looks at whether the interviewed victims' experiences with criminal proceedings left them with the overall sense that justice was done.

⁸ The insight that criminal justice serves to maintain a social order by preventing offenders from exploiting and freeriding on the law-abiding behaviour of others dates back to Morris (1976); in support of Morris, see Murphy (2012), pp. 37-38, 122-123; Dearing (2017), pp. 114-116.

1

Doing justice by identifying and punishing offenders



Victims want to come to terms with their victimisation, to integrate that experience in their biography and, on that basis, to move on. This closure is premised on a number of preconditions. These include that the facts of their victimisation have been established correctly and are recognised by the court; that the offender's behaviour has been marked as a wrong done to the victim as a person and rights-holder; and that, consequently, the state – representing the legal community – has taken action to ensure that the offender will not reoffend and that the victim's rights – as much as the equal rights of all other members of the community – will be respected.

1.1 Establishing the truth

Finding the truth is a significant first step in doing justice.⁹ For victims who struggle to make sense of and come to terms with their victimisation, the court's function of authoritatively establishing the relevant facts of their victimisation is of crucial importance. In the *El-Masri* case, the ECtHR explained:

“Having regard to the parties' observations, [...] the Court also wishes to address another aspect of the inadequate character of the investigation in the present case, namely its impact on the right to the truth regarding the relevant circumstances of the case. [...] The inadequate investigation in the present case deprived the applicant of being informed of what had

happened, including of getting an accurate account of the suffering he had allegedly endured and the role of those responsible for his alleged ordeal. [...] In view of the above considerations, the Court concludes that the summary investigation that has been carried out in this case cannot be regarded as an effective one capable of leading to the identification and punishment of those responsible for the alleged events and of establishing the truth.”¹⁰

As regards what the offender did, the truth found by the court is powerful in overcoming the victim's doubts or confusion, the offender's denial, and, at times, also the reluctance of third parties to acknowledge and remember the victim's encounter with violence.¹¹

“It's not about punishment, I just think it reflects what you have done [...] in the real terms, it wouldn't matter to me what punishment he was given, because it's not about the punishment as such, it's about, 'look what you did'.”
(Victim, United Kingdom)

A victim of rape had to deal with the fact that her case was not prosecuted as the offender was a migrant in an irregular situation of residence and was returned to his country of origin after being apprehended by the police. That the circumstances of her victimisation were never established by a court negatively affected the victim's situation. The victim felt that she had been denied justice as a result of the authorities' failure to establish the truth.

⁹ According to Doak (2008), p. 204, the recent emergence of a right to truth has “begun to percolate traditional understandings about the role of the criminal process in delivering justice for victims”.

¹⁰ ECtHR, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], No. 39630/09, 13 December 2012, paras. 191-193.

¹¹ “After the story has been heard and acknowledged, one can let it go, or unfreeze it. One can unclench.” See Brison (2003), 110.

“It never went to trial. I never knew really what happened and I’ll never understand. I don’t know anything about the whole situation, it was just like it just got swept under the carpet, so I’ll never know. [...] Good that he’s gone, not good that I didn’t get justice for what he’d done.” (Victim, United Kingdom)

1.2 Defending rights and placing responsibility by convicting offenders

The offender’s conviction is an act laden with normative significance, as it authoritatively marks the offender’s behaviour as wrong. It thus attests to the respect owed to the victim’s rights violated by the offender, confirms the victim’s status as a rights-holder, blames the offender for wronging the victim, holds the offender accountable, and by the entirety of this communication invalidates the message sent by the offender and limits the damage done by the offence to the rights and personhood of the victim. If anything, the offender’s conviction is a crucially important step on the victim’s path towards leaving their victimisation behind.¹²

A victim of armed robbery emphasised that it had to be made clear that the offenders could not do this to her and her husband.

“I do not allow that they can hurt people. There was no respect. They had to respect us. [...] they should also respect us for our age. I am old enough to be their grandmother. Therefore, they had to be punished. This is how I think.” (Victim, Portugal)

Over and over again victims express that what matters to them is the wrong done to them and the offender’s responsibility. Therefore, the violent offence must not be allowed to go unchallenged. This is why many victims reported to the police in the first place: they expect that the criminal justice system will acknowledge and object to the offence on their behalf and not allow the offender to get away with it. For victims, the conviction and punishment of the offender is primarily an expression of the significance of the wrong done to them and of the offender’s responsibility.¹³

“The officer [...] explained that I’m not obliged to testify against my husband. But I waived that right and I told them that I want to testify, because enough is enough and he should be punished for what he has done to me.” (Victim, Austria)

“I am going to feel, if it’s a guilty verdict, I’m going to be over the moon, because it’s like me saying, ‘you’ve not got away with this’.” (Victim, United Kingdom)

“What motivated me was for justice to be done...Not only me...I am a victim, but they don’t believe me, they don’t listen to me, that motivated me. I said to myself ‘I will not let him do it’.” (Victim, France)

The eminent importance of the offender’s conviction is indirectly reflected by the observations of a victim imagining that the proceedings could end with a not-proven verdict:

“It’s horrendous ... There’s no closure, there’s no nothing. It’s horrible and I’m dreading getting it, because I still have the messages he sent, I know how they made me feel, I’m at the stage where somebody has to say to him, ‘You can’t do this, it’s wrong’. Until that happens, he’s going to keep on doing this, I know he’s going to keep on doing this. [...] You feel lonely in court and you’re talking about it. I’m at the stage where I need a conviction. I need somebody to say, ‘He’s guilty.’” (Victim, United Kingdom)

This captures in a nutshell what many victims hope for as a fair outcome of criminal proceedings: that the court establishes the facts, tells the offenders that what they did to the victim was wrong, that offenders are held accountable, and that they are brought to reconsider their behaviour. The offender’s conviction and punishment confirms and reinstates the victim as a member of her legal community, who no longer has to “feel lonely in court”.

A rape victim whose case resulted in a not-proven verdict felt that she was denied justice because the jury did not have the courage to acknowledge the facts and to, consequently, convict the offender. She blamed the jury system for this failure.

“You know, people were crying in the jury when I was giving evidence. [...] I couldn’t have answered the questions any better, I couldn’t have been more honest [...] but no one had the guts to actually, you know, ... it’s so stupid, I wish a judge had made the decision, not the jury.” (Victim, United Kingdom)

Victims’ expectations are disappointed if the trial fails to focus on the wrong suffered by the victim but instead deals with some other aspect of the situation. One victim felt that the court was more concerned about the fact that both the victim and the offender had been drunk in daytime. By dealing with the matter as an issue of public order, the court failed to acknowledge the victim as a victim of violence and hence failed to clearly maintain the fundamental distinction between the person wronged and the person accountable.

¹² For an understanding of criminal justice as expressive or communication refer to Hörnle/von Hirsch (1995); Hörnle (2006), (2017); Duff (2001), (2018); Hampton (2007); Hamel (2009); Dearing (2017).

¹³ On the importance of accountability Holder (2018), pp. 136-143.

"[T]he case was more of a judge that wasn't happy with drunken people in the city centre during the day. [...] he was dealing with that as an issue rather than me, I never felt like it was about me, it was two people, drunk, I felt it was belittling and I felt like the victim statement was a waste of time." (Victim, United Kingdom)

As the function of the conviction is to reject the claim, implicit in the violent offence, that the victims' rights must not be respected, it is important that the conviction identifies and acknowledges all the rights violated by the offender and captures truthfully the essence and severity of the wrong done. This is not so much a matter of obtaining a more severe sentence, but of the court being clear as to the victim's rights violated. Hence, in a case where the offender was convicted of aggravated assault and where the victim explicitly assessed the sentence as appropriate, she still complained about the fact that the court had not paid attention to the entire wrong suffered by her, including the threat to her life and the violation of her private sphere.

"I was so angry that someone had broken into my house, gone and got my keys, went to my knife drawer, I said, 'Why aren't you charging him with breaking and entry and with, you know, attempted murder?' That's what I thought he should be charged with, you know, because he put a pillow over my head and he put a knife to my throat, so I said, 'Why aren't you charging him with attempted murder and breaking and entry?'" (Victim, United Kingdom)

Even where victims seemingly criticise the sentence, they may be expressing the sentiment that the court did not take the entire wrong into account.

"I would have preferred a more severe punishment, but if they had realistically assessed ... They only included in the indictment that he had followed me, pestered [...] but the police did not include [...] these denunciations, that they had influence on my life, disrupted the organisation of my life [...] Writing to my daughter's school [...] that I was a liar, thief, that I stole from him, that I married to obtain the residence card." (Victim, Poland)

A victim stressed the fact that the offender had acted in an official capacity as a police officer and that citizens must be able to rely on the police as securing societal peace.

"[T]his is not just a citizen who is there. It is a citizen who is in uniform and doing his job to ensure that people can be there and interact with each other in security. We are there to ensure that." (Victim, Portugal)

Victims of domestic partner violence often felt that the court only looked at one violent incident in isolation without paying attention to the wider extent of their victimisation, including the fact that they had to live in a situation of constant fear and helplessness over a longer time period. A woman who had lived with her seven children in a severely abusive relationship for more than thirteen years commented:

"I think that sentence did not make any sense. 4 years and 8 months for what? Because he beat me? What about the psychological and the physical damages? Have you seen my mouth? It was him, it is all him." (Victim, Portugal)

A victim of racist violence criticised that the element of racial discrimination was not taken into account by the police and the ensuing proceedings. By dealing with the offence as mere hooliganism and ignoring the hate motivation, the authorities turned a blind eye to the racist message conveyed by the offender.

"[I]t is an attempt to push the problem away and look for the easiest solutions." (Victim, Poland)

The significance of the offender's conviction was also reflected in victims' critical views on informal, alternative, out-of-court settlements, such as victim-offender mediation, as falling short of doing justice to them and of formally and authoritatively establishing the facts and acknowledging the wrong done to the victims. Until the offender is found guilty by a court, the offender is presumed innocent and state authorities fail to establish and recognise the wrong done to the victim.¹⁴

If the offender's conviction is meant to respond to the offence, this should happen in due time. As victims view criminal justice as intervening in a current crisis, for them the functioning of the justice system is impaired if proceedings take too long. In this vein, a victim observes:

"It's a question of immediacy, isn't it? If I look at it from a criminological perspective: If this guy is sentenced to a penalty of € 500 four or five years later [after the incident] this, in a sense, doesn't have any punishing effect, does it?" (Victim, Germany)

¹⁴ These concerns do not speak against conducting victim-offender-mediation after the offender's conviction. See Shapland/Robinson/Sorsby (2011); Kilchling (2017).

1.3 Sentencing, punishing, and rehabilitating offenders

For many interviewed victims, sentences were important, and one main function of the sentence was to quantify and highlight the severity of the wrong done to them. This is not to say that victims are interested in severe sentences. A member of a support organisation observed in this respect:

“Also in terms of criminal policy [...] penalties are increased in the context of violence, but this does not benefit victims, [...] it all goes in the direction of satisfying the public, these are all populist measures [...] that doesn't help the victims, [...] every measure that is adopted to make it more difficult for the offenders to rehabilitate [...] it goes hand in hand with the situation of the victims.” (Support organisation, Austria)

Victims will be critical about a sentence if they believe that it fails to reflect the significance of the wrong done to them – for example, in comparison with other sentences. Thus, when asked about how she assessed the outcome of the proceedings, a victim of domestic partner violence noted:

“The accused was found guilty. He was sentenced to a fine of PLN 1,000 and ordered to pay PLN 70 of court costs. Yesterday, I heard about a sentence for beating a dog: a prison term of two years and a fine of PLN 5,000. Excuse me, how does it compare to [beating] a human being?” (Victim, Poland)

If no sentence is passed, this can be understood as contradicting or even invalidating the conviction. Hence, in a case where the offender had been convicted but the court had neither imposed a sentence nor granted the compensation requested by the victim, the victim felt that the offender had not been prosecuted effectively. Similarly, several victims took issues with suspended sentences, which they experienced as meaning that nothing had happened. After an offender found guilty of inflicting grievous bodily harm was given a two-year suspended sentence and community service, the victim believed that this sentence would not make a difference as it failed to convey an appropriate response to the wrong done by the offender, highlighted in the victim's impact statement.

“I felt a bit daft in a way. It was just like, just me saying, 'look how worse off I am now' [...] and then he walks out, so it's all negative [...] I ended up seeing them all walking out of court jumping up and down [...] I felt let down and disappointed, and I'm adjusting to a new life, I've got all the problems that go along with that [...] I'd rather not have that disappointment in my life.” (Victim, United Kingdom)

From the victim's perspective, by allowing the offender to walk out of the court building – “jumping up and down” – the court was being generous at the expense of the victim's rights.

To a large extent, the expectations voiced by victims circled around their hope that offenders could be brought to reflect on what they had done and motivated to refrain from further offending. Sentencing, then, is about conveying a message to offenders that will make them rethink their behaviour. Asked about why she reported the violent offence to the police, a victim, interviewed in the Netherlands, noted that she hopes that the offender learned something from the proceedings as she believes that something good exists in every human being. Thus, convicting and sentencing the offender appeals to offenders' moral sense of justice and their ability to reconsider and change their behaviour and attitudes. It is about teaching the offender a lesson.

“I think the verdict was enough to make her realise that she can't do ..., it was just enough for her to know that she was in the wrong and not to do it again. I think it was enough, it wasn't too lenient, it wasn't too harsh.” (Victim, United Kingdom)

In this vein, punishment should support offenders in realising what they have done. A hate crime victim commented:

“I was interested [...] in sentencing him to some community service for an organisation working with xenophobia. For instance, make him clean a Jewish cemetery that really needs cleaning.” (Victim, Poland)

A victim at a court trial suggested to the judge that the offender should be required to participate in anti-aggression training. The victim felt that this could support the offender in overcoming her aggressive behaviour. Remarkably, the court followed her suggestion.

“I want to feel safe here, and for me it's, in the first place, not about the fact that she gets a sentence. And I also told the judge so. Especially, because there is also a little child in the family, that was also a little bit of a motivation, she is still very young, and she can still learn how to handle something like this, and if she doesn't do it of her accord, then a judge can impose an anti-aggression training [...] somehow also as a help for her to first reflect, hey, what am I actually doing, right?” (Victim, Germany)

A victim of robbery used her impact statement to advise the offenders on how to change their lifestyle in a way that would enable them to abide by the law.

“I said that, in that report, that they should not rob old people but that they should deliver some newspapers if they needed the money.” (Victim, Netherlands)

Victims' expectations that the offender should change are expressed when victims vaguely hope for some "therapy" or "treatment". For instance, a victim of a long-lasting violent relationship believed that imprisoning the offender would not help much and, in spite of a prison sentence, would have wished for some "therapy".

"What I wanted the court to do was [...] oblige him to do a psychiatric treatment [...] I wanted them to do something different. I don't think that putting him in jail will be the solution. I think that detaining him for such a long time will not be of any use." (Victim, Portugal)

Victims' hopes were also expressed by a victim of domestic partner violence in Poland who explained:

"[T]he whole point of this was to have him changed, to make him stop being like that, I didn't want him to lose custody of children, I didn't want to leave him, I wanted to mend this somehow." (Victim, Poland)

While in theory a right to justice and a right to protection against repeat victimisation can be isolated as two fundamental rights of victims of violent crime, the stage where the court decides on how the offender is to be sanctioned marks a point where these two rights flow into one another: victims expect that the court, in righting the wrong suffered by the victim, will also consider the victim's right to be protected against repeat victimisation. After all, both rights flow from the victim's entitlement to a state's best endeavours to secure the rights of individuals living under its jurisdiction. Hence, criminal sanctions that motivate offenders to respect the rights of others and to refrain from reoffending match the logic of a criminal justice system that is constructed to secure the rights of individuals.¹⁵

In conclusion

For victims, outcome justice is less about suffering being inflicted on the offender in order to 'get even'. Instead, they are more interested in sanctions that reflect the wrong done to them and their rights violated by the

offender. The court, by rebuking the offender for displaying contempt of the victim's rights and dignity, confirms the victim's status as a member of their legal community and a holder of rights and thus clears the victim of the offender's imposition of a degraded status.¹⁶ The denunciation of the crime expresses recognition of the victim's rights and of the victim as a person and rights-holder. Thus, the false message by the offender is defeated and the victim is restored as a full member of their legal community and supported in leaving behind the humiliation and degradation implicit in the violent crime as well as feelings of their own guilt and shame.

However, this is more about the severity of the punishment and says little about the content and design of the sanctions imposed. In this respect, victims interviewed in the research expressed a keen interest in sanctions that are shaped to support offenders in understanding that what they did was wrong and in changing their behaviour. Victims' preference for sanctions that rehabilitate is consistent with the overarching obligation on Member States to secure the rights of individuals living under their jurisdiction, including by appealing to the ability of individuals to understand a normative order based on human dignity and human rights and to assume responsibility for their conduct.

Therefore, attention should be devoted to sanctions that support offenders in developing as accountable persons who can abide by common standards of mutual respect of others as persons and of their rights, such as anti-violence (or 'anti-aggression') training¹⁷ and offenders living in 'semi-freedom' under conditions of supervision and probation.¹⁸ Victim-offender mediation, implemented after the conviction of the offender, can also be an appropriate and meaningful sanction from the perspective of both the offender understanding the wrong done to the victim and the victim experiencing that the offender understands and accepts responsibility.

¹⁵ On 'constructive' criminal sanctions serving the offender's formation, see Hampton (1984), Duff (2003).

¹⁶ On the significance of the victim's vindication, see Hampton (1992); Herman (2005); Murphy (2011), Dearing (2017), pp. 336-347.

¹⁷ On anti-aggression training and their effectiveness, see the contributions to the volume edited by Logar et al. (2002); Flood (2015).

¹⁸ On probation as a sanction, see Duff (2003); Dearing (2017), pp. 352-355.

2

Doing justice by compensating victims



Compensation¹⁹ is owed to the victim of violent crime as part of the effective remedy to which they are entitled under Article 13 of the ECHR and, where applicable, also under Article 47 of the Charter. Primarily, it is the offender who owes compensation to the victim. However, as has been explained in the Part I report, given that the state is tasked with securing and protecting the rights of individuals living under its jurisdiction against violent offences, the state incurs a form of guarantor liability. Hence the state faces a two-fold duty. Firstly, to see to it that the offender is held and encouraged to pay compensation to the victim; secondly, to the extent that the state cannot achieve this result swiftly or comprehensively, to step in and pay compensation instead of or as an advance to compensation paid by the offender. The victim should not have to make procedural efforts in order to obtain or enforce a court decision on their compensation.

In instances of violent offences, the victim's right to compensation under Article 13 of the ECHR and Article 47 of the Charter encompasses in principle a right to non-pecuniary damages. In the case of *Kontrová v. Slovakia*, which concerned a male individual's violence directed against his wife and children, the ECtHR found that the wife "should have been able to apply for compensation for the non-pecuniary damage suffered by herself and her children in connection with the children's death".²⁰

2.1 Offender compensation within criminal proceedings

According to Article 16 of the Victims' Rights Directive,²¹ all victims of crime have a right to obtain a decision on compensation by the offender in the course of criminal proceedings, within a reasonable time. While, according to the directive, Member States are free to provide in their legislation for such a decision to be made in other legal proceedings, as concerns specifically victims of crimes against the person, the Victims' Rights Directive is to be read and applied in light of the EU Charter of Fundamental Rights, which in Article 47 grants victims of crimes against the person a right to compensation as part of their right to an effective remedy.²² Therefore, victims of crimes against the person, including victims of violent crimes, can legitimately expect to be compensated within the framework of criminal proceedings. This is consistent with victims' expectations and views on the matter.

2.1.1 Offender compensation as part of criminal justice

In the course of the interviews, victims were asked whether they agree with the statement that "Criminal courts should ensure that victims receive compensation from the offender." Of the 79 victims who were asked this question, 60 either agreed or even strongly agreed with this statement. Only six disagreed – one

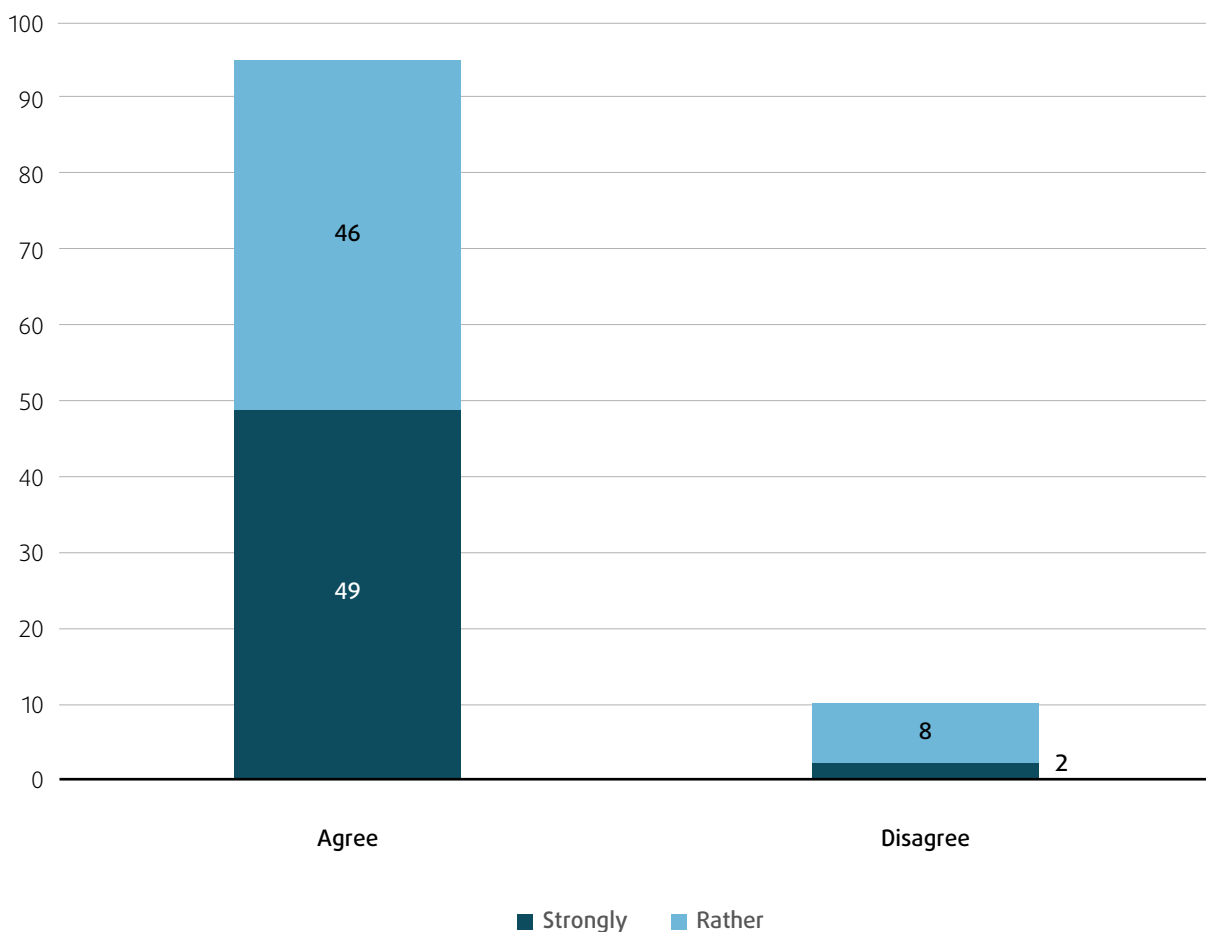
19 In drafting this chapter, FRA drew inspiration from participating in the preparation of the report of Joëlle Milquet, Special Adviser to President Juncker on compensation for victims of crime, entitled "Strengthening victims' rights: from compensation to reparation" and published on 11 March 2019. See European Commission, [Statement by Commissioner Jourová on European Day for Victims of Crime](#), 22 February 2018.

20 ECtHR, *Kontrová v. Slovakia*, No. 7510/04, 31 May 2007, para. 65.

21 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, OJ L 315, 14.11.2012, p. 57.

22 This is explained in more detail in Section 2.2 of Part I of this series of reports.

Figure 2: Victims agreeing/disagreeing with the statement: ‘Criminal courts should ensure that victims receive compensation from the offender’ (%)



Note: N=63.
Source: FRA, 2019

strongly – and 13 answered “Don’t know”.²³ Hence there is, across the Member States researched, a strong consensus of victims on the matter: compensation paid by the offender is part of what victims expect of criminal justice.

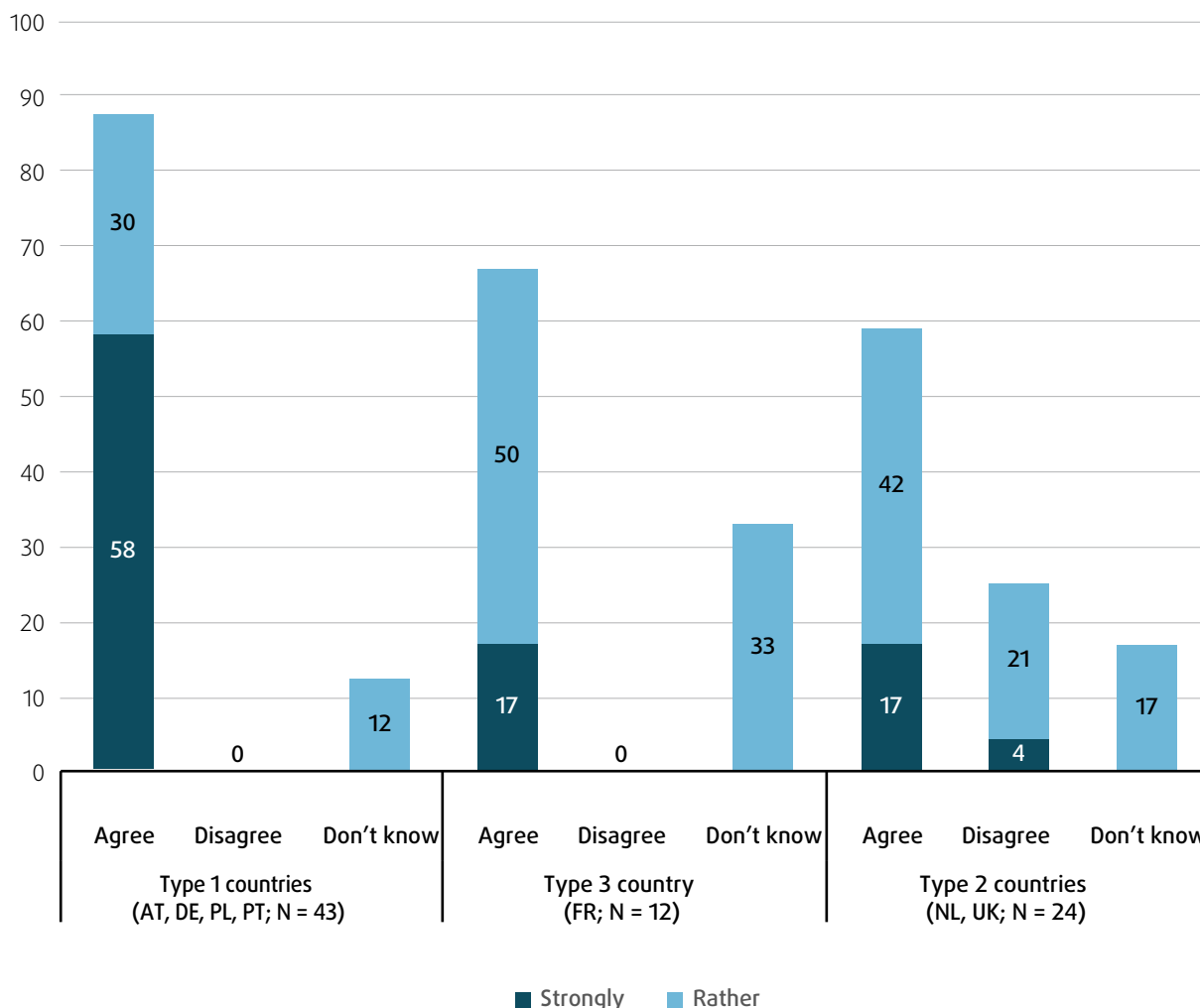
In spite of this strong consensus, there are differences. Strikingly, these clearly depend on the type of country involved.²⁴ Specifically, more victims from type 1 countries maintain that criminal courts should ensure that victims receive compensation from the offender than do victims from type 2 and type 3 countries. This becomes particularly clear from the number of victims

strongly agreeing that courts should ensure offender compensation. In type 2 and type 3 countries, 17 % of respondents strongly agree that victims should be compensated as a result of the criminal proceedings. Meanwhile, 58 % of the victims interviewed in type 1 countries do so. This pronounced agreement reflects victims’ strong expectation that courts ensure that they are compensated by the offender. What this indicates is that, overall, attitudes of victims from type 1 countries are more demanding compared to the expectations of victims from type 2 and type 3 countries. In particular, victims in type 2 countries expect less of criminal courts in terms of justice for victims.

23 Readers should be aware that these small numbers of interviewees are not representative and do not allow for generalisations.

24 The classification of countries in terms of how victims are conceptualised in legislation is explained in Chapter 3 of Part I of this report series.

Figure 3: Victims demanding that courts ensure compensation (%)



Source: FRA, 2019

Victims' views on offender compensation as part of what can be expected as a result of criminal proceedings do correspond to what Article 13 of the ECHR and Article 47 of the Charter grant to victims of violent crime. However, at the same time, victims' legitimate expectations contrast with reality, which falls short of meeting these targets.

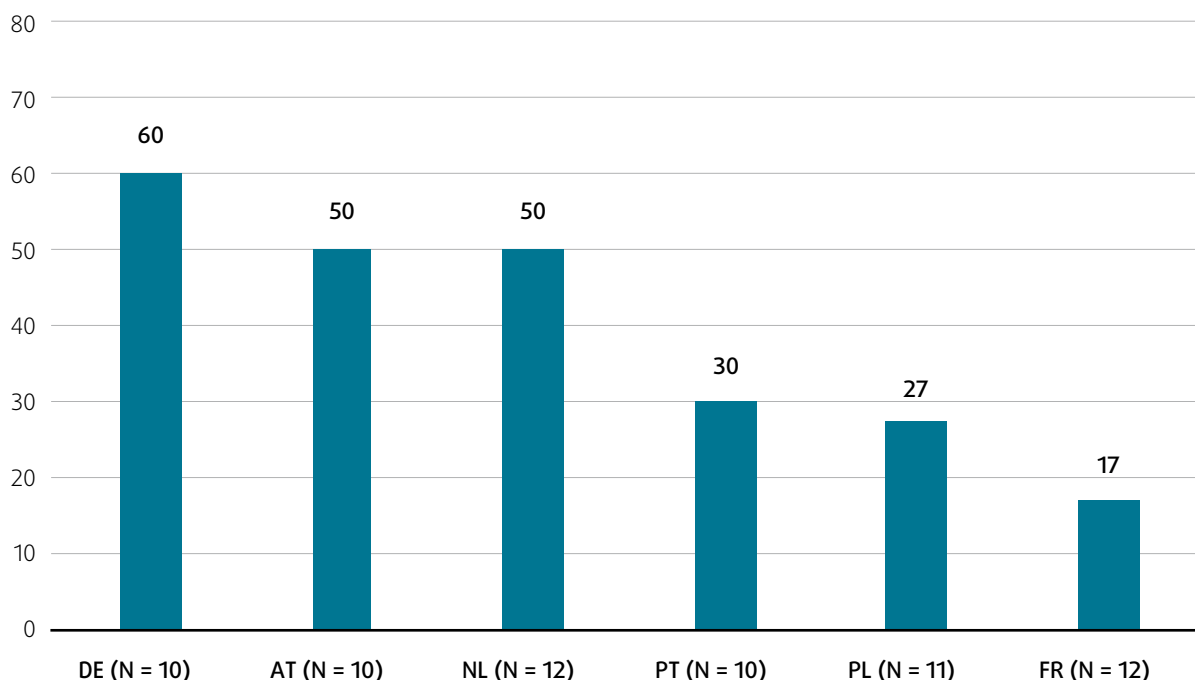
2.1.2 Victims claiming offender compensation in criminal proceedings

In spite of victims' belief that criminal courts should ensure that victims are compensated, only a minority of victims entered a claim for damages in criminal proceedings.

The main reasons preventing victims from applying for offender compensation in criminal proceedings, according to the interviews with victims and practitioners, were:

- Across the Member States researched, many victims reported that they had not been informed about their right to claim offender compensation within the framework of the criminal proceedings; of the victims who did apply, many were represented by lawyers throughout the proceedings.
- Some victims did not apply because they assumed that their claims would, for various reasons, not be successful – for instance, because they were not in a position to demonstrate their damages or because the offender did not have the means to pay compensation.

As with other types of information to be provided by the police in other contexts, it appears that either victims are not informed, or they are not informed in an effective manner. In Poland it was observed that information on offender compensation is covered by the letter of rights handed to victims at their first encounter with the police. But even if victims were to

Figure 4: Claims for offender compensation in criminal proceedings (%)

Source: FRA, 2019

understand at this stage that they have this right, it is likely that they would not remember once the proceedings reach the trial phase, which is when they would have to request compensation.

A particular case is the situation in France. Of the 12 victims of violence interviewed in this project, only two filed claims for compensation in the criminal proceedings. These two were represented by lawyers. Hence, of the victims interviewed, the number of victims claiming offender compensation in France is lower than in any other country researched – except for the United Kingdom, where the law does not allow victims to claim compensation in criminal proceedings. In France, except for the two victims who were advised and represented by a lawyer, victims were not informed about their right to claim compensation from the offender in the framework of criminal proceedings. While the numbers of interviews conducted in France are too small to allow for generalisations, it appears that all practitioners who had a view on the matter reported that obligations to inform victims of their rights do not cover the victim's right to claim compensation in criminal proceedings. Hence this information is not provided 'automatically'. Police officers maintained that such information is provided where "useful" or "justified" or if the victim asks for it. Hence it is likely that the low percentage of victims claiming compensation in criminal proceedings in France is a consequence of the fact that victims are not systematically informed about their right to claim compensation in criminal proceedings.

It appears that the two mothers of victims of terrorism interviewed in the project were informed that they would in any event receive state compensation. However, by not entering a claim for damages in the criminal proceedings, they failed to assert their right to act as civil parties in those proceedings – an option in France's *partie civile*-system (which is explained in more detail in Part I of this report series). Thus, they effectively renounced their participation rights. It is worth noting that a majority of practitioners interviewed in France maintained that the police routinely inform victims, at the time of the victims' reporting, about their right to ask for state compensation. However, by informing victims only about state, and not about offender compensation, victims are systematically shifted away from active participation in criminal proceedings. This is another indication of the crucial significance of 'information policies' in enabling victims to act on their rights or preventing them from doing so. In addition, it suggests that the police are not interested in enabling victims to act as a party to the proceedings.

The finding that only a small minority of victims in France knew about and acted on their right to claim compensation in criminal proceedings could point to yet another example of a significant discrepancy between law in the books and law in practice. In addition, this finding sits uncomfortably with practitioners' perception, as voiced in the interviews, of the victim primarily acting as a civil party and of criminal courts as regularly deciding on civil-law-based compensation claims. This

could indicate that the traditional concept of the civil party model orients perceptions more than actions and thus contributes to concealing the fact that, in the reality of criminal proceedings in France, many victims are, in the end, mainly witnesses.²⁵

By contrast, in Germany, six of the ten victims interviewed submitted compensation claims within the criminal proceedings, and three victims had already received payments at the time of the interviews. (In the fourth case, an appeal was pending; in the fifth, the offender was economically unable to pay; and in the sixth case, the offender was not found guilty.) This could indicate that offender compensation in Germany is somewhat better than its reputation.²⁶ Still, two of the ten victims had not been informed about the possibility to ask for offender compensation in ancillary proceedings.

In Poland and Portugal, legislative reforms were recently enacted to increase the number of cases where criminal courts decide on offender compensation. These reforms gradually detached offender compensation from its civil-law basis and converted it into an instrument of criminal-law based sentencing, similar to the model existing in the United Kingdom. Thus, the burden on victims to act as civil parties was alleviated in both countries.

In Portugal, in addition to the victim, the public prosecutor can request a decision on compensation to the victim. Moreover, in certain cases the court can – and in domestic violence cases, according to Article 21 of Law 112/2009, must – order compensation on its own initiative, conditional only on the victim not objecting to such a decision. Of the ten victims interviewed in Portugal, only three had applied for offender compensation; in at least three cases, the court ordered compensation to be paid to victims even though no such claim was pending before it.

Interviewee: “I didn’t ask the judge for any compensation. [...] The judge thought I should [...] she ordered € 5,000 for me and € 4,000 for my daughter. [...]”

Interviewer: “The judge decreed it, right?”

Interviewee: “Yes, she did. [...] It was great, and that’s it! It was great because I had never mentioned any compensation and I think this judge gave the right sentence for me. It was a correct sentence.” (Victim, Portugal)

While compensation orders enhance victims’ satisfaction, some victims interviewed in Portugal complained about how much time passed before they actually received the amount granted, if at all. Hence, the effectiveness of these orders would need to be further explored.

In addition, in responding to particularly severe and complex forms of victimisation, including abusive relationships, victims may not view compensation as an appropriate form of redress.

“Do you think that € 3,000 pays for what he did to me for 14 years? [...] And what about the psychological damage done to my children? Will it compensate? It doesn’t. My son is already in psychiatry and he is 10 years old [...] Do you think that the money will pay for the happiness and the physical well-being of my children? Things will never be the same.” (Victim, Portugal)

In Poland, substantive criminal law provides a basis for adjudicating offender compensation (in Articles 46 and 47 of the Polish Criminal Code). The victim no longer has to decide at the beginning of proceedings whether to act as civil party, but can file a motion for compensation any time during the proceedings. In addition, if calculating the amount owed to the victim as compensation under substantive civil law provisions is difficult, the criminal court can award as just satisfaction an amount of up to PLN 200,000. This can take the form of punitive damages. It also can, in cases where the victim has been killed, be ordered in favour of a victim’s close relative; and in other instances also to the benefit of a public fund serving the interests of victims. It has been observed that courts ordering punitive damages in the framework of criminal proceedings could be preferable to civil courts adjudicating punitive damages because criminal procedures entail the legal safeguards needed to legitimise punitive reactions of any kind.²⁷

Still, of the 11 victims interviewed in Poland, only 2 had applied for compensation (and one victim stated that he would apply for compensation). Professionals assessed the effectiveness of the system as fairly limited – partly due to victims not being informed in an effective manner, and partly due to a perception of the regulations as overly restrictive or complicated. One victim reported that he had filed a motion for compensation, but that this had not been dealt with by the court. Another victim had been advised by her lawyer not to demand compensation as her claims were likely not to be taken into account by the court.

²⁵ These findings confirm previous research cautioning that the French civil party model in theory offers the victim compensation from the offender and participation rights, while “in reality it offers the victim more false hope than promise”, Goodey (2002), p. 30. As concerns the limited effectiveness of enforcement of compensation, see Brienen/Högen (2000), pp. 338-340.

²⁶ The significance of offender compensation in German criminal proceedings is usually rated as marginal, see e.g. Weigend (2012), p. 35.

²⁷ Koziol (2009), p. 306.

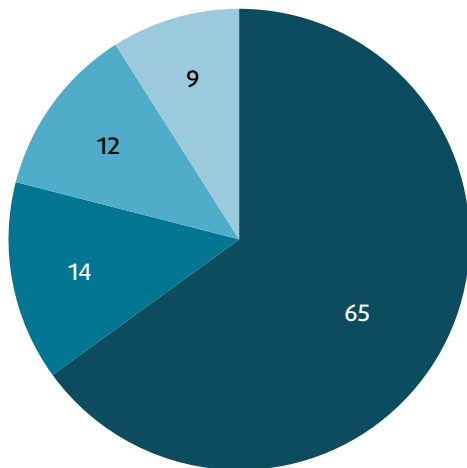
2.1.3 Victims being awarded offender compensation

Practitioners were asked “As concerns proceedings in cases of violent crimes and judging by your practical experiences, how often does the criminal court adjudicate on the victim’s civil law claims?” To respond they could choose between “often or very often”, “occasionally” and “only in exceptional cases or not at all”. As police officers were not asked and staff members of support organisations often lacked robust knowledge on the matter, here the responses from the judiciary and from lawyers advising victims are shown.

Overall, some 2 in 3 interviewees stated that judgments on restitution are passed often or very often. However, there exist significant differences between Member States. While an overwhelming majority of practitioners interviewed in Austria, France or Portugal asserted that such decisions are taken “often or very often”, in Germany the majority of practitioners indicated that this occurs only “occasionally”.

From the interviews conducted with victims and practitioners, some challenges emerge:

Figure 5: Members of the judiciary and lawyers assessing how often criminal courts adjudicate the victim's civil law claims (%)



- Often or very often
- Occasionally
- Only in exceptional cases or not at all
- Don't know

Note: N=78.
Source: FRA, 2019

- In several countries, including Austria, Germany and Poland, members of the judiciary displayed reservations, doubts and ambivalence about their civil law functions.

“It is difficult to strike a balance between the fact that criminal proceedings do not serve to determine compensation claims – and should not be randomly extended – and the fact that criminal proceedings should respect victims’ rights in an appropriate manner.” (Judge, Austria)

“[T]here are judges who order an expert opinion and a doctor then assesses the degree of pain, and the judge then grants restitution accordingly. However, there are also other judges who say: “You get € 100 and for the rest – I am not in charge, you need to get that elsewhere. Usually, the latter is the case, as the criminal judges do not feel responsible for ‘civil court issues’, they do not want to deal with this, they are not interested in this.” (Lawyer, Austria)

- If they do decide on civil law claims, criminal courts in Austria only grant part of the compensation or a symbolic amount and for the rest leave it to victims to clarify the entire amount of compensation due to them in ensuing civil proceedings, thus frustrating victims’ legitimate expectation to be spared a second court procedure.
- It appears that amounts granted were at times minor or covered only material damage. Also, courts denied compensation for a lack of documentation of the expenses. For example, a victim of domestic violence, interviewed in Portugal, was denied the costs of repairing the entrance door to her house, which the offender had destroyed, because she had not kept the invoice.

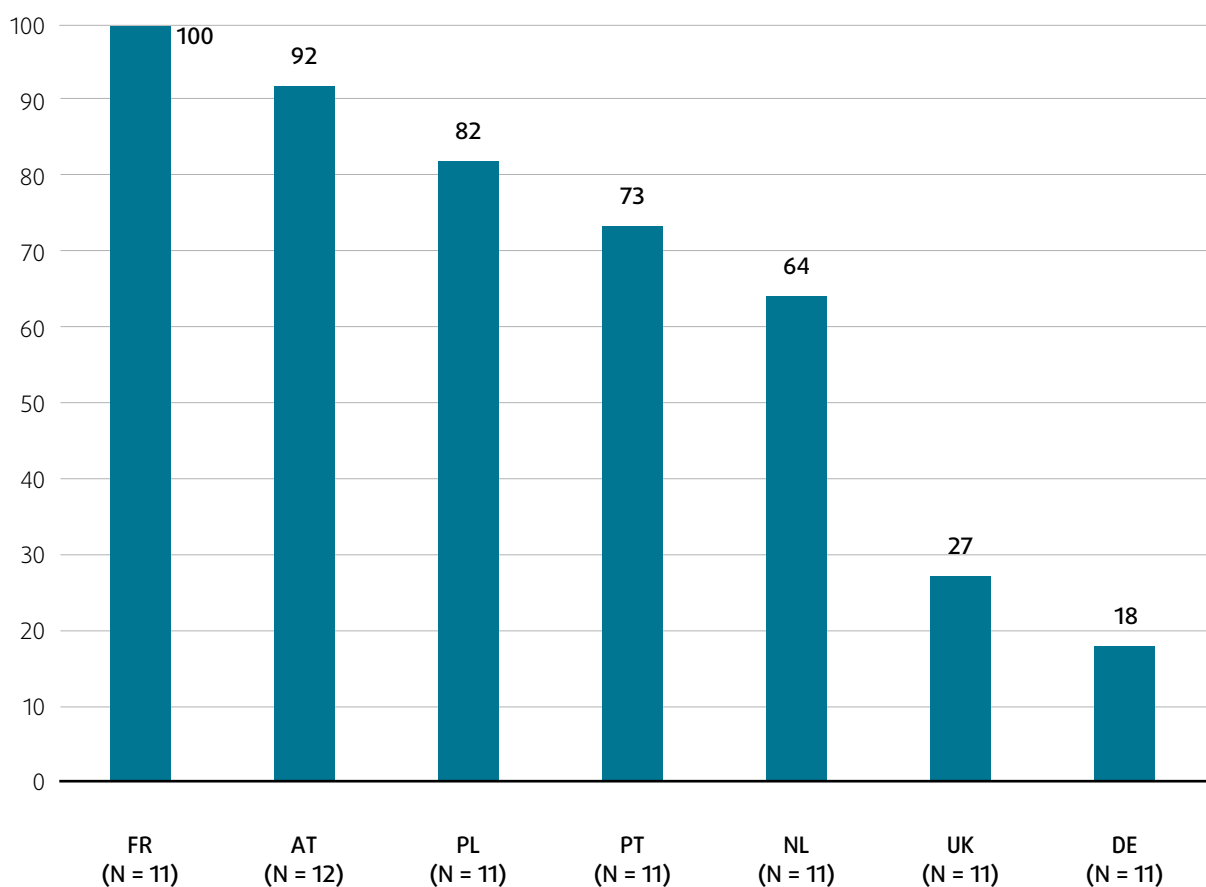
It appears that criminal judges are at times not comfortable with having to take decisions on civil law claims. It was maintained that regulations in this area are complicated and that criminal judges lack knowledge of and experience in civil law. Asked about adjudicating the victim’s civil law claims, judges in Germany and Poland maintained:

“I find it confusing and it has little to do with our profession as criminal law judges.” (Judge, Germany)

“Even in simple cases, where it is easy to award compensation, there is this terrible Article 46 of the Criminal Code involving civil law issues of interest, postponements. These are difficult things, burdened with a risk of mistake. We don’t deal with them on a daily basis.” (Judge, Poland)

As criminal judges in Austria are not confident in their civil law expertise, they will only adjudicate part of the compensation and, for the rest, leave it to the victim to turn to a civil court. From the victim’s perspective,

Figure 6: Members of the judiciary and lawyers asserting that criminal courts adjudicate the victim's civil law claims 'often' or 'very often', by country (%)



Note: N=78.

Source: FRA, 2019

this approach is far from satisfactory. As practitioners pointed out, the ensuing civil proceedings are time-consuming and burdensome; victims will not have any assistance unless they pay for a lawyer; and they bear the risk of having to pay for the costs of the proceedings. Hence, criminal courts' reluctance to pass a comprehensive and concluding judgment on victims' compensation claims renders adhesive proceedings unattractive.

A victim interviewed in the Netherlands reported that the court had denied offender compensation on the basis that the victim would be entitled to state compensation. This raises the question whether compensation should primarily be paid by the offender or by the state. From a fundamental rights perspective, compensation forms part of the redress owed to the victim by the offender. Hence, offender compensation should have priority; state compensation serves as an advance payment for the state to recover from the offender as far as economically feasible.

A specific situation exists in the United Kingdom, which – unlike the vast majority of EU Member States – does not allow victims to act as a civil party to the criminal proceedings. Instead, offenders can be ordered by the court to pay compensation to victims as part of the sentence. Therefore, the police are expected to assess the damages suffered by victims and complete a 'compensation form', which contains all the information needed by the Crown Prosecution Service to apply for a compensation order, which can be issued by the court upon the conviction of the offender.²⁸

The interviews conducted with practitioners suggest that, in practice, criminal courts only occasionally issue compensation orders – one reason being that a compensation order must take the defendant's means into account. In severe cases, where it is likely that the offender faces a prison sentence, courts often assume that offenders do not have the financial means to allow an order to be made.

²⁸ On compensation orders, see Goodey (2002), pp. 22-24.

The interviews conducted with victims in the United Kingdom revealed a general lack of knowledge among interviewees about the possibility of asking for compensation in criminal proceedings. In fact, not all practitioners interviewed in the United Kingdom knew about the possibility of a compensation order being awarded as part of criminal proceedings. Not surprisingly, three quarters of interviewees did not receive any restitution from the offender. In addition, the two victims who received restitution had not been aware that it was a possibility prior to it being awarded by the court, and neither were satisfied with it. One victim was awarded £ 5,000 to be paid in monthly instalments of £ 300 – but thought that this amount was not significant enough to be anything more than an inconvenience to the offender.

Offenders not having the financial means to compensate victims was a recurring theme in several Member States. In Poland, a judge explained that the bleak prospects discourage some victims from claiming compensation, while others do insist.

“People ask me: is it going to help? I say, I doubt it [...] imprisonment for a couple of years, the accused brought from prison. It’s obvious there’s no chance. When I put it this way, some of them withdraw. Others are firm in their stance: I want him to give it back. But it’s only a passage in a judgment. No problem, I can order him to pay.” (Judge, Poland)

Victims interviewed in the United Kingdom claimed that the court should not only reach a final decision on the victim’s compensation claims, but advance the payment of compensation and then use its leverage to recover the payment from the offender.

“[T]hey can take as long as they like to pay it really, it’s just ridiculous [...] The court should pay it and charge them [...] it might cost the government a little bit more, but I think they’d get their money back straight away.” (Victim, United Kingdom)

If the offender is ordered to pay to the victim in instalments, payments can drag on.

“In this country, it is not worth it. Even if I had asked for compensation, my grandchildren would probably have the right to get it.” (Victim, Portugal)

A judge interviewed in France indicated that suspended sentences are used to put pressure on the offender to compensate the victim.

“One solution already exists: a suspended sentence with a probationary period for which one of the obligations is that the offender compensates the victim.” (Judge, France)

Thus, the victim, who should be supported in leaving behind their victim status, is continuously reminded of

this status and, depending on the circumstances, even remains dependent on the offender and in this respect denied control of their situation.²⁹

“Having spoken to the [...] enforcement courts, [...] she said I’d be lucky to receive anything because you only get it if he pays [...] That to me says he has influence on my life, and he does, because I’ve got no money [...] I think there should be a fund where it’s paid to me and he pays back the fund.” (Victim, United Kingdom)

A victim explained that the reason he did not claim compensation in criminal proceedings was that he wanted to avoid such a “lingering” situation:

“If the judge would grant me a financial compensation, this would become a lingering situation, and I didn’t want that.” (Victim, Netherlands)

A severely traumatised victim of armed robbery stressed that he did not apply for compensation in order to avoid any further confrontation with the offenders.

“No, because why should I be asking for that, for what? Then I would get even more confrontation with them [...] that may make things worse, and then I have retaliation.” (Victim, Portugal)

2.1.4 Compensation without punishment

In cases where offenders were merely ordered to compensate victims for the harm they endured, but no separate punitive measure was imposed, victims criticised the lack of sufficient redress. For example, in a case of domestic violence, the offender was found guilty and ordered to pay £ 2,000 for compensation. The victim felt that this amount in no way reflected the wrong she suffered – or, only in economic terms, the amount of earnings she had been deprived of over the course of the violent relationship. The victim contrasted the hardship of enduring lengthy proceedings and the relatively minor sanction:

“I just feel hard done to and I just thought the system is not right, it’s broken, how can they do that to somebody? Put me through 17 months, give me my own money back and then he walks out with that, I mean he’s 57 now, a retired policeman, it doesn’t matter him if he’s got a conviction for assault, it just doesn’t mean a thing to him, he’s still going on about his daily business. [...] So, I’m thinking, 2016, you can batter your wife and pay? That’s all he got, was just to give me money [...] I basically got my own money back for 17 months of hell [...] I felt, are we still in Victorian times here?” (Victim, United Kingdom)

²⁹ On compensation payments reminding victims of their victimisation, see Goodey (2002), p. 18.

This view suggests that at least some victims do not perceive compensation alone as a sufficient remedy or an appropriate response to a violent crime. However, in cases where the court orders offender compensation, also imposing a fine comes with a risk of absorbing the offender's financial means. A judge observed on the matter:

“In such a case, there's no need to impose a large fine on the perpetrator. It's more sensible that the perpetrator pays all amounts adjudged directly to the victim. There is no point in imposing a fine on a perpetrator whose financial situation is not-so-good or plainly bad without obliging him to make restitution. In deciding between fine and restitution, you need to make a balancing act so that the perpetrator faces at least comparable consequences of his act and the victim can benefit from the financial measures ordered in a meaningful way.” (Judge, Poland)

Hence, in striving to avoid custodial sentences, criminal courts may prefer to opt for sanctions that do not absorb the offender's financial means, such as anti-violence-training or community service.

2.2 State compensation

Recital 7 of the Compensation Directive³⁰ explains that the task of the directive is to set up “a system of cooperation to facilitate access to compensation to victims of crimes in cross-border situations, which should operate on the basis of Member States' schemes on compensation to victims of violent intentional crime, committed in their respective territories. Therefore, a compensation mechanism should be in place in all Member States.”³¹ As concerns the – limited – effectiveness of the directive, the CJEU found on two occasions that measures adopted by Member States fell short of meeting their obligations under the directive.³²

The Council Resolution of 2011 “on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings”³³ as Measure D invited the Commission “to review the Compensation Directive, in particular whether existing procedures for the victim to request compensation should be revised and simplified, and to present any appropriate legislative or non-legislative proposals in the area of compensation of victims of crime.” In October 2017, Ms Joëlle

Milquet was appointed Special Adviser to the President of the Commission for the compensation of victims of crime. Her mandate is to advise the President on how the Commission can foster better implementation of the existing rules on the compensation of victims of crime.

2.2.1 State and offender compensation

Concerning the relationship between state compensation and restitution made by the offender, Recital 10 of the Compensation Directive notes that crime victims “will often not be able to obtain compensation from the offender, since the offender may lack the necessary means to satisfy a judgment on damages or because the offender cannot be identified or prosecuted.” This acknowledges the primacy of offender compensation: it is primarily the offender who owes justice to the victim and should be encouraged in redressing the balance unsettled by the violent offence. Only insofar as the offender is unable or unwilling to pay compensation should the state step in.

Some of the victims felt that offenders can be expected to, at least, make an effort to compensate the victim, even if their economic situation is tight and if they can only pay small instalments. However, if the offender – for whatever reason – fails to swiftly compensate the victim, the state should make an advance payment and not leave the victim waiting for compensation over a longer time period.

It should be recalled that for victims of violent crimes, financial compensation is often not at the forefront of their interest. Some victims interviewed stressed this point in relation to state compensation. One interviewee – who was attacked because he spoke to a friend in a foreign language (German) – made clear that he did not apply for state compensation to avoid any misunderstanding as to his motivation, which was the desire to counteract xenophobia and not financial interest. Hence victims' compensation should be organised in a manner that reflects the fact that the right of a victim of violence to compensation is an expression of compensation being owed to the victim and is not premised on the individual victim wanting, needing, or deserving to be compensated.

2.2.2 Victims being informed about and applying for state compensation

One of the main reasons why victims were not awarded state compensation is that they did not apply for it, and one of the main reasons for victims not applying is a lack of information about the possibility to do so.

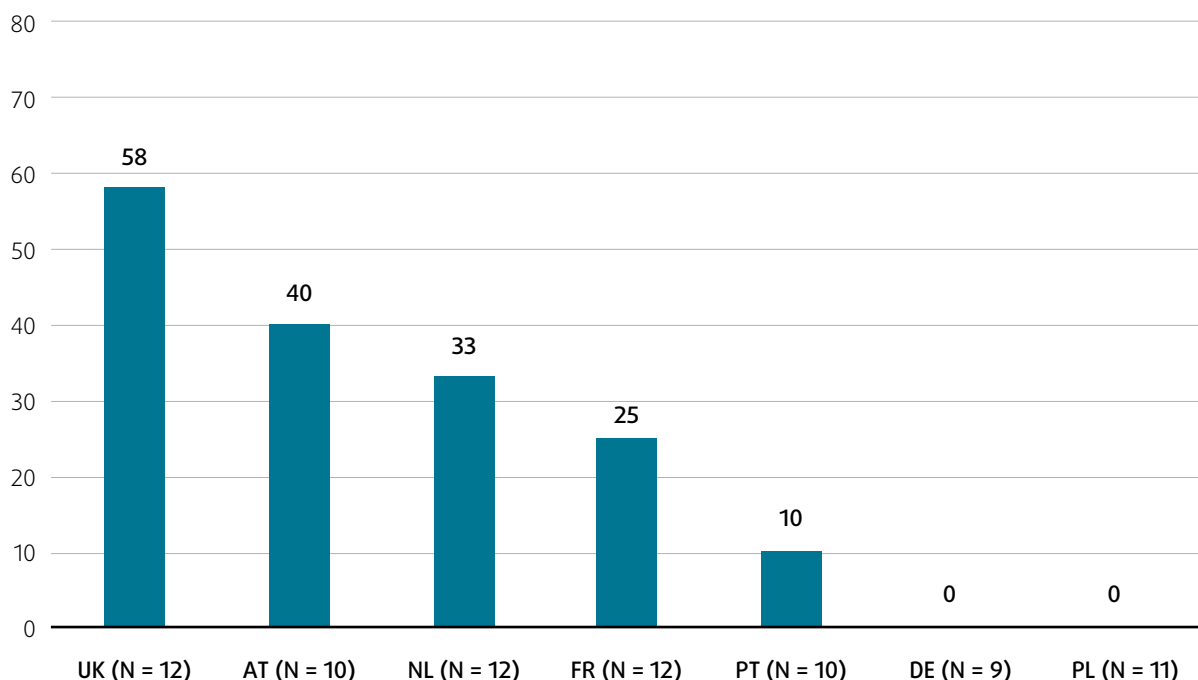
³⁰ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6.8.2004, p. 15–18.

³¹ On the development of state compensation in Europe, see Goodey (2002).

³² CJEU, *Commission of the European Communities v. Hellenic Republic*, C-26/07, 18 July 2007; CJEU (Grand Chamber), *European Commission v. Italian Republic*, C-601/14, 11 October 2016.

³³ Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings, OJ C 187, 28.6.2011, p. 1–5.

Figure 7: Victims applying for state compensation (%)



Source: FRA, 2019

Victims were asked whether they applied for state compensation and, if so, what the result was. As the project is restricted to victims of violent offences, under the Compensation Directive, all or close to all victims interviewed should have been entitled to some compensation.

Only in the United Kingdom had a majority of the victims interviewed applied for state compensation. In the group of victims, there were two mothers of victims of the terrorist attacks of 13 November 2015 in Paris. Both were awarded compensation swiftly.

Interviews with victims and practitioners identified the following as the most important reasons for not applying:

- Victims not being informed in an effective manner about the possibility to apply for state compensation is – across all Member States researched – by far the main reason for victims not applying.

Interviewer: “In your experience, do the police routinely inform victims about their entitlement to state compensation?”

Interviewee: “That should be the case, yes. Do they do it? Well, at least in the way that they hand them a leaflet, as I mentioned before, with the qualification: Do people also understand what it says?” (Police, Austria)

- In addition, lengthy and bureaucratic proceedings discourage applications.

- Narrow preconditions that render victims of violent crime ineligible were stressed in Austria, Germany and Poland – for example, in Austria, a victim of domestic violence was denied state compensation because she had ‘only’ suffered a fractured nasal bone.

Practitioners from all professional groups were asked whether the police routinely inform victims about their entitlement to state compensation. In some countries – including all type 1 countries – answers lack consistency and hence do not reveal a clear picture, even as concerns the responses given by the group of police officers themselves. One reason could be that practitioners working in the criminal justice system know little about state compensation, as it is rarely used.

For instance, in Poland, interviews conducted both with professionals and victims show that state compensation is hardly used in practice, if at all. Practitioners in Poland observed that, because state compensation is hardly ever awarded, practitioners are discouraged from providing information to victims, as this could create unrealistic expectations.

“Well, there are so many limitations and hindrances in using this law that at least I have not heard that it works. I have not heard of persons coming to us who would use it.” (Support organisation, Poland)



As also happens with other types of information that the police is supposed to provide to victims, victims are often left without a clear understanding that state compensation is available to them and what they need to do to receive it. It makes little difference whether the police do not inform victims at all or 'inform' them in a manner that is not effective – for instance, by handing out letters of rights without further explaining the concrete practicalities of where, how and when to submit an application and assisting the victim in doing so. (Some exceptions were noted in the United Kingdom, where police officers in some regions assist victims in lodging applications.)

Practitioners in Austria observed that victims are handed an information sheet, but doubted that victims understand what it says. Similarly, in Germany, victims are provided with a brochure containing information on state compensation; in Poland, information about state compensation is contained in the official letter of rights presented to the victim before the first interview. Practitioners interviewed in Austria and Germany questioned whether police officers know enough about state compensation to provide robust and practical advice to victims.

Several practitioners in Austria therefore suggested that informing victims about state compensation should be left to organisations providing support services or to the lawyers advising victims. In Germany, there was a lack of clarity as to who is responsible for providing information about state compensation. Only one interviewee saw himself as being responsible in this regard, and it was a member of a support organisation. Similarly, in the Netherlands, there was a strong consensus among the interviewed practitioners that the police do not inform victims about their rights to claim state compensation, and that it is left to victim support organisations or lawyers to provide this information. One interviewed police officer firmly believed that her colleagues had never heard of the Violent Offences Compensation Fund, as it is neither covered in police education nor promoted.

It appears that local practices in the United Kingdom vary. One interviewee explained that, in his police force area, some officers routinely give the victim a criminal injuries compensation form to fill in, sometimes even completing the form on the victim's behalf. Meanwhile, other interviewees from law enforcement not only made clear that they do not provide such information, but also believe that they *should* not do so, as applying for state compensation – at least at an early stage of the proceedings – could undermine the credibility of the victim's statement. One police officer even indicated that he would dissuade victims from filing a state compensation claim.

"Sometimes I question why, you know, are they just doing it for the compensation and that doesn't look good ... if a defence barrister raised that, you know, you're only doing this for compensation, it could undermine your case couldn't it? [...] I will always sort of talk them away from it. Because that is something you can do at the end [of the process]." (Police officer, United Kingdom)

A staff member of a support organisation shared this view.

Question: "[D]o you know if the police tell victims about their entitlement to compensation?"

Response: "No they don't, and I totally understand why they don't. Well, speaking specifically about criminal injuries compensation, no one wants a victim to turn up in court having claimed compensation. And if they did, they would be absolutely lacerated by the defence and there is a conflict ..."

Question: "Why would they? If you could just explain?"

Response: "'You're only doing it for money', you know. It's a very cheap shot, isn't it? Most of our clients don't care about money, at the beginning anyway. I've never known anyone report for money, or with an eye on the compensation." (Support organisation, United Kingdom)

This attitude reflects a wider tendency to insist that victims should primarily be perceived and treated as witnesses and hence should not demonstrate a strong personal interest in the case, as this could undermine their objectivity and credibility. It can be questioned whether such expectations are realistic or legitimate.

In the United Kingdom, victims complained about the amount of bureaucracy involved in the administrative process. One victim observed:

"She's a solicitor and she's got a team behind her and they've taken a year to get this far [...] so, it's been slow, it's been painful [...]. Say if I was traumatised still or didn't speak the language, it's hopeless, it's a long-winded system and it's still ongoing and even the solicitor bangs her head off a brick wall now and again." (Victim, United Kingdom)

"I've tried ringing them and speaking to them, the counsellor has tried ringing them and speaking to them, I've had, I've conversed with a lawyer about it, and the CICA, the only people who can approach CICA are MPs, I've actually started that route but recently I've given up the fight, I'm the brain injured victim fighting." (Victim, United Kingdom)

Similar comments stressing the complexities involved in applying for state compensation were voiced in the Netherlands. In Poland, some interviewees stressed that the conditions for obtaining state compensation are generally very strict and difficult to meet.

2.2.3 Victims being awarded state compensation

The amount awarded matters to victims primarily as an acknowledgement of the severity of the offence and of the significance of the victim's rights violated. However, as it is difficult to assess, in absolute terms, the appropriate equivalence between the wrong suffered and an amount of money corresponding to this experience, victims tend to assess the compensation received in terms of what they know – or believe – other victims to be awarded.

“The compensation is disgusting. £ 11,000 for a rape, £ 3,500 for a serious sexual assault. You know, mine was a category A crime, I nearly was murdered and to be told that I'm only entitled to a third, it's less than a third isn't it? Of the compensation for rape, I think it trivialises and it demeans the crime that I was subjected to. [...] I am incensed at the compensation for the crime committed against me.” (Victim, United Kingdom)

Interviewed victims were critical where they felt that only part of their damages was covered by state compensation. Some complained that not all their health costs were taken into account. In particular, this was observed regarding costs of therapy in the aftermath of the traumatic stress often implicated in violent victimisation (PTSD). A victim observed:

“Three years I've had PTSD, I'm having to pay privately for my therapist because it's not available on the [National Health Service] [...] I'm lucky that I can afford it. What happens to women who can't afford that kind of treatment? 30 of them a day kill themselves, or attempt to kill themselves, that's what happens. [...] I definitely think [...] everybody who has been through this as a victim should have the offer of some kind of counselling. [...] get the guy to pay for it [...] or get the Sheriff to award an extra £ 500 for 10 sessions or whatever.” (Victim, United Kingdom)

One victim explained that she did not apply for state compensation because she believes that the offender should compensate her for the damage suffered, not the state.

In conclusion: Taking victims' rights to compensation seriously

Offender compensation as part of criminal justice

That offenders should compensate victims of violent crime is part of the effective remedy owed to victims under Article 13 of the ECHR and, where applicable, also under Article 47 of the Charter. Therefore, offender compensation should be dealt with as a matter of criminal,

not civil, justice. It is for criminal courts to order compensation and for state authorities to execute the courts' decisions. The expectations expressed by a vast majority of the victims interviewed – that state authorities should ensure that victims are compensated for all the pecuniary and non-pecuniary disadvantages incurred as a consequence of the violent offence – should be recognised as an essential aspect of what doing criminal justice means from the perspective of victims of violent crime. Instead of treating compensation as the victim's private matter – by referring the victim to a civil court or by requiring the victim to act as a civil party alongside criminal proceedings – the necessary procedural steps to enable the criminal court to award compensation by means of a court decision should be taken *ex officio* in all proceedings relating to violent crimes. Consequently, the enforcement of this part of the judgment should be ensured by state authorities and not be left to victims.³⁴

Drawing inspiration from the Polish model, consideration should be given to reinforcing compensation as a criminal sanction by adding elements of punitive damages. This could also be a means to relaxing complexities involved in the calculation of damages.

In any case, criminal courts should decide, within the course of criminal proceedings, on the compensation of victims of crimes against the person. In designing compensation orders, Member States should take into account the experiences gained in the United Kingdom, Poland and Portugal.

Criminal judges should be trained to know the civil law basis of restitution and how to measure amounts of compensation. If necessary, procedural means should be found to enable a criminal court to draw on the expertise of their civil law colleagues from the same court rather than requiring the victim to draw on this expertise by instigating civil proceedings in addition to criminal proceedings.

State compensation

A main cause of victims not benefiting from state compensation is a lack of applications. The most important reasons for not applying, identified in the interviews with victims and practitioners, were:

- Victims not being informed effectively about the possibility to apply for state compensation, which is – across all Member States researched – by far the predominant reason for victims not applying.
- Lengthy and bureaucratic proceedings discouraging applications.

³⁴ Weigend (2012), pp. 36-37; Dearing (2017), pp. 346-347.

- Narrow preconditions that render victims of violent crime ineligible, as was stressed by interviewees in Austria, Germany and Poland – for example, in Austria, a victim of domestic violence was denied state compensation because she had ‘only’ suffered a fractured nasal bone.

Given that, in practice, victims benefit from offender compensation only at a late stage, all victims of violent crime should have effective access to swift state compensation paid as an advance to the compensation owed by the offender. As a matter of course, victims of violent crime, when reporting to the police, should be informed that they are entitled to offender and state compensation. If they apply for state compensation, they should not have to wait for a long time before they receive such payment.

In criminal proceedings, the court should – to the extent that the state has advanced the payment of compensation – order the offender to indemnify the state and pay the rest to the victim.

The interviews with victims suggest that it is important to avoid situations where victims have to wait for payments made by offenders for a long time period. If an offender does not comply with the court decision swiftly, the state should step in, advance the compensation due to the victim and make the offender settle their debt to the state. It should be for the state to use its leverage to ensure that payments are made effectively and not left to victims.

3

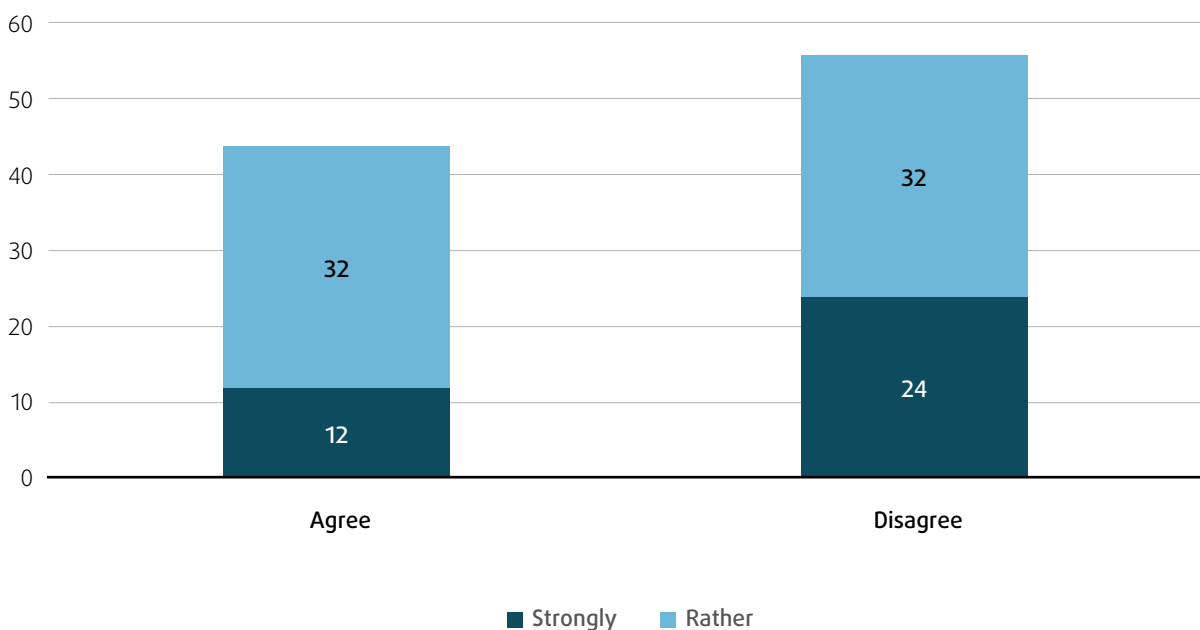
Conveying a message that justice is done



Victims were asked to relate to the statement that, overall, the investigation and the following proceedings conveyed a strong message that justice is done.

A clear majority of the victims interviewed in the project disagreed with the statement, with twice as many strongly disagreeing than strongly agreeing.

Figure 8: Victims reacting to the statement: 'Overall, the investigation and the following proceedings conveyed a strong message that justice is done.' (%)



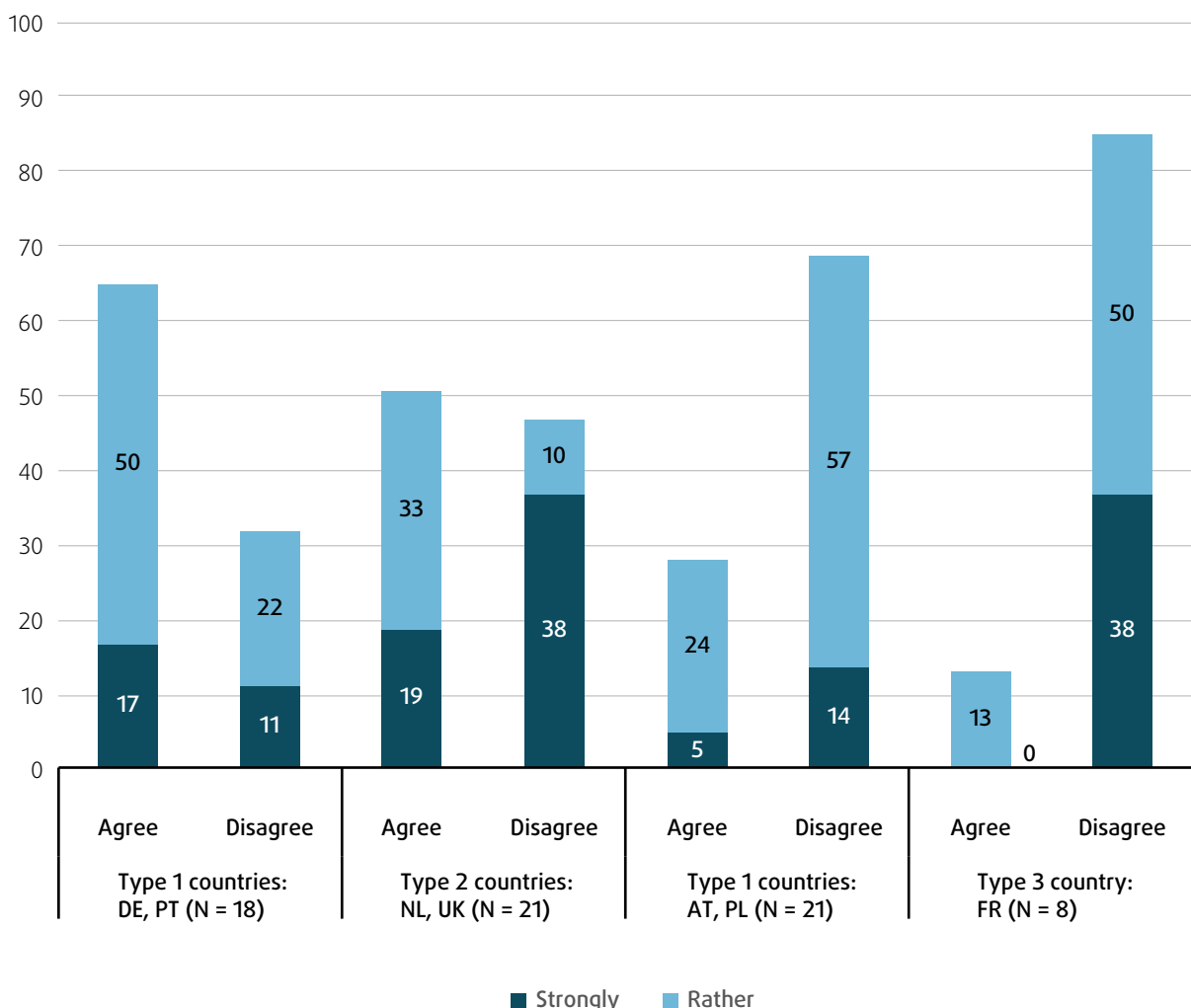
Note: N=68.
Source: FRA, 2019

This cannot be taken lightly, as it means that – from the victims’ perspective – criminal justice systems more often than not fail their basic function of doing justice. With 1 in 4 victims even strongly disagreeing with the statement, victims are conveying a clear and troubling message – particularly if one acknowledges that victims are, from a human rights perspective, key stakeholders in criminal justice systems.

3.1 Differences between Member States

However, differences between Member States are significant. Particularly many victims disagreed with the statement in Austria, France, and Poland. However, the group of type 1 countries is split – Germany and Portugal

Figure 9: Victims assessing whether the proceedings conveyed a strong message that justice is done, grouped by countries (%)



Source: FRA, 2019

are the only countries covered by this research with clear majorities of victims believing that the proceedings sent a strong message that justice is done.

Although the small numbers of interviewees hardly allow for any generalisations, it appears that in Austria, Poland and France, victims were overall discontent with the performance of the criminal justice systems in their countries.

3.2 The importance of an effective investigation

Where victims are content with the message sent by the criminal justice system, reasons given by them to support their assessment often relate to the effectiveness

and swiftness of the investigation in identifying the offender, as perceived by victims. As victims view criminal justice as intervening in a current situation – as responding to the offence – they believe that the functioning of the justice system is impaired if proceedings take too long. A victim observed:

“It’s a question of immediacy, isn’t it? If I look at it from a criminological perspective: If this guy is sentenced to a penalty of € 500 four or five years later [after the incident] this, in a sense, doesn’t have any punishing effect, does it?” (Victim, Germany)

More emphatically, a victim of rape emphasised the devastating impact of a lengthy investigation on the situation of the victim and her family. Asked whether she would report again she answered:

“No, there is no point, it is another form of suicide, that’s all, it is suicide to lodge a complaint. You die, you leave your health behind during the procedure which is so very long. It happened in 2009, now it’s 2017, [...] they kill you slowly, psychologically, it has a physical impact, later it has a social, financial impact. [W]ith the justice system you lose everything: you lose your job, you lose everything, you have nobody to support you [...] There is nobody to listen to us. There is no follow-up, nothing at all, they give you an officially appointed lawyer who does nothing ... Lodging a complaint is pointless, it just adds one bad thing to another. The offender kills you once, and the justice system doesn’t kill you once, but a thousand times.” (Victim, France)

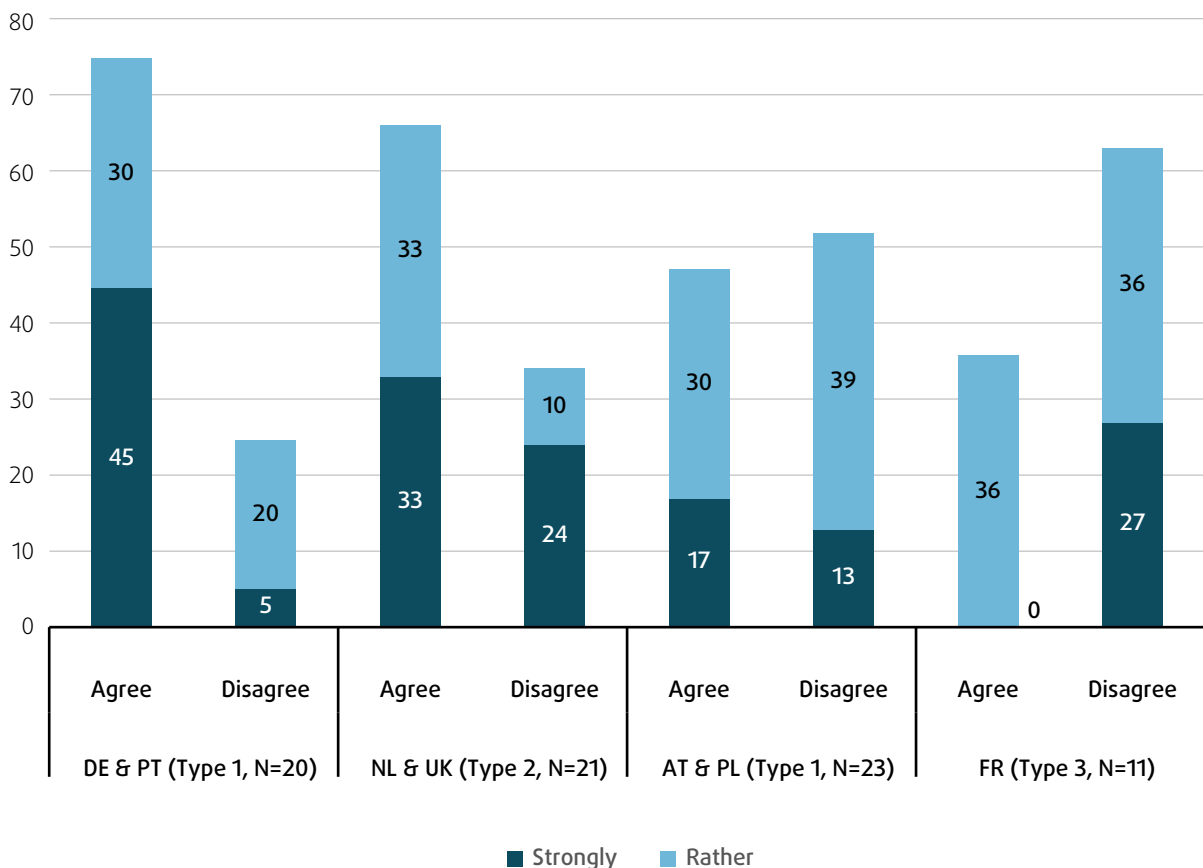
Hence, for victims to sense that justice is done, it is important for the police to appear committed to conducting a swift and effective investigation. Not surprisingly, the countries where victims felt that the investigation and the following proceedings sent a message that justice is done are also the countries where victims assessed the police as being committed to conducting an effective investigation. Victims were asked

whether, and to what extent, they would agree with the statement that the police appeared to be committed to an effective investigation.

These results mirror quite precisely the pattern, demonstrated above, of victims’ agreement with the statement that the investigation and the proceedings sent a message that justice is done. For example, several victims interviewed in Poland described the police investigations as lengthy and ineffective.

“Three officers handled the case. [...] First, there was this man. He went on holiday, so the woman came. She interviewed me and other witnesses, she made a report for herself and kept it for two months. Then she would call me and other witnesses to collect more evidence, medical certificates of the injuries or something, and the case was left untouched again. I called every week to ask and I heard, ‘No, we haven’t sent the case to the prosecutor’s office yet, not yet’. It wasn’t until about four months passed when the case was sent to the prosecutor.” (Victim, Poland)

Figure 10: Victims agreeing/disagreeing with the statement: ‘The police appeared to be committed to an effective investigation,’ grouped by countries (%)



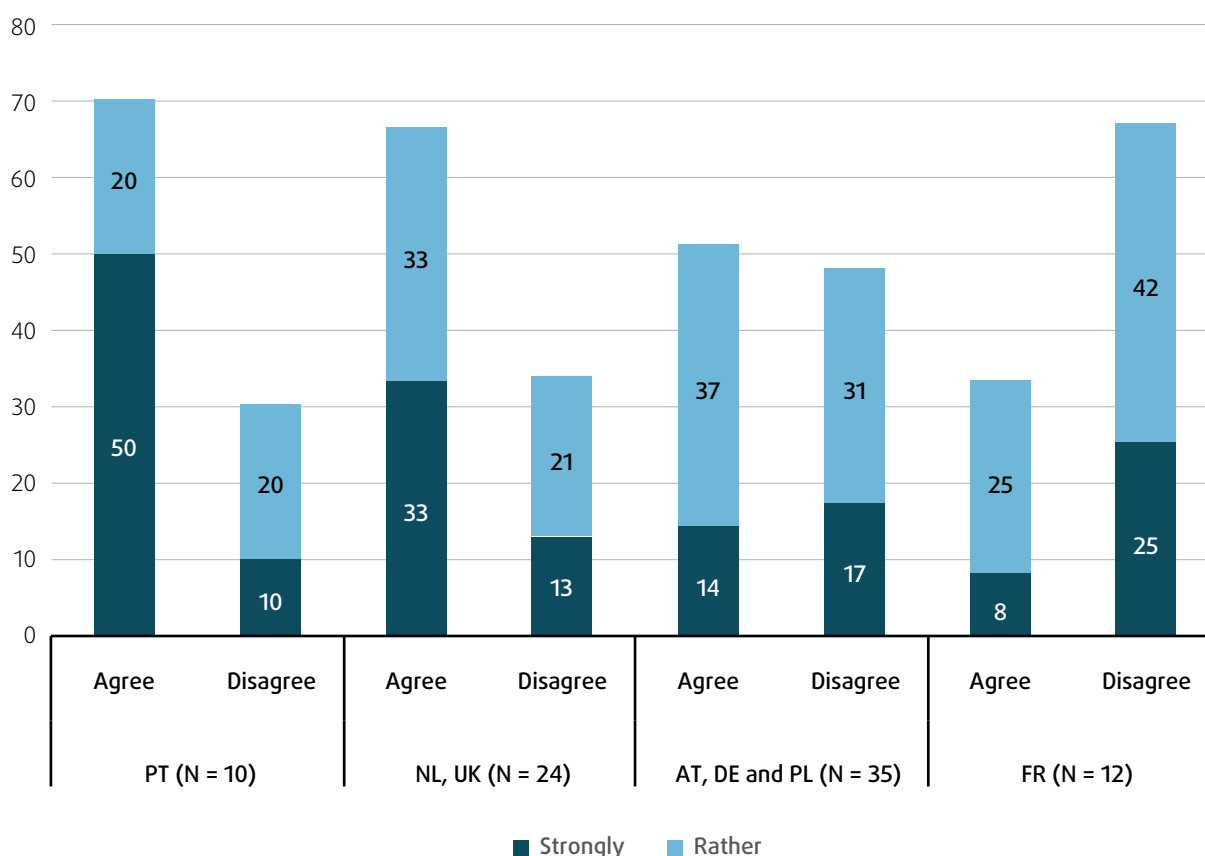
Source: FRA, 2019

3.3 The interrelatedness of procedural and outcome justice

Where victims are content with the message sent by the criminal justice system, reasons given by victims to support their positive assessment often relate to the effectiveness of the investigation in identifying the offender, as perceived by victims. By contrast, reasons given by victims who negatively assess the performance of the criminal justice system at times relate to their impression that their views were not sufficiently considered – that, in terms of procedural justice, their voice was not heard. With the exception of Germany, countries where victims sense that their concerns were not given due attention are also the countries where more victims saw the criminal justice system as failing to convey a message of justice being done.

Differences between countries do not correspond to the extent of participation rights granted to victims at the legislative level. Take a comparison of the Netherlands and the United Kingdom (two type 2 countries), on the one hand, and Austria and Poland (two type 1 countries), on the other. Victims in the Netherlands and the United Kingdom have far fewer participation rights under the applicable procedural codes – but are more content with how the police paid attention to their rights and concerns; see the police as more committed to conducting a thorough investigation; and are more satisfied with the message sent by the investigation and the ensuing proceedings. Therefore, to recognise victims in criminal proceedings as the persons whose rights are concerned, legislation is not enough; effective implementation of the procedural codes is also required.

Figure 11: Victims agreeing/disagreeing with the statement: ‘During the investigation, I had the impression that my concerns and rights were taken seriously by the police and were given due attention’, grouped by countries (%)



Note: N=81.
Source: FRA, 2019

In conclusion

This research shows that, whether victims interviewed in the project believed that criminal proceedings were successful in doing justice, corresponds to the following factors:

- whether victims experienced the police as committed to investigating carefully and swiftly;
- whether victims sensed that the authorities gave due consideration to their views;
- whether victims felt that the offender's conviction captured correctly the essence of the wrong done to them and accepted the sentence as correctly mirroring the severity of the offence;
- whether sanctions are fit to make offenders understand that what they did to victims was wrong and to, accordingly, reconsider their behaviour and attitudes;
- whether victims were swiftly compensated as one element of righting the wrong done to them.

As much as the concept of recognition is a core element of procedural justice, from the victims' perspective, it is also at the heart of outcomes that do justice:

recognition, that is, of the victim's rights, violated by the offender; of the significance of these rights; and, above all, of the status of a rights-holder to which the victim is entitled as a member of a community of rights. From this perspective, outcome justice is a continuation of procedural justice. The court is expected to acknowledge and right the wrong done to the victim by insisting that the offender must settle the debt incurred by violating the norm, undermining the victim's rights, and appropriating an amount of freedom that belonged to the victim. By, as far as possible, establishing and righting the wrong done to the victim and by acknowledging that the victim is a main stakeholder of criminal justice and hence must have sufficient opportunities to participate in the proceedings, the criminal justice system recognises and restores the victim as a person whose rights are to be respected.

In order to be able to duly consider the rights and concerns of victims of crimes against the person, all practitioners acting in criminal justice systems should be trained to understand the legitimate interests of victims and what doing justice means from their perspective, taking into account findings from this research and other evidence. Such knowledge can contribute to overcoming myths of victims as vindictive and irrational, which can help practitioners in overcoming their resistance against victims' participation in criminal proceedings.

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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

Victims of violent crime have various rights, including to protection and to access justice. But how are these rights playing out in practice? Are victims of violent crime properly seen, informed, empowered and heard? Do they tend to feel that justice has been done? Our four-part report series takes a closer look at these questions, based on interviews with victims, people working for victim support organisations, police officers, attorneys, prosecutors and judges.

This report – Part III – takes a look at sanctions, scrutinising whether the outcomes of proceedings deliver on the promise of justice for victims of violent crime. Taken together, the four reports reveal a wide gap between the law ‘on the books’ and the law in practice, showing that many victims still feel marginalised. We hope this series encourages policymakers to take steps to ensure that victims of violent crime receive the attention, support and consideration to which they are entitled.



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