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Pro.Vi – Protecting Victims’ Rights

Handbook for Practitioners





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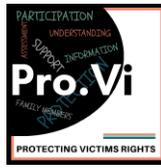
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The project’s actions involve key professionals within the judicial process and victim support services with the conviction that all justice system actors and professional services that work with victims of crime should share the same vision, strategies and objectives in order to work together in an effective and coherent manner. The project aims to promote continuous dialogue between practice and academic research, contributing to a process of reflection capable of improving the quality and adequacy of services and identify areas in need of further study.

Quotes from interviews with victims and stakeholders have been translated by the authors and edited for clarity.



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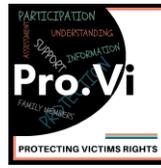
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Preface

The *Pro.Vi Handbook for Practitioners* is intended to provide practitioners both within and outside the criminal justice system (e.g., police, prosecutors, judges, social workers, psychologists, victim support service providers) with an understanding of advances in the protection of victims' rights in terms of the application of law, innovative developments and practices, and practical guidance to assist them in their interactions with victims of crime via the utilization of a victim sensitive approach. The *Handbook* takes into consideration all victims of crime including adults, minors and other vulnerable groups recognized as having specific protections and rights.

The *Handbook* derives from advances made via 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. The Directive reiterates the need to take appropriate actions to guarantee victims' rights and establish an integrated support system for victims of crimes according to minimum standards. The Directive affirms crime victims right to have their dignity recognized and respected.

More specifically, the Directive states that all victims should be treated with respect and dignity regardless of the crime, where it took place, who the victim is, where s/he comes from, or the factors that contributed to him/her being victimized. All victims should be provided with support immediately following the crime and then monitored as long as necessary. In assessing needs, all the harm and suffering caused by the crime must be taken into account in addition to victim profiles and characteristics. Ultimately each victim is unique and has a unique set of needs to which services and supports should correspond. Responding to victims' needs means viewing them as individuals with unique and varying responses to the experience and subsequent needs.

The Directive assigns a role in providing victims with appropriate information, support and protection and assistance in participating in criminal proceedings to everyone who comes into contact with a victim. The Directive also indicates a number of practical measures that should be adopted at the system level and in day to day professional work with victims so that victims are protected from repeat victimization and are supported in the process of recovering from the consequences of the offence. Furthermore, the Directive requires professionals in different services to avoid any prejudice in relation to the victim's contact with police and participation in criminal proceedings. Victims should be able to easily access assistance, compensation and support services. More specifically the measures provided in the Directive are relevant for:

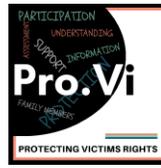
- Law enforcement agencies
- Criminal justice professionals
- Victim support services
- Restorative justice services

Despite the different roles played by the various services and professionals they should all abide by the same cornerstone of victim protection when dealing with victims.



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Chapter 1: The cultural horizon of the Victims' Directive

Why a directive for victims of crime?

"Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognized and treated in a respectful, sensitive and professional manner without discrimination..." Consideration 9 of the Victims' Directive

These three lines call for a full reversal of the victim's position in society and in the justice system, expressing the revolutionary scope of the Victims' Directive. The victim goes from being the passive subject of a crime, an abstract entity, the "owner" of the legitimate right harmed by the crime whose protection is to be assured by the government, to being a social actor with rights that are to be guaranteed and promoted. The victim stops appearing as an impersonal object and transforms into a person with his/her experiences of suffering, insecurity and humiliation.

As Nils Christie recognized in his seminal 1977 work "Conflicts as Property"¹, victims have lost "ownership" of crime, which instead has fallen under the domain of the State with victims often viewed as tools instrumental to protecting the power of the State. It is only in recent years that the role and rights of the victim have gained renewed focus and recognition within EU and national legislation.

We have become so accustomed to keeping the victim outside of the process that we have difficulty telling them what they can do. Above all, they can't do anything. (Stakeholder, Italy)

The need for neutrality on the part of the judge and the presumption of innocence creates a situation within which a victim's anger, suffering or desire for revenge – when present – may be seen as potentially jeopardizing criminal proceedings, working against the State's interests.

Within modern criminal justice, the crime effectively creates a point of contention between the State and the offender to be resolved by bringing stability to the social order brought into imbalance by the crime. While significant steps have been made in some EU Member States to rectify this situation and include victims, justice all too often does not operate in the name of the victim but on behalf of society.

What have you done for victims? This concept still hasn't been understood. (Stakeholder, Italy)

The role of the victim is to testify and participate in criminal proceedings in accordance with procedures that assure the impartiality of the actions taken by the justice system in relation to the offender, notably in relation to providing evidence that is relevant for the actions taken

¹ Nils Christie, "Conflicts as Property", *The British Journal of Criminology*, Volume 17, Issue 1, January 1977, Pages 1–15, <https://doi.org/10.1093/oxfordjournals.bjc.a046783>



by the justice system thereby instrumentalizing the victim. This not only means that the pain, and the victim’s suffering is left outside the halls of justice, but also tramples on their dignity and individuality.

The process, which has allowed victims to affirm themselves as individuals worthy of being treated in a respectful and sensitive manner and welcomed with all of their suffering, has not been linear. At first this involved victims of serious violations of societal principles, such as victims of terrorism, victims of domestic or gender violence as well as victims of horrific crimes capable of capturing the public imagination and interest. Later, the victim’s characteristics, behavior, and relationship with the offender gained relevance as they were used to stigmatize and blame the victim while mitigating the offender’s culpability; this is a significant concern in the prosecution of sexual offences². Ultimately, crime victims have long been left in a category void of care that was neither treated in regards to their specific needs, nor recognized as socially relevant³.

“...it’s important to reconsider the victims and think of them as a true procedural subject that also has rights, that is also waiting for justice to prevail.”
(Stakeholder, Portugal)

The Victims’ Directive introduces a new citizen, the victim, to the social panorama and tries to delineate their profile.

Victim recognition

On the basis of the Victims’ Directive, a crime victim is whomever feels the s/he has incurred harm from an act that can be defined as a crime regardless of whether the crime is reported or charges are filed.

Up until now it has been the justice systems, at the end of what is often a lengthy process, that determines if a person is technically a victim of crime. This occurs after the establishment of formal legal truth⁴, or that which is closest

A person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted...” (Consideration n. 19 EU Directive 2012/29/EU)

² See for example <http://criminal-justice.iresearchnet.com/crime/domestic-violence/victim-blaming-theory/>

³ It is important to recognize that significant differences exist amongst EU Member States in regards to the recognition and protection of victims’ rights both prior to and following EU Directive 2012/29/EU. See *Report on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2016/2328(INI))*. 14.05.2018. Available online at https://www.europarl.europa.eu/doceo/document/A-8-2018-0168_EN.html#title1

⁴ Formal legal truth needs to be understood as distinct from substantive truth. Sumers defines “formal legal truth” as “whatever is found as fact by the legal fact finder (judge or lay jurors or both), whether it accords with



to formal legal truth. The Victims’ Directive introduces this fundamental element, or rather the fact that in order to guarantee someone the right to define themselves as a victim, and to receive the attention and support that they deserve, they are not required to demonstrate that they are a victim, or even to report the crime. It is not necessary to complete a process that allows for the certification of the truth.

What is the sense of all of this? Why was it necessary to recognize that a subject acquires rights in the moment in which s/he says “I am a victim”?

Under reporting of crime

Although there are significant variations based on the type of crime, statistically speaking we know that the number of victims in society that come into contact with the justice system only represents a portion of the victims that do not file a complaint resulting in the so-called dark figure of crime^{5 6}. Research⁷ consistently demonstrates that the number of crimes reported to the police is notably lower than the number of crimes reported in victimization surveys. The decision to report is also not necessarily linked to the harm done given the high levels of underreporting in interpersonal crimes such as domestic violence and sexual

Victims of crime should be protected from secondary and repeat victimization, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice. (Consideration n. 17 EU Directive 2012/29/EU)

substantive truth or not” (Summers, Robert S. “Formal Legal Truth and Substantive Truth in Judicial Fact-Finding – Their Justified Divergence in Some Particular Cases. (1999) *Cornell Law Faculty Publications*, paper 1186. p. 498.

⁵ See <https://www.oxfordreference.com/view/10.1093/acref/9780199683581.001.0001/acref-9780199683581-e-2530>

⁶ Biderman, A., & Reiss, A. (1967). On exploring the "dark figure of crime." *The Annals of the American Academy of Political and Social Science*. 374(1), 1–15. <https://doi.org/10.1177/000271626737400102>

⁷ Victimization survey data points to a very different view of criminality in comparison to official data on reported crime; findings from a 2011 Italian study demonstrate that only 34.7% were reported to the police with significant variations depending on the type of crime: almost all incidents of motorcycle (99.3%) and automobile (94.5%) theft were reported whereas only a minimal number of attempted motor vehicle thefts as well as more serious crimes such as domestic violence and rape were reported. At EU level, comparisons, albeit problematic due to differences in crime definitions, reporting systems, and other factors, between the EU Survey on Crime and Safety and the European Sourcebook on Crime Statistics demonstrate a lack of correlation between reported crime and victimization survey results demonstrating that reported crime does not accurately reflect actual crime rates (van Dilk, Jan, John van Kesteren, Paul Smit. *Criminal Victimization in International Perspective: Key Findings from the 2004-2005 ICVS and EU ICS*. http://www.unicri.it/services/library_documentation/publications/icvs/publications/ICVS2004_05report.pdf

Maria Giuseppina Muratore, *La misurazione del fenomeno della criminalità attraverso le indagini di vittimizzazione*, p. 3 <https://www.istat.it/it/files/2011/02/Muratore.pdf>



offences⁸. This points to the need to reflect on law enforcements systems' capacity to address suffering and take action to ensure that criminal victimization does not remain a private issue. This is also why arriving at the formal legal truth does not necessarily bring about a sense of restoration or healing for victims who, as noted in the Directive, are frequently subject to further victimization or traumatization via their participation in the criminal process.

The need to rethink fundamental aspects of our social systems

The Victims' Directive recognizes that the topic of victims' rights raises issues about fundamental aspects upon which our social systems are built, complex issues that we will try to introduce here.

Perceived Safety

The Victims' Directive recognizes the need to address concerns about citizens' attitudes towards law enforcement agencies and justice systems in regards to the capacity guarantee social protection and care for individuals' needs. While significant variation exists across EU Member States, there is considerable concern about the criminal justice system's capacity to address victims' concerns and respect their dignity and needs, including the need to feel safe.

Fear of crime is widespread, generally not proportional to the crime rates, and the result of more complex social dynamics that do not necessarily involve the direct victims of crime⁹. *Safety* - or the possibility of continued safety - is a dynamic socially constructed belief that contributes to the sense of security experienced by individuals and the community. Law enforcement's role in reducing the fear of crime, enhancing the feeling of safety and responding to victim's needs is ultimately hampered by its focus on the cause of the crime or disorder, resulting in the effective abandonment of the victim (e.g., a police officer is prone to chase the suspected offender rather than stay and tend to the victim).

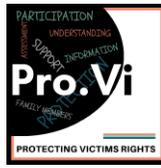
Furthermore, when the crime is reported, the justice system, with its complex mechanisms for activation, slow procedures, and uncertain outcome, often fails to satisfy both the individual and the collective need for safety solicited by the repetition of criminal behavior indicated above, even if the crime cannot be characterized as objectively serious.

Justice systems do not appear either effective, or efficient in guaranteeing offender rehabilitation, while as stated by the French anthropologist Fassin, criminal justice systems are increasingly punitive¹⁰. If the punishment does not serve a purpose, if the offender

⁸ Fundamental Rights Agency. 05 March 2014. *Violence Against Women: an EU-wide survey. Main results report*. Accessible at: <https://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>

⁹ Prieto Curiel, R., Bishop, S.R. Fear of crime: the impact of different distributions of victimisation. *Palgrave Commun* 4, 46 (2018). <https://doi.org/10.1057/s41599-018-0094-8>

¹⁰ Didier Fassin, *Punire. Una passione contemporanea* (Feltrinelli, Milano 2018), authors' translation from the Italian by Lorenzo Alunni. Fassin's thesis is that the world has entered "an era of punishment" (p. 9). Utilizing data, Fassin tries to discover "where our idea of punishment comes from" (p. 57), investigating «our understanding of what it means to punish" (p. 28) with the conviction that the moment of punishment "as a social institution, reveals itself



continues to commit crime after having completed the sentence, if recidivism rates remain high, what is the purpose of justice? Crime victims as well as society often raise these questions with peaks following high profile cases – such as the commission of a rape or murder by someone just released from prison - that capture the public imagination, bring into question the entire functioning of the justice system and frequently result in the call for tougher sentencing¹¹. Within this context, the sense of outrage experienced by the victim as well as the community calls into question the efficacy of the entire system highlighting the need to better understand the impact and meaning of crime for victims and society as well as how to develop a system that is more in tune with victims' needs and concerns.

Feeling safe, however, is essential to community and individual well-being pointing to the need to take steps to reduce unwarranted fear at the community level while taking direct steps to ensure that victims of crime can address fear resulting from the crime and resume a more normal life (e.g., reducing the fear of being alone at home following a burglary, which may be especially acute for women or elderly living alone; providing victims of domestic violence or stalking with adequate protections and support).

In short, in order to improve the victim's and the community's sense of safety, neither more aggressive tactics, nor more severe punishment have provided the right answers. This is why the EU Victims' Directive calls on all officials and professionals to treat victims with dignity and make them feel that their suffering matters. Ultimately, the expression of empathy towards the victim does more to increase their sense of safety and security than actions that aim to increase law enforcement or to get tough on crime.

Humiliation of the victim

In the traditional justice system, the victim remains "a disconcerting guest" while the State and the accused engage in a duel to define guilt. Nothing says that there will be justice for the victim. In fact, the model of justice we know today primarily focuses on the relationship between the State and the accused. Today's system should be understood as the result a process – beginning with the work of Cesare Beccaria¹² during the 18th century and the development of the accusatorial model – to assure some semblance of proportionality and fairness for the accused, many of whom have been and continue to be subject to gross violations and subject to cruel sentencing in the absence of what we, today, would consider a fair trial. However, "this irreversible progress of legal civility led to the gradual marginalization of the victim, a disturbing figure that needed to be disarmed in order to pursue peace between the adversaries via a sentence that brought stability back to the social order made vulnerable by the offence"¹³.

to be an effective instrument for the analysis of society, of the feelings that run through it and the values it brings" (p.36).

¹¹ See e.g., Garland D., 1990. *Punishment and Modern Society: A Study in Social Theory*. Chicago: University of Chicago Press.

¹² See Cesare Beccaria's [1764] *An Essay on Crimes and Punishment*.

¹³ Rossi, 2015, p. 3



The victim has, in many cases, effectively disappeared from the courtroom except when called upon to testify. Testifying and providing information, however, comes with its own risks as it exposes the victim to cross-examination, potential victim-blaming and revictimization by the offender, which is most acute in cases where the victim is especially vulnerable such as in cases of rape and gender violence. This potential for revictimization within the justice system and utilization as an instrument or pawn of the prosecution represents one of the primary issues that the Victims’ Directive attempts to address and remedy¹⁴.

Society’s failure to care for the victim

Not only have victims been wronged in the courts, victims have, to a large extent, also been excluded by society. Social responsibility for victims of crime has yet to establish itself. The paradox in this case is even more evident if one thinks about how frequently social responsibility is emphasized in relation to the offender (notably for juvenile offenders) due to the role assigned to the environment in the creation of criminogenic behaviours within criminological and sociological studies with rehabilitation as an expected outcome of punishment. The same responsibility in relation to victims has all too often been neglected, leading to a sort of negative stigmatization of the victim in many cases. Victims are all too often not only denied their dignity in favour of an offender-centric approach in the courtroom, but also in society which lacks concrete actions in support of victims of crime.

Victims tend to say “we reported the crime, then we were left alone”. (Stakeholder, Italy)

Historically, the view of the victim has gone from a culture that tended to view the victim with pity or sympathy for the pain they had experienced, to a culture that placed attention on society’s responsibility for the offender, tracing the causes of crime to socially deprived environments and traumatic life experiences. This has led to the need to re-think the penal system and detention centers with greater attention placed on the offender. At the same time, however, the victim has been placed at a distance both within society and in the justice system both of which are primarily tilted in favour of the rights of the offender. The challenge rests in finding a balance between just treatment of the accused – both prior to and upon conclusion of the judicial process – while assuring that victims of crime receive the necessary support and services.

The rights set out in this Directive are without prejudice to the rights of the offender. The term “offender” refers to a person who has been convicted of a crime. However, for the purposes of this Directive, it also refers to a suspected or accused person before any acknowledgement of guilt or conviction, and it is without prejudice to the presumption of innocence. (Consideration 12, EU Directive 2012/29/EU)

¹⁴ It should be noted that considerable country differences exist within the EU in regards to victims’ protections.



As noted in the Victims' Directive, this focus on the rights of the accused remains paramount. Recognition of the victim should not come at the expense of the presumption of innocence and rules of criminal procedure that underpin criminal justice proceedings in the EU.

Who is responsible for the victim?

This imbalance in criminal justice systems in favour of the offender raises a question addressed by the Victims' Directive, even if implicitly. Logic suggests that if the justice system cannot take responsibility for victims, then the welfare and health systems should take care of them.

The suffering and impact that the crime has on the victim's life is primarily of a social, psychological and economic order. The topic of justice regards social justice in which criminal justice is one component. Social justice operates to the benefit of the victim via remunerative, redistributive and restorative mechanisms and the activation of support systems that respond to the victim's needs.

But the Directive does not entirely delegate the responsibility of caring for the victim to society. The criminal justice system has to care for the victim, failure to do so implies weakening the justice system in its entirety. Consequently, the Directive calls on the criminal justice system to act in two ways.

The first involves ensuring that the first contact with the justice system, notably with the police when reporting the crime, is not merely a bureaucratic issue. In many cases, above all for less serious offences, when the victim reports the crime the crime is recorded by the police as one of many social facts that will not have legal consequences (e.g., it is difficult for the reporting of the crime to lead to charges, it will be difficult to identify the offender) or for which the response by the legal system, in cases where a response exists, does not necessarily satisfy the victim. But this first contact is fundamental not only to initiate the investigation in an effective and useful manner, but also because it represents the first and perhaps only response that the victim will ever have from the justice system. Chapter 2 explores this issue in greater detail.

The police are not being asked to compute a bureaucratic act when taking a report as this is the closest that a person who has been subject to a crime may get to justice. In fact, studies in this area demonstrate that the procedures adopted by the police play a more important role in victim satisfaction than case outcomes¹⁵.

¹⁵ "Australia, Elliott et al. (2011) found that victims who perceived police procedures as fair (procedurally just) tended to report greater levels of satisfaction and legitimacy and to believe that the outcome of the case was fair. While obtaining the desired outcome was also associated with greater satisfaction levels, procedural justice emerged as a much stronger predictor of satisfaction. This indicates that police processes play a more important role in victim satisfaction than case outcomes. The authors also used qualitative analysis to probe further into participants' perceptions of procedural justice and found that procedurally just treatment was interpreted by victims as evidence that the police valued them as members of society (mentioned by 79.9% of respondents), that the police were competent (mentioned by 68.2% of participants) and trustworthy (mentioned by 53.64% of participants), that they



What can the victim expect from the justice system?

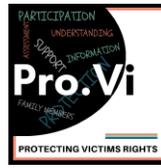
Even if victims cannot enter the courtroom to seek personal vengeance or achieve other personal objectives, they have the right to understand what is happening. As a member of the community victims have the right to verify that justice corresponds both to the community’s needs for justice and re-establishment of the social order and the individual victim’s needs. One can think of how the communities that are the most affected by events that have shaken their daily lives participate in the proceedings in order to understand how justice works and to re-establish a sense of equilibrium.

Beyond this community need for justice, the Directive asks criminal justice systems to assure that the victim feels dignified and not humiliated when in the courthouse and that separate spaces are dedicated to victims (measures may include dedicated waiting rooms, separate parking lots and entrances). This means that victims are symbolically and physically present in those spaces, that they are assigned dignity, and hence worthy of being informed, supported and protected when they participate in criminal proceedings. It means victims merit understanding the decisions taken in the case.

A victim of crime needs a lot of things, first to understand and comprehend which rights and services are available. If the victim cannot afford a trusted attorney, then free legal services should be available. Then there are services for the victim. I have seen a lot in my life...i have seen all kinds of victims who prefer not to report the crime because they are afraid or because they don't trust the justice system or cannot afford the extra expenses beyond the damage caused by the crime. I think policymakers, serious policymakers if they still exist, needs to either create services for all victims of crime, or find the funds to make sure existing services work. If there are offices or services for all victims, then one can go there for comfort, to get information...(Crime victim, Italy)

The Victims’ Directive makes explicit reference to victims’ sense of invisibility, of not being recognized by the justice system when it calls on the responsible authorities to respond in a respectful, sensitive, professional, and non-discriminatory manner to the victim’s reports and solicitations. This contact between law enforcement and victim plays an important role in the process as it serves to increase the victim’s trust in the justice system and reduce the number of unreported crimes (Consideration n. 63).

were helped to recover from the crime (mentioned by 40% of participants) and were encouraged to reengage with the police if necessary (mentioned by 21.82% of participants)” in *Exploring Victims’ Interactions with the Criminal Justice System: A Literature Review* Dr. Deirdre Healy, University College Dublin, October 2019, p. 18.



Why victims are re-victimized

When one fails to recognize victims' dignity, to attribute social relevance to their suffering, when victims subject themselves to procedures, professionals, and practitioners that risk causing them further trauma, then it is precisely this moment that contributes to the risk of secondary and repeat victimization, intensifying the effects of the trauma, and thereby rendering the victim's situation even more complex

Victims tend to experience the crime as an incomprehensible and paradoxical event, potentially damaging their own interests and dignity. The person who suffers the consequences of crime is exposed to the risk of being re-victimized by criminal justice procedures and rules. This can occur not only during contacts with law enforcement officials, encounters with lawyers and within the courthouse, but also derive from the length of the criminal proceedings, which may not provide a response to the crime until years after it took place.

Denial of victims' dignity

Police and law enforcement procedures

Whoever turns to law enforcement as a victim is especially vulnerable to the procedures used during contact.

During first contact with the police victims often do not feel that they are viewed as a member of the community that should be protected. They may not feel that they have someone to turn to, or to trust. Their anguish and suffering may not be recognized; the victim risks being "pressed" in order to extract evidence for the case without regard for the effect that it has on them. These actions minimize the significance of what has occurred, can place doubt on the victim's version of what happened or make the victim feel guilty or responsible for what happened.

The victim may be alone when reporting the crime to a police officer despite being in an impaired mental and/or physical state. Victims might have a hard time understanding and making themselves understood and do not receive assistance meaning that police officers and other first contact personnel need to be especially attuned to victims' needs and condition.

This is especially true for vulnerable groups such as children, migrants, trafficked persons, and persons with disabilities, which are most in need of protection. The most common underlying factor preventing these groups from coming forward is an abusive relation of power held by the perpetrator(s) over the victim, as well as the personal nature of certain crimes.



Underreporting can also be due to macro social factors such as perception of the police, socioeconomic status and fear of victim blaming¹⁶.

Criminal justice proceedings

Victims of crime may experience a loss of dignity in courtrooms because of the crime centred approach of criminal justice. The victim is called in criminal cases as a witness in the preliminary investigation phase; to provide elements for establishing the facts that constitute an offense; and to be heard during trial. At the same time courthouses are generally not designed to welcome and protect the victim and the design of spaces often does not correspond to the need to provide for separate spaces for victims and the accused.

The role of the victim is limited to the criminal justice process, that is: the process of establishing offender’s responsibility and guilt, sentencing, sentence enforcement, and post-release measures following incarceration generally designed to promote rehabilitation efforts and, in limited cases¹⁷, protect the victim and broader community. In this sense, the suffering intrinsic to every experience of victimization remains subordinate to the crime committed, the finding of guilt, and the choice of the appropriate sentence.

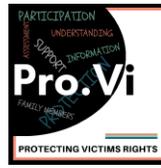
At times it is more important to have an immediate response than to go through the process.... We cannot intervene after three years. We need to intervene right away and give the victim something that doesn't make them feel like a victim twice. (Stakeholder, Italy)

The information that the victim receives both in regards to the proceedings and in regards to their rights is often provided in a “technical or legal” language that is not easily understood and communicated via channels that are more concerned with the formal correctness of the information than the victim’s capacity to understand its significance, who is working on the case and where, and what opportunities and services are available. The system all too often asks those who are often in a fragile condition and unaware of how the system works to understand, translate and orient themselves without any assistance. Addressing this concern represents a key focal point of the Victims’ Directive and responses to it such as the provision of psychosocial assistance in Germany (see Chapter 3) and victim support offices in Spain (see Chapter 4).

Victims might have a hard time understanding and making themselves understood during criminal proceedings (linguistically or otherwise) and do not necessarily receive assistance.

¹⁶ Yoon, Seokhee, “Why Do Victims Not Report?: The Influence of Police and Criminal Justice Cynicism on the Dark Figure of Crime” (2015). CUNY Academic Works. https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=2209&context=gc_etds

¹⁷ Some states in the United States have laws requiring that the victim and/or public be informed of the convicted offender’s residence. Similarly, some offender types may be prohibited from living in certain areas (e.g., convicted pedophiles may not be allowed to live near schools). However, privacy laws in Europe do not allow for this kind of public notification. See Dubber, Markus D. and Tatjana Hörnle, Eds. 2014. *Oxford Handbook of Criminal Law*. Oxford: Oxford University Press.



In these cases, the victim is not granted the right to be heard, to say what happened, to express their pain for what happened to them or others. Chapter 3 on Psychosocial Assistance in Criminal Proceedings provides insight into the importance of addressing this concern and provides a framework for how it can be done.

Victims may suffer secondary and repeated victimization, might be left alone and not shielded against intimidation or reprisals, including the risk of emotional or psychological damage. Victims may have to come in contact with the suspect or perpetrator of the crime within the courtroom or in the police station. They might have to participate in a public hearing, thereby exposing their situation and experiences to members of the community, or be subjected to repeated questioning, medical examination and unnecessary disclosure of information about their private life not related to the criminal offence. All of these actions have the potential to undermine the victim's dignity.

Society and the failure of service systems

Most countries only have services dedicated to a few categories of crime victims such as victims of gender violence and minors. Other victims often find themselves to be alone in dealing with the aftermath of the crime.

Victims are therefore asked to search for the answers to their needs and to find their way through the services systems alone. Victims are also often asked to consult different services without any support or guidance in the transition from one service to another.

Even when services are available professionals might not have the skills or knowledge necessary to enable them to work with the victims in a respectful, sensitive, professional and non-discriminating manner, thereby reducing the capacity to identify victims' needs and establish adequate protection measures.

Victims may also be asked to tell their story several times, repeating it to different professionals who do not work within a coordinated system. This repetition may not only be traumatic in and of itself, but inevitably yields differences in the narration that is potentially subjected to cross-examination and scrutiny by the defense and other actors within the justice system working to ascertain the veracity of the statements provided.

Chapter 4 covers psychological assistance at all stages, demonstrating how all victims of crime can be provided the necessary support, using recent developments in Spain as an example of multi-agency work involving the justice system and mental health services.

What do victims need?

Victims that feel that they have incurred a harm need to receive a response as soon as possible. Even if everyone does not respond in the same manner to events that threaten their rights and freedoms, there is a generally universal need to feel accepted and to have someone listen to them recount their pain and suffering.



The Victims’ Directive indicates that victims have an “immediate need” that cannot be satisfied by relying on the timeframe of the justice system. These needs, which demand an immediate response, include psychological, medical and social needs.

Someone who listens

The experience of victimization often generates a sense of anger that can be accompanied by fear and anxiety¹⁸. This suffering by the victim needs, first and foremost, to be expressed and shared with someone who listens in a supportive context before and independently of the investigation of the crime or being assigned to a specialist. This initial support should be done in an empathic, respectful and sensitive manner to allow the individual to express him/herself without shame. This applies to all contexts that establish the first contact with the victim.

What does it mean to listen to the victim? It means recognizing the dignity in their pain, it means working in harmony with their disorientation and suffering, knowing how to do it without causing harm, containing the anger, the sense of humiliation, and interacting with this pain without trivializing it or stimulating a desire for vengeance.

There is a need to provide care for all victims because every crime, even that which is apparently minimal, can leave profound wounds. **The Victims’ Directive does not create a hierarchy of crimes but asks those that work with victims to create a context in which the person that has been subject to a crime can find the space and time necessary to confront the impact of the crime on his/her life.**

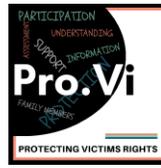
Orientation

The victim needs to be directed towards the services that can respond to their specific needs in relation to the trauma experienced, the harm to their health and finances, and the procedures to follow in order to claim their rights.

The victim has to be able to receive clear, adequate information that they can understand and that permits them to make decisions. They must be able to receive assistance in accessing services and the justice system and be supported in their effort to have the wrong they experienced recognized as a crime.

One cannot wait for the victim to navigate the justice system and services alone in their effort to find answers to the multiple questions and doubts that they may have. Without support in the phase immediately following the crime, the incapacity to find answers may translate into

¹⁸ “Research indicates that about 25% of victims of violent crime reported extreme levels of distress, including depression, hostility, and anxiety (Norris et al. 1997). Another 22% to 27% reported moderate to severe problems. This means that around 50% of victims of violent crime report moderate to extreme distress. Table 1 shows the reactions that researchers and theoreticians have observed in crime victims. Workers may also recognize these reactions in the victim’s friends and family, since crime affects family and friends, school, work and the broader community (Burlingame and Layne 2001)” in Working with victims of crime: A manual applying research to clinical practice (Second Edition), Department of Justice, Government of Canada. <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/res-rech/p7.html>



a sense of impotence, leading the victim to close themselves in their pain thereby making it even more difficult to ask for help.

Assistance and protection

When a victim enters the criminal justice process, which for the Victims' Directive means the moment in which they report the crime, the victim must feel that their suffering is not minimized and that their presence matters beyond its' usefulness to the investigation and prosecution. They must feel that they receive constant attention within the spaces and procedures that involve them in order to feel that their dignity is recognized. They have to be able to understand, be understood and obtain all of the information necessary to make informed decisions in regards to their participation in the criminal proceeding.

The victim has to be able to establish trust-based relationship with judges and court staff and feel protected when asked to participate actively in the proceedings, for example when testifying, avoiding the contact with the suspect/accused offender. Ultimately, the procedures and treatment reserved for the victim should not cause ulterior harm.

The victim needs to be supported in their effort to understand what is happening. Since the experience in the courtroom can be very unpleasant for the victim for a variety of reasons, it is important that they be equipped to confront the experience in court. The victim needs to know what can happen, know what difficulties s/he may encounter and in what way s/he may find her/himself in crisis when in the courtroom. It is not the type of crime that is relevant, but the characteristics that render the victim more or less capable of handling the situation, which is an important test in his/her life and a test for the successful completion of the process.

Conclusion

The transposition of the Victims' Directive has contributed to significant changes in the treatment and protection of victims of crime albeit with varying levels of protections and services in EU Member States. Notable advances have been made and yet much remains to be done in changing not only policy and practice, but also culture both within the criminal justice system and broader society. The chapters that follow address changes that can be undertaken within the criminal justice system and victim services. Chapter 2 focuses on one of the most determinant points in victim protection – first contact – which can be seen as laying the framework for all future contact and services, underscoring the importance of using a victim-sensitive, individualized approach with *all* victims of crime. Chapters 3 and 4 then discuss some of the intricacies of working with and protecting victims and groups in need of psycho-social and psychological assistance, ensuring that they receive the necessary support and assistance, based on advances in service development in Germany and Spain respectively. Chapter 5 addresses the special needs of vulnerable groups while Chapter 6 provides guidance on the completion of individual assessments with special considerations for vulnerable groups or individuals.



Chapter 2: First contact: System Response and Professional Interventions

Introduction

The victims' protection process starts when the victim, a family member or friend explores available services in a quest for information, protection or support that can be of assistance in dealing with the victimization experiences at hand. This kind of first-line intervention with victims is ensured predominantly by public and private non-profit organizations that aim to promote gender equality, human rights and the continued fight against all forms of violence and discrimination. As such, the efficacy of these first-line interventions hinges on certain key aspects (chief among these are awareness of the victimization experience and acknowledgement of the need for support or intervention) that should be reinforced and developed by the aforementioned support services. The importance of these first-line interventions cannot be understated¹⁹.

Specialized understanding of victimization and its impact on the individual is essential for victims' support services, police departments, the judicial system, and health services in order to minimize the negative effects experienced by the victim. This includes both direct effects caused by the crime as well as the effects of justice system involvement. This potential for ulterior victimization by the criminal justice system points to the need for victim-sensitive interventions that protect their rights and well-being.

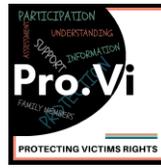
The first approach with victims can include a single contact or be comprised of several interventions. In both cases the service must be based on knowledge of the victim's situation and resources, on an evaluation of the person's immediate needs and the transmission of information regarding their rights, available services, protections and criminal procedure. Professionals should be educated and well versed in the specialized areas, as well as in relational, emotional and communication skills that enable them to provide adequate and comprehensive care for victims.

These interventions should be planned and delivered to avoid overlap or duplication, thereby contributing not only to the effective allocation of resources, but also to a decrease in secondary victimization. Moreover, services should be provided in a time-sensitive manner, providing answers immediately or as soon as possible.

In addressing first contact with victims, this chapter aims to:

- Raise awareness about the importance of informing victims about their rights and the available support services;

¹⁹ CIG. (2016). *Guia de Requisitos Mínimos de Intervenção em Situações de Violência Doméstica e Violência de Género*. Comissão para a Cidadania e a Igualdade de Género.



- Promote an appropriate approach to working with crime victims, notably at first contact, highlighting the importance of an effective communication model based on respect, empathy, competence, rigor, and safety;
- Emphasize the power of cooperating with other services or agencies and the importance of referring victims to more specialized services; and
- Promote the operationalization of special protections towards victims that belong to more vulnerable groups.

What victims’ rights apply?

A series of rights protect victims starting with the point of first contact with the judicial and protection system. These rights are designed to protect them as crime victims and include: the right to information, the right to understand and be understood, the right to access support services, the right to be heard, and finally the right to protection from the first contact to the end of the process²⁰. Let us now take a deeper look at how these rights should be applied and operationalized during the victim’s first contact, as established by the European directive 2012/29/EU.

“...it’s our role to enforce the rights that these victims have, isn’t it? It has a lot to do with this, the victim doesn’t know that this is their right, but we know that we must enforce these rights and we must request them...” Stakeholder (Stakeholder Interview, Portugal)

The right to information

Every victim has the right to be informed about their rights, as well as receive information about all the relevant proceedings during the criminal process. Victims should receive this information during the first contact with the system, whether it is with the police, victims’ supports services or the health system. This is to ensure that they understand where they are in the process and the next steps that should be followed. The acquisition of this information helps the victim integrate their own victimization experience and increasing their sense of control over the situation. This empowers victims, enabling them to feel more secure and protected by the judicial system:

“(...) there’s an issue that we find to be very important: it’s the fact that they had concrete information about their rights and duties. And, essentially, the legal rights, because there are certain situations that will only be resolved through the justice system (...) an informed woman is an empowered woman, because she has more information, she knows where to go, know perfectly well the time this takes, they can have a way better protection strategy. If they don’t have the information everything is more complicated.” (Stakeholder Interview, Portugal)

²⁰ See Annex 1 for the complete directive.



Chapter 2, Article 4

Right to receive information from the first contact with a competent authority

1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:

(a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;

(b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;

(c) how and under what conditions they can obtain protection, including protection measures;

(d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;

(e) how and under what conditions they can access compensation;

(f) how and under what conditions they are entitled to interpretation and translation;

(g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;

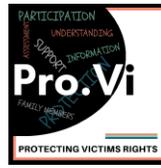
(h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;

(i) the contact details for communications about their case;

(j) the available restorative justice services;

(k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

2. The extent or detail of information referred to in paragraph 1 may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may also be provided at later stages depending on the needs of the victim and the relevance, at each stage of proceedings, of such details.



The right to understand and be understood

Following the aforementioned right to information, the victim has the right to understand all the information that is given to them, as well as the right to be properly understood by all the services that they come into contact with. These rights are based upon the premise that both communication with the victim and the **language used must be clear, objective, and adjusted to their profile and needs**. The services that are in contact with victims, especially in the beginning, should be receptive and aware of these issues, paying attention to the way they convey information and, above all, confirm that the victim has understood everything that they have been told. All too often information is transmitted in a short period of time, in a rushed way and with external stimuli that can disrupt the victim's attention. When a professional is with a victim, it is important that all the attention is focused on them so that the service can be adjusted to their needs, assuring that the services are as adequate and personalized as possible.

This naturally implies that if the victim cannot speak or cannot understand the country's language, then they have the right to interpretation and the translation of relevant documents and written material. These services must be accessible and ready to help victims understand all of the information provided in an objective and clear manner.

Chapter 2, Article 3

Right to understand and to be understood

1. Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority.
 2. Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.
 3. Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.
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The right to be heard

Throughout all the phases of criminal proceedings, the victim has the right to be heard in an informal and reserved environment that allows the victim to be an active and present figure throughout. Giving victims their voices should be one of the main objectives of the professionals involved in this process. Only this way will we be able to understand the victim's perspective and act according to their specific necessities. Some studies^{21 22} show that when victims feel that they are being heard, and that their experiences are being validated, they tend to cooperate in a more involved and efficient manner. Victims feel safer and trust the support services more when their experiences are valued, making it less probable that they will quit throughout the process.

Chapter 3, Article 10: The right to be heard

1. Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.
 2. The procedural rules under which victims may be heard during criminal proceedings and may provide evidence shall be determined by national law.
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²¹ Kunst, M., Popelier, L., & Varekamp, E. (2014). Victim Satisfaction with the Criminal Justice System and Emotional Recovery. *Trauma, Violence, & Abuse, 16*(3), 336–358. <https://doi.org/10.1177/1524838014555034>

²² Wemmers, J. (2013). Victims experiences in the criminal justice system and their recovery from crime. *International Review of Victimology, 19*(3), 221–234. <https://doi.org/10.1177/0269758013492755>

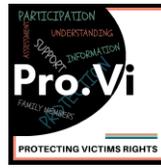


The right to access support services

All victims have the right to have access to support services, regardless of the crime they have suffered or if it was reported to the police criminal department or not. The victim has the right, from the first contact, to be guided by the appropriate structures that can give them the support they need before, during and after the criminal process. These services include, but they are not limited to, judicial support; psychological, emotional and social support; they should empower victims; clarify doubts that they might have; assist, inform and advise them as well as refer them to a shelter (if necessary). These should be free of charge and confidential.

Chapter 2, Article 8: Right to access victim support services

1. Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.
2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.
3. Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim.
4. Victim support services and any specialist support services may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis.
5. Member States shall ensure that access to any victim support services is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.



The right to protection

Victims have the right to be protected against acts of retaliation, intimidation and acts that can jeopardize their physical integrity, emotional well-being, dignity, or their lives. This protection is also present since the first contact with the support services. The protective measures that are to be applied are a result of a victim's individual evaluation, adjusting these measures to their specific needs:

"(...) the intervention comes in that sense, we try to identify the risk and we try to identify the necessities, find resources and answers to those necessities and design individual intervention plans with each woman that goes through everything we can imagine, right? And protection, is in fact, the issue that we worry the most (...)"
(Stakeholder Interview, Portugal)

Chapter 4, Article 18: Right to protection

Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

The role of professionals attending victims and protecting their rights

Given the demanding nature and responsibility that professionals have when interacting with crime victims since the first contact, these professionals need to have the appropriate qualifications for their respective roles. These qualifications include updated scientific knowledge and an understanding about victimization, including its dynamics and potential impact on victims. Professionals should also be familiar with the current legal framework regarding the protections awarded to victims of crime²³. In addition to this theoretical training, professionals should also be well-versed in intervention procedures and practical strategies

²³ APAV. (2019). *Manual EMAV – Atendimento e Encaminhamento de Vítimas de Violência Doméstica e de Género*. Associação Portuguesa de Apoio à Vítima.



related to technical and personal skills, attitudes, and behaviours to be adopted when in contact with victims.

These technical skills are the result of all the knowledge acquired throughout the professional's academic and professional education, additional advanced and specialized training in a certain area, and the experience accrued throughout their professional career. All of these give the professional the expertise to know what to do when they encounter victims, regardless of the stage in the criminal procedure at which they come into contact with the victim.

Professionals should also develop and adopt personal skills are the characteristics, attitudes and behaviours that enable them to provide a higher quality service that is more humane, attentive and focused on the victims' needs. These traits give the professional the knowledge of *how they should do things* when in contact with victims. These skills include **relational skills** (the way the professional deals with human relationships), **emotional skills** (the way the professional manages and adjusts their own emotions especially when faced with more demanding and challenging circumstances and situations), and other skills such as: tolerance, respect for others and their rights, the capacity to listen and be empathic, and an effort to understand and "*comprehend, through the victim's perspective, the reality they live in*"²⁴.

Professionals involved in first contact and interventions play a crucial role in the way the victim processes the events that they have experienced. These professional are directly involved in the victim's path to recovery and have a responsibility to avoid, as much as possible, any secondary victimization that may arise from their professional practice^{25 26}.

The victimization experience is an emotionally complex and disturbing event that negatively influences the individual's psychological well-being²⁷. Victimization data show that common psychological effects experienced by victims include feelings of **rage, fear, worry, anguish, sadness, anxiety, shame, negative self-image, and possible culpability for the**

²⁴ APAV, 2019

²⁵ APAV, 2019.

²⁶ Machado, M., & Gonçalves, R. (2002). *Violência e Vítimas de Crime, Vol. 1 – Adultos*. Quarteto Editora

²⁷ Chadee, D., Williams, D., & Bachew, R. (2020). Victims' emotional distress and preventive measures usage: Influence of crime severity, risk perception, and fear. *Journal of Community & Applied Social Psychology, 30*(1), 14-30. <http://doi.org/10.1002/casp.2418>



violent situation^{28 29 30}. These effects can have a long-term negative impact in victims, potentially leading to the development of post-traumatic stress disorder or depression^{31 32}.

The first contact with crime victims is therefore of extreme importance in any type of intervention. This contact with victims can define and determine the establishment of a relationship of trust, which allows the professional to better select and implement the appropriate intervention, adapting it to the victim’s needs³³. The quality of the service during first contact is also crucial to ensure that the victim’s decision is based on as complete of an understanding of the situation and their rights as possible, including their level of participation in the criminal process³⁴.

Thus, when a victim of a crime takes the initiative of ending the cycle of violence and decides to seek help, professionals should be ready to receive them in a warm and protective way. Professionals are expected to provide an adequate and effective service that is congruent with the ethical and deontological principles that govern their profession, avoiding secondary victimization³⁵.

Professionals involved and examples of good practice

Some groups of professionals, by virtue of the nature of their profession and the first line interventions they provide, are more likely to be the first contact and bridge between the victims and the judicial system. These first line intervention professionals may include law enforcement (e.g., police), physical and mental health professions and victim support professionals. All of these professional groups play an essential role in the identification and reporting of crime, as well as in attending to, supporting, assisting, and referring victims to more specialized services³⁶.

Victims should be appropriately received, given any necessary information, and referred to a network of support institutions. Police, doctors, nurses, judges, psychologists, and other support professionals, should be capable of adopting a positive, empathic and appropriate attitude, with the aim of reassuring the victim and validating their decisions without

²⁸ Langton, L., & Truman, J. (2014). *Socio-emotional impact of violent crime* (NCJ 247076). Washington, DC: US Department of Justice.

²⁹ Manita, C., Ribeiro, C., & Peixoto, C. (2009). *Violência Doméstica: Compreender e Ouvir, Guia de Boas Práticas para Profissionais de Saúde*. Comissão para a Cidadania e a Igualdade de Género.

³⁰ Shapland, J., & Hall, M. (2007). What do we know about the effects of crime on victims? *International Review of Victimology*, 14, 175–217. <https://doi.org/10.1177/026975800701400202>

³¹ Langton & Truman, 2014

³² McLean, C. P., Morris, S. H., Conklin, P., Jayawickreme, N., & Foa, E. B. (2014). Trauma characteristics and Posttraumatic Stress Disorder among adolescent survivors of childhood sexual abuse. *Journal of Family Violence*, 29, 559–566. <https://doi.org/10.1007/s10896-014-9613-6e>

³³ APAV, 2019

³⁴ Manita, Ribeiro & Peixoto, 2009

³⁵ Ibid.

³⁶ Ibid.



underestimating or trivializing the reported facts. Whenever possible these professionals should provide, when receiving victims, adequate and supportive material conditions to aid the expression of very painful facts and that are part of a person's private life. An example of good practice in this sense would be receiving the victim in a private and isolated space, guaranteeing their privacy and confidentiality³⁷.

Consequently, first contact professionals should adopt several principles and attitudes^{38 39}:

- Reassure and calm the victim down
- Establish a relationship of trust and empathy with the victim
- Validate the report and support victims' request for help
- Avoid giving excessive information to the victim in a first contact
- Inform the victim of their rights
- Avoid intervening in an impulsive manner, as it can lead to the victim avoiding asking of the necessary support
- Listen to what the victim has to say about their victimization experience
- Assure the victim that they are not alone in this process, and that they are not at fault for what happened to them
- Do not pressure the victim into making decisions, revealing excessive details about their victimization experience if they do not feel comfortable doing so
- Avoid giving personal advice, making comments or judgements about the situation
- Respect the victim's confidentiality, keeping in mind its' limits
- Believe the victim's report
- Avoid asking questions that may induce acute emotional reactions from victims
- Approach and treat victims with dignity and respect, avoiding judgements about their appearance, narratives, behaviours, and decisions
- Refer the victim to institutions or services that can support them, evaluate their needs, and provide appropriate support
- Respect each victim's perspective of their specific situation even if it is contrary to the professional's point of view
- Normalize the victimization experience and the associated consequences

³⁷ Ibid.

³⁸ APAV, 2019

³⁹ Manita, Ribeiro & Peixoto, 2009



- Be prepared to intervene in a crisis

Professionals should also highlight that violence is never justifiable and that no circumstance, person, or behaviour can justify physical, psychological, verbal, sexual, or any other kind of abuse.

The importance of communication in interventions with victims

As mentioned above, the quality of the established relationship with the victim can be a predictor of the success or failure of the professional’s intervention. There are certain factors that influence this quality, which include the **style of and quality of communication**. When victims ask for help, they find themselves debilitated, hyper-vigilant and sensitive to every detail in the behaviour of others. This includes non-verbal communication. First line professionals should not only have the appropriate communication and listening skills, but also be prepared to implement these skills in the field, regardless of the victim, crime suffered or the situation⁴⁰.

Attending skills represent one of the most important strategies for effective communication with others and entails a group of essential skills for a more appropriate and adjusted communication when providing services to victims of crime. This includes: the appropriate use of eye contact, the type of verbal language and tone of voice used, adoption of an empathic attitude, and the professional’s non-verbal communication/body language⁴¹. This set of basic listening skills allows victims to feel safer, more involved in the process and that their experiences are important and valid. These skills also give the professionals the tools that allow them to be more aware and be able to observe non-verbal cues, which in turn enables them to respond to victims’ needs in the most appropriate way⁴². These tools also allow for the creation of a deeper and more beneficial relationship based on trust between the professionals and the victims upon first contact, which can be a positive reference during the next steps in the judicial procedure.

The sections that follow discuss some of these techniques and skills, which are essential for more effective communication with crime victims.

Verbal language, non-verbal/body language, and questioning

In the early stages of the first contact, the professional should start by introducing themselves, providing their name and role. They should treat the victim in a personalized way, clarify their objectives as well as explain what usually happens during criminal proceedings. This first step provides the victim with information about the support service, allows for the clarification of doubts and concerns the victims may have about the proceedings while providing an opportunity to break the ice between the professional and the victim.

⁴⁰ Ibid.

⁴¹ Ivey, A. E., Ivey, M. B., & Zalaquett, C. P. (2010). *Intentional Interviewing and Counseling: Facilitating client development in a multicultural society* (7th ed.). Nelson Education.

⁴² Ibid.



Verbal language, namely the tone of voice, its rhythm, cadence, and speech pattern are good indicators of the state someone is in and should therefore be taken into consideration by the professionals when engaging with victims. Once aware of these voice characteristics - and the possible changes induced in the other's speech quality - the professional increases their capacity to identify both signs of comfort or discomfort and stress-inducing or confusion-inducing situations⁴³. Professionals *should not* disregard the victim's story and experiences.

The victim should be encouraged to tell the events and to share relevant aspects that they believe are important to the process in a manner that respects the victim's will and self-determination. This moment of sharing should never be forceful or intrusive. By utilizing an open, welcoming approach the professional shows that the victim's concerns are valid, important and deserve as much attention and importance as other topics that need to be explored⁴⁴.

The professional should be able to paraphrase the content shared by the victim, using examples that help clarify given situations. Paraphrasing makes the victim feel like they are being listened to, which encourages them to continue talking about their victimization and the associated feelings. The professional must also summarize what was said and should confirm the information with the victim, so that they can fill in any information gap or misunderstanding⁴⁵.

Furthermore, it is the professional's duty to inform victims of their rights and the available resources. During contact, all information should be provided in a careful, clear, objective, and adequate manner (with limited or no use of technical language or jargon). The provision of information should be adapted to the personal characteristics of the victim in a manner that allows the professional to be certain that the information has been understood by the victim.

Body language should be attentive and careful. It represents a constant in the day-to-day attitudes and behaviours of front line professionals. This is important not only for the professional, but also for the victim. On the one hand, the professional should be aware of the victim's non-verbal cues, which can lead to the revelation of feelings and reactions to the contents being discussed, allowing the professional to adapt their response to the necessities and circumstances of the situation at hand. On the other hand, the use of appropriate body language by the professional will promote a feeling of safety, protection, and trust by the victim. Their attitude should be serene and consistent with what they are saying, and professionals should pay special attention to the use of gestures, facial expressions, looks, tone of voice, and other aspects. They should also avoid signs of impatience or anxiety (e.g., crossing their arms, sighing insistently, looking at the clock) as this may lead the victim to feel that their experience is not valued⁴⁶.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ APAV, 2019

⁴⁶ Ibid.



How professionals **question victims** is also important. The way one asks questions is fundamental to the establishment of a good foundation for effective communication. Thus, victims should be asked questions in a careful and sensitive way that does not pass judgement. The professional should focus on the victim’s speech, giving them reassuring signs via attentive non-verbal communication that shows their availability to listen and to provide support. This is crucial since the way we ask questions can inhibit the victim or lead to the adoption of a more defensive posture in response to the service provided and the professional involved⁴⁷:

"(...) and the questions that I make have to be careful, attentive, so that I don't hurt further, so that I don't victimize them again. And, preferably, listen to them once, not twice, not three times, not four times, not even five times (...)" (Stakeholder Interview, Portugal).

Professionals should also learn how to appropriately deal with victim’s silences, crying, emotional confusion, and hesitation, all of which are natural reactions, taking into account the traumatic experiences and victimization they have gone through and are recalling when talking about what happened to them.

Questioning should entail open ended questions complemented with some closed ended questions. This strategy can promote the acquisition of knowledge and a deeper understanding about the situation⁴⁸. Questioning victims in an appropriate manner, with respect for the victims and their protection, can help make the exchange smoother while helping identify and clarify new questions that arise⁴⁹.

The principles of listening

Listening is an essential skill that is the foundation of effective communication. It is the most important skill when intervening with crime victims. Ivey, Ivey and Zalaquett (2010) assert that the most important issue to keep in mind, in any situation where we need to interview, counsel, or attend, is the capacity to establish contact with another person in a rich and trustful way. Listening, understanding and providing the victim with the time and to share their narrative is essential, enabling the professional to understand the victim’s story, main questions and doubts.

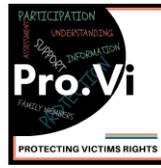
Front line professionals should hear the victim, listen attentively and grasp all the contents of their message. Furthermore, the professional should focus all of their attention on the present moment with the victim, demonstrating this focus through their verbal and body language. Useful strategies include maintaining eye-contact throughout the victim’s narration, nodding their head and using interjections, while abstaining from interrupting the victim⁵⁰. All

⁴⁷ Ibid.

⁴⁸ Heller & Hindle, 2010.

⁴⁹ Ivey, Ivey & Zalaquett, 2010.

⁵⁰ APAV, 2019



communication strategies should be adapted to the victims' individual and cultural characteristics with full respect for their individual space and cultural background.

According to Manita, Ribeiro and Peixoto (2009), there are general principles that make up the foundation of listening and should be present in the day-to-day actions of front line professionals that not only contact, but also receive victims that reach out to them. Firstly, it is necessary to be aware of the fact that *"it's impossible not to communicate"*. Communication is established through one's speech, gestures, tone of voice, posture, gazes, facial expressions, silences, and attitudes. This is why professionals should be aware of the way in which they behave and act towards victims. It is essential to recognize that *"behaviours generate behaviours"* and that the victim's reactions to the proposals and assistance offered depend on the impact of the first contact, which includes the situation and people who participated.

Secondly, it is imperative to appropriately use non-verbal communication (gazes, gestures, posture) and verbal communication as well as the voice in all of its' dimensions: intensity, volume, rhythm, word cadence, accentuations and tones. Knowing how to listen, knowing how to relay appropriate information in an effective way and knowing how to give constructive feedback are also aspects that should be taken into consideration throughout the process.

Finally, professionals should recognize that the context and space where victims are listened to exerts influence over the services and support given to the victim, underscoring the importance of being seen in a calm, safe, private and comfortable place. All these strategies allow victims to be more open and feel safer in telling their story and victimization experience, making them more receptive to the services and supports offered.

Victim safety and confidentiality and human rights protection

The guarantee of confidentiality and safety for victims of crime is an imperative condition for an appropriate service by first line professionals. Some studies show that negative reactions from professionals towards the victim, after the crime was committed, can worsen their suffering, contributing to the continuation of secondary victimization^{51 52}. Hence, it is important that professionals understand that they are working with people who are suffering. Professionals need to show the utmost respect for the intimate and delicate situation with which they are confronted:

"...the victim must be treated with professionalism and respect..." (Stakeholder Interview, Portugal).

The ethical and deontological codes of their professions should also be a part of the foundation of their professional practice, assuring respect for the victim's privacy, data and confidentiality regarding all matters. Any leak of information, whether it be deliberate or accidental, can put

⁵¹ Montada, L. (1994). Injustice in harm and loss. *Social Justice Research*, 7(1), 5–28.

⁵² Orth, U. (2002). Secondary victimization of crime victims by criminal proceedings. *Social Justice Research*, 15(4), 313–325.



the victim's life, physical integrity and/or assets at risk. The same applies to the victim's family and friends⁵³.

When a professional wants to contact other institutions or refer the case to other organizations, then it is necessary to receive the victim's express consent and permission to share information regarding them⁵⁴. Besides being good professional practice, this can promote trust between the professional and the victim.

"...it would make sense a more general directive at this level – have general protocols with entities to keep the victim's confidentiality in the national health and educations systems..." (Stakeholder Interview, Portugal).

Dignity is a universal value and inherent to human beings. This is why all of us have an ethical and judicial duty to respect the rights of others. When working with victims, front line professionals have the duty to perceive the victim as an individual person, a unique being, who is necessarily different from others, with their own desires that should be respected and promoted while attending and supporting the victim throughout the judicial process⁵⁵.

The foundation of an adequate and empathic relationship with victims must be based on certain principles such as respect for autonomy and self-determination and the undertaking of actions to promote recovery, a feeling of justice and empowerment. Victims should be treated with equality. Fairness represents a key consideration fairness when promoting conditions that consider victims' individual differences⁵⁶ and in the fight against discrimination.

Professionals need to be made aware of these issues so that, when intervening with victims, they respect their wishes and decisions without harming arrangements related to criminal law and criminal procedure⁵⁷. Interventions based upon this principle will make the victims feel more responsible, relevant, empowered and independent regarding their choices and decisions (e.g., concerning the support received, filing a police report, future plans). Professionals should guarantee that all services and specialized support services be provided with the maximum rigor and absolute respect for these principles without putting their wishes before victim's⁵⁸.

In order for this to happen, professionals should try to follow a model⁵⁹ ⁶⁰ that promotes respect and the acceptance of others, non-discrimination, human rights, and victim empowerment while adopting behaviours that include but are not limited to:

⁵³ APAV, 2019

⁵⁴ APAV, 2019

⁵⁵ Ricou, M. (2014). *A Ética e a Deontologia no Exercício da Psicologia* (1st ed.). Ordem dos Psicólogos Portugueses

⁵⁶ Nunes, R. & Rego, G. (2002). *Prioridades na saúde*. Lisboa: McGraw-Hill de Portugal, Lda.

⁵⁷ CIG, 2016

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Manita, Ribeiro & Peixoto, 2009



- Get informed consent from the victim for any intervention that might be conducted;
- Give all the necessary information to the victim including the likely outcomes of certain decisions, especially the risks and benefits that are associated with them;
- Be aware that there is not a victim's or assailant's profile, and therefore, any persons, independently of their personal characteristics and resources, can be a victim of a crime;
- The **individual assessment** of the victim should be conducted without undue influence by the individual's appearance, personal characteristics, gender, age, sexual orientation, socioeconomic status, ethnicity, nationality, or by the victims' or assailants' apparent behaviour. Some of these factors, however, do play a role in the general identification of vulnerable victims (e.g., minors). The emphasis here is on the individualization of the evaluation and recognition that multiple factors come into play, many of which may not be obvious (see Chapter 6 for further guidance);
- Avoid giving personal advice, passing judgement or making affirmations based on stereotypes, prejudice, myths, or unfounded beliefs;
- Promote awareness about the different criminal process stages, so that the victim can make a well thought out and informed decision;
- Guarantee that the victim's self-determination is present in every decision they make and that the victim has the final say in determining which intervention will be provided.

Multi-agency cooperation and referrals to other services

Whenever necessary, the intervention provided front line professionals requires, as a basic operating principle, cooperation with other entities and the referral of cases in accordance with multi-sectoral approaches⁶¹. Cooperation between entities allows for the clear definition and systemization of the intervention in a manner that more fully respects the professionals involved.

Networking involving collaboration and cooperation with other professionals is the best methodology for obtaining more suitable and higher quality services for crime victims. Networking at local, regional and national level enables the implementation of protocols, coordination of interventions with defined roles, functions and responsibilities, that are then given to each professional, thereby avoiding the duplication or dispersion of interventions and efforts⁶²:

"(...) we work in a strict collaboration with the security forces, courtrooms, social security, and a little while ago we spoke about the national shelter homes network and the structures for victim support services, all of these structures work in an articulated

⁶¹ CIG, 2016.

⁶² Ibid.



way, especially because they are referral structures (...) All referral structures keep in contact and they ask for some support for victims.” (Stakeholder Interview, Portugal).

Networking can provide more adequate answers to identified victims’ needs.

An integrated approach involving the various professionals and services can avoid some constraints that could affect the joint work between organizations. Hence, professionals should promote a positive relationship and effective communication with professionals from other entities. Problems should be addressed in an integrated way, mobilizing and engaging the various services as deemed necessary⁶³.

The following outlines a set of measures that professionals should adopt while in an articulated victim referral process:

- Time should be well managed and made the most of in order to meet certain requirements in the process, without delaying or harming the performance of other services in their work with victims (e.g., an urgent referral of a victim to medico-legal services, sending reports in time).
- Communication with other professionals should be appropriate, cordial, clear and objective, avoiding the sharing of information in an ambiguous fashion.
- The sharing of information between professionals should be made in a careful and clear way. It should contain all the necessary information so that other entities can follow-up. The victim’s voluntary consent, which represents the basis for information sharing, should always be kept in mind.
- The intervention should promote networking through the active participation of other professionals, optimizing the available resources to give the best attendance possible to crime victims.
- Personalized and personal contact with professionals from other institutions is very important as this promotes a synergy and a closeness between all the professionals involved with the objective of facilitating the necessary diligences in the victim’s intervention⁶⁴.

Conclusion

Front line intervention professionals play a central role in the diagnosis, treatment, and referral of victims. Being that they are the professionals with the highest probability of being in contact with these kind of situations, it is important that they show education, availability and appropriate skills to: identify and recognize victimization experiences; protect and refer

⁶³ APAV, 2019

⁶⁴ Ibid.



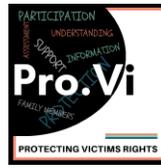
victims; and promote networking and the development of an individualized intervention in cooperation with other support services⁶⁵.

It is imperative that professionals get general and specialized education in a regular and systematic way. This education should be updated as new issues, interventions and national legislation develops. This will help assure that front line professionals practice their roles in a more adequate way, increasing their sensitivity to victims' needs, as well as allowing them to give appropriate treatment, with respect and professionalism, that is free of prejudice and discriminatory attitudes⁶⁶.

"...there must be professional development and education, especially of an interdisciplinary nature." (Stakeholder Interview, Portugal)

⁶⁵ Manita, Ribeiro & Peixoto, 2009

⁶⁶ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029>



Chapter 3: Psycho-social assistance in criminal proceedings

Introduction

Exposure to violent crime often leads to traumatization and severe psychological consequences for victims. Their participation in subsequent criminal proceedings frequently constitutes a significant additional burden with the potential for secondary victimization. In fact, the needs of the victim are often contrary to the legal requirements of a court proceeding, which may, by their very nature, represent traumatic experiences. In addition, most victims are unfamiliar with the procedures, stakeholders, rights and responsibilities in a criminal trial.⁶⁷ In-court interrogations and the encounter with the accused also have the potential to lead to flashbacks and re-experiencing the crime.

To reduce this risk of secondary victimization, Germany has introduced the victim support instrument of “psychosocial assistance” as part of the 3rd Victims’ Rights Reform Law⁶⁸ which was passed in response to the Directive 29/EU/2012 in December 2015. Psychosocial assistance is specifically designed to limit the negative effects of participation in criminal proceedings for victims via a series of actions described below.

The right to psychosocial assistance during criminal proceedings (*Psychosoziale Prozessbegleitung*) was established in § 406g of the German Code of Criminal Procedure (StPO)⁶⁹ and is considered the most significant legal adjustment that was made in response to Directive 29/EU/2012.⁷⁰ As such it represents one method of assisting victims and reducing secondary victimization to be used with victims scheduled to testify in court

⁶⁷ Stahlke, Iris (2017): Psychosoziale Prozessbegleitung von gewaltbetroffenen Jugendlichen in Strafverfahren. Eine Methode zur Belastungsreduktion und zur Vermeidung von Retraumatisierung? Habilitation Presentation, Bremen 27.11.2017

⁶⁸ Gesetz zur Stärkung der Opferrechte im Strafverfahren (3. Opferrechtsreformgesetz), December 21, 2015, https://www.bmjb.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_Staerkung_Opferschutzrechte.pdf?__blob=publicationFile&v=3

⁶⁹ StPO: Strafprozessordnung; Bericht zur Umsetzung der Richtlinie 2012/29/EU (2015) https://www.bmjb.de/DE/Themen/OpferschutzUndGewaltpraevention/OpferhilfeundOpferschutz/Bericht_BundLaender_AG.pdf?__blob=publicationFile&v=2

⁷⁰ With the support of the Ministry of Justice of Schleswig-Holstein, the German project partner CJD Nord has placed a focus on this newly introduced instrument of victim protection in its capacity-building activities. Schleswig-Holstein is known as a pioneer of psychosocial assistance. Already in 1996 it was the first German state to finance witness assistance – the predecessor of psychosocial assistance – as a voluntary measure of the Ministry of Justice. Apart from conducting interviews with professionals and victims the project partner has facilitated multi-agency meetings and regional capacity-building workshops on psychosocial assistance for an interdisciplinary group of participants constituted of judges, prosecutors, lawyers, police officers and psychosocial assistance practitioners.



What is psychosocial assistance

The newly introduced § 406g StPO states that “*aggrieved persons may avail themselves of psychosocial assistance in legal proceedings. The person providing psychosocial assistance shall be permitted to be present during the aggrieved person’s examination and, when accompanying the aggrieved person, during the main hearing.*”⁷¹ While this possibility has been previously mentioned in the law, its parameters had not been clearly defined.⁷² This gap has been closed through the introduction of the new Law on Psychosocial Assistance during Criminal Proceedings (PsychPbG) which came into effect on January 1, 2017 and which complements § 406g StPO.⁷³

The **intention** of introducing psychosocial assistance is captured in § 2 (PsychPbG): “*Psychosocial assistance is a special form of non-legal assistance for vulnerable victims before, during and after a main hearing. It entails the provision of information and the qualified assistance and support during the entire criminal proceeding with the objective to reduce the individual burden of victims and to reduce their secondary victimization.*” With this objective, the instrument of psychosocial assistance constitutes a reaction to potential trial-induced stress factors such as encountering the accused, comprehensive interrogation and extensive waiting periods.⁷⁴

Eligibility for psychosocial assistance is defined in § 406 g (1) StPO stating that the right to psychosocial assistance extends to minors and vulnerable adult victims of an array of severe crimes including sexual violence, homicide, human trafficking and robbery. Assistance is further granted to family members however only in cases in which a victim has lost their life as a consequence of an unlawful act.⁷⁵ The scope of eligible offenses corresponds with the offences that grant the right to participate as joint plaintiffs in a criminal proceeding.⁷⁶ Psychosocial assistance is to be granted through judicial appointment and be free of charge to the recipient provided that a witness has been affected by one of these crimes and that the vulnerability is proven for an adult victim.⁷⁷

⁷¹ Section 406g Psychosocial assistance in legal proceedings , paragraph 1, https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p2460

⁷² Stahlmann-Liebelt, Ulrike, Stephanie Gropp (2016): *Psychosoziale Prozessbegleitung – vom Pionier in Schleswig-Holstein zum Bundesgesetz*, in: Justizministerialblatt Schleswig-Holstein, Dezember 2016, 439-444.

⁷³ <https://www.gesetze-im-internet.de/psychpbg/BJNR252900015.html>

⁷⁴ Stahlke, Iris (2017): *Psychosoziale Prozessbegleitung im Strafverfahren – qualifizierte Unterstützung und Begleitung für besonders schutzbedürftige Verletzte von schweren Gewalt-und Sexualdelikten*, in: Praxis der Rechtspsychologie, 27 (1), June, 55-74.

⁷⁵ § 395 (2), 1

⁷⁶ § 397a StPO

⁷⁷ For other types of crimes an aggrieved person can make use of psychosocial assistance however at their own cost. In Schleswig-Holstein psychosocial assistance is financed through voluntary measures of the Ministry of Justice for victims of domestic violence and stalking.

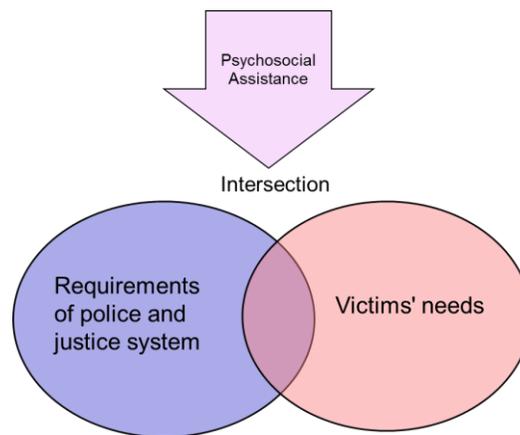


Access to psychosocial assistance is based on the victim’s proactive application for the service victim – either during the investigation phase or before or after a trial of first instance. Information about psychosocial assistance is commonly provided by the police, the prosecutor’s office or a provider of victim support services.

Core principles within the provision of psychosocial assistance include the neutrality of the professional delivering the support and the requirement of *separation between counselling and psychosocial support*. The law further emphasizes that psychosocial assistance neither includes legal counselling nor the clarification of the case. This means that the professional providing psychosocial assistance must take great care in assuring that the services do not including counselling, therapy or other services that could influence the case. The practitioner is not to influence the witness or his or her testimony. The victim is to be informed about these principles and about the fact that the psychosocial assistance practitioner does not have the right to refuse to give evidence in court.⁷⁸ These core principles constituted an important concession to the judicial system and its requirements during the legislative process of developing psychosocial assistance.⁷⁹

Role and function

Psychosocial assistance aims to reduce the stress and fears of minors and vulnerable adult victims in the context of criminal proceedings and to avoid secondary victimisation. From a judicial perspective it also bears the potential to – albeit indirectly - strengthen the ability of an affected victim to testify in a court hearing. Therefore, psychosocial assistance constitutes an important intersection between the requirements of the judicial system and the needs of the victim.



⁷⁸ § 2 para.2 PsychPbG

⁷⁹ Stakeholder interview, March 20, 2019



The assistance extends from a pre-trial to a post-trial phase and includes the following⁸⁰:

Before trial:

- Assessment of individual assistance needs
- Age-appropriate provision of information about the procedure of the trial, the respective roles of trial participants, rights and obligations of a witness
- Accompaniment of victims to police interviews, examinations by the public prosecutor's office or judicial video interrogations
- Visits to the courthouse or courtroom before trial
- Referral to other support services (e.g., therapy, victim compensation)

During trial:

- Accompaniment of victim and staying by their side in court for the duration of the hearing
- Assistance during breaks and waiting periods to discuss potential questions about how the trial works

After trial:

- Possibility to discuss how the victim feels after the trial
- Clarification of questions on the outcome of the proceedings that often leads to disappointment and misunderstanding

Psychosocial assistance practitioners report that many victims face internal pressures related to high expectations for themselves combined with fears of failure. As a consequence 60-70% of victims they assisted collapsed after the trial.⁸¹ Long waiting times before and between trial proceedings tend to further amplify these sentiments. By applying appropriate psychological and pedagogical methods psychosocial assistance helps alleviate trial-induced experiences of stress that can lead to fear, anxiety and psychosomatic disorders. An interviewee and victim of sexual violence described the positive effects as follows:

⁸⁰BMJV (2017). Psychosocial Support in Criminal Trials. We are here to help.

https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/Prozessbegleitung/Merkblatt_Prozessbegleitung_Englisch.pdf;jsessionid=4C02B9B103900A7C0FF95A415F8A2129.2_cid324?_blob=publicationFile&v=1;

Frauennotruf Lübeck (2020): Psychosoziale Prozessbegleitung im Strafverfahren. Prozessbegleitung in Schleswig-Holstein. PPT Presentation during capacity building workshop, February 19, 2020.

⁸¹ Capacity-building Workshop, Kiel, February 27, 2020



"I so appreciated the whole setting. We met in the cafeteria. She brought something to drink. She brought tissues, and an anti-stress ball, things one wouldn't think about but they helped so much during these challenging moments. When I left the court room I first collapsed and cried and she comforted me and said, this is totally normal."⁸²

Another interviewee described the benefits of psychosocial assistance in criminal proceedings as follows:

"The first two witnesses came alone without a lawyer or any kind of support. One of the women cried non-stop and eventually had an emotional breakdown. This came as a result of not having been prepared and not having anyone by her side. The fact that Ms. X (psychosocial assistance practitioner) sat at my side, that was really powerful. She sat between me and the accused, that was so important because that way I didn't even have to look at him. It doesn't help the judge if you are just crying and can't really say anything. It takes a lot of effort, but if you have this person next to you then you can mobilize your strength better than if you have to go through it alone."⁸³

To date the impact of psychosocial assistance on victims has only been evaluated in a few studies with small samples that were conducted prior to the comprehensive legal introduction of psychosocial assistance in 2017. However, similar to the exemplary interview excerpts, research has found that psychosocial assistance comforts victims and witnesses, improves the protection of victim rights, constitutes support and relief not only for victims but also for judicial staff, and improves the ability of victims to testify.⁸⁴

Practitioner characteristics and financial compensation

The psychosocial assistance practitioner does not constitute a party in court proceedings and therefore does not have the right to refuse testimony during a trial. However, the professional appointed by the judge to provide assistance is bound to **high quality standards and professional training requirements** regulated in the Law on Psychosocial Assistance

⁸² Victim interview, June 3, 2019

⁸³ Victim interview, June 17, 2019

⁸⁴ Kavemann, B. (2014): *Unterstützung von Mädchen und Jungen, die als verletzte Zeuginnen und Zeugen bei Polizei und Gericht aussagen. Ergebnisse des Modellprojekts »Psychosoziale Prozessbegleitung« in Mecklenburg-Vorpommern*. In: Deutsches Jugendinstitut e.V. IzKK-Nachrichten. Konstruktiv kooperieren im Kinderschutz. 2013/2014 Heft 1: 63-72); Kosmann, M. (2010): Sozialpädagogische Zeugenbegleitung für sexuell missbrauchte Kinder und Jugendliche im Strafverfahren. Ein Modellprojekt des Jugendamtes Dortmund 2007-2009 – Evaluationsbericht - . FH Dortmund https://www.dortmund.de/media/p/jugendamt_2/downloads_13/sexuelle_gewalt/Evaluation_Modell_Zeugenbegleitung_Jugendamt_Dortmund_2007-2009~1.pdf; Dannenberg, U., Höfer, E., Köhnken, G. & Reutemann, M. (1997). Abschlussbericht zum Modellprojekt „Zeugenbegleitung für Kinder“. Kiel: Institut für Psychologie. Forschungsbericht für das Ministerium für Frauen, Jugend, Wohnungs- und Städtebau des Landes Schleswig-Holstein, Kiel; Lercher, L. (2000). *Psychologische und juristische Prozessbegleitung bei sexuellem Missbrauch an Mädchen, Buben und Jugendlichen*. Austria.



During Criminal Proceedings (PsychPbG). As stated in § 3(1) of PsychPbG, a psychosocial assistant needs to be qualified on an interpersonal, professional and interdisciplinary level. The law requires that a psychosocial assistance practitioner has an academic degree in either social work, pedagogy or psychology. In addition, the professional must have gained practical work experience in one of these fields and must have completed an extensive training course on psychosocial assistance offered by a provider approved by the state.

The psychosocial assistance practitioner is responsible for proving his or her professional qualification including counselling and communication skills, conflict management skills, stress resilience and organizational skills. Given the interdisciplinary nature of providing psychosocial assistance to crime victims the training courses for practitioners also includes: basics of medicine, criminal law and criminology, the criminal proceeding framework, victimology, trauma and potential symptoms of post-traumatic stress disorder during a trial, basics of testimonial credibility assessment, age appropriate interviewing techniques, quality assurance, and self-care.⁸⁵ Finally, practitioners commit themselves to be informed about existing support services for their clients and to continuously participate in trainings.

The following elements can be identified as core competencies of a psychosocial assistance practitioner⁸⁶:

- Makes use of psychological techniques based on the individual needs of a victim in a criminal proceeding
- Assesses and strengthens the subjective resources of a victim avoiding suggestive methods
- Recognizes the benefit of combining psychosocial assistance with other judicial measures of victim protection and promotes cooperation between all parties involved in the proceedings
- Supports and encourages victims through a designated form of assistance that can clearly be distinguished from psychological therapy

The **affiliation of psychosocial assistants** varies between states. Some states accept both freelance practitioners as well as practitioners affiliated with a service provider, others explicitly require an affiliation with a provider and yet other states require psychosocial assistants to be affiliated with the Ministry of Justice.⁸⁷

⁸⁵ Stahlke, Iris (2017): Psychosoziale Prozessbegleitung von gewaltbetroffenen Jugendlichen in Strafverfahren. Eine Methode zur Belastungsreduktion und zur Vermeidung von Retraumatisierung? Habilitation Presentation, Bremen 27.11.2017; https://www.dgfpi.de/files/was-wir-tun/Mitgliedsfachtagungen/2019-11-20_bff_Ausschreibung_Prozessbegleitung_2019-2020.pdf

⁸⁶ Fastie, F. (2017) *Opferschutz im Strafverfahren. Psychosoziale Prozessbegleitung bei Gewalt- und Sexualstraftaten. Ein interdisziplinäres Handbuch*. Opladen: Barbara Budrich

⁸⁷ https://justizportal.niedersachsen.de/startseite/burgerservice/opferschutz/psychosoziale_prozessbegleitung/psychosoziale-prozessbegleitung-in-niedersachsen-160951.html



The **reimbursement** for their assistance is either paid to the practitioner directly in the case of freelance activities or to the service provider depending on their professional affiliation. Also, there are various payment models. The national law holds that €520 are to be paid during investigative proceedings, €370 during first instance court proceedings, and €210 after the completion of first instance proceedings.⁸⁸

Some states have passed different payment regulations in their local implementation laws. In some states compensation is provided on an hourly basis whereas other states utilize a mix of lump sum and hourly reimbursement.

Psychosocial assistants work to balance the need for a fair and equitable judicial process with victims' needs and rights.

Language and communication with victims

The EU Directive emphasizes the right to understand and to be understood. In the German adaptation of the directive an explicit reference is made to the need to inform victims in "easy" and comprehensible language about their rights during criminal proceedings.⁸⁹ However, interviewees have stated that the language in criminal proceedings is often incomprehensible not only for non-native speakers, but also for children and victims with mental impairments. Representatives of victim support groups have further claimed that the language in criminal proceedings is not only difficult to understand but in some cases **not sufficiently victim-sensitive**.

"It is a great problem that judges are not mandated to be trained! Judges and prosecutors often lack the sensitivity and fail to adjust their language when facing a traumatized victim unfamiliar with the system."⁹⁰

A victim of sexual abuse during childhood has described her experience as follows:

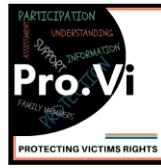
„I was sitting in front of a male judge who was about my stepfather's age and he said, so now go ahead and tell your story. And you have to imagine the setting, to the right of me sat the defendant and his lawyer, to the left of me sat my lawyer and I sat in the middle below this judge and his jury in this completely diminished and helpless position and then he says, so now it's your turn to talk... I had to start crying and then the judge said, crying doesn't help any of us here. And then I had to do my testimony which was absolute hell, I start crying even thinking about it today because it all was so humiliating and I felt so deprived of my rights in this moment."⁹¹

⁸⁸ § 6 PsychPbG

⁸⁹ § 406i StPO

⁹⁰ Stakeholder interview, Germany

⁹¹ Victim interview, Germany



Representatives of the judicial system on the other hand highlight their professional mandate of impartiality and of identifying the truth in a criminal case. Therefore, the language used can be challenging to the victim who might perceive the utilization of certain interrogation methods as putting their credibility in doubt. Given these two positions in a criminal proceeding psychosocial assistants play an important role as “translators”, preparing the victim for the nature of questioning to be expected and explaining the roles of all participants involved.^{92 93} While operating as an important intersection between the needs of the victim and the requirements of the court system, the psychosocial assistance practitioner is not allowed to provide legal advice or to talk about the offence. Also, psychosocial assistance is not a replacement for therapy or counselling, but providers could refer victims to these types of support if needed

Other considerations

The introduction of § 406g StPO – the right to psychosocial assistance - is a clear dedication towards the reduction of secondary victimization in criminal proceedings. Research demonstrates that psychosocial assistance has the following positive effects^{94 95}:

- Sense of safety and orientation during criminal proceedings
- Improved understanding of procedures and stakeholders in a criminal trial
- Empowerment and sense of control through offering paths of action and coping strategies
- Reduction of feelings of loneliness and helplessness
- Promotion of strength and resilience
- Stabilization and stress reduction through anticipation

Apart from these benefits, capacity building activities conducted within the Pro.Vi project have also highlighted remaining challenges to be addressed in the future, which are discussed below.

⁹² Stakeholder interview, June 13, 2019

⁹³ The service of psychosocial assistance is described in an informational flyer which has been translated into 28 languages and which is posted on the website of the Ministry of Justice and Consumer Protection; https://www.bmjv.de/DE/Themen/OpferschutzUndGewaltpraevention/Prozessbegleitung/Prozessbegleitung_nod_e.html

⁹⁴ The implementation process of the instrument of psychosocial assistance was assessed during capacity-building activities in four court districts of the state of Schleswig-Holstein. An advisory board was established and regional interdisciplinary workshops were conducted entitled: „*The implementation of the EU victim rights directive and the example of psychosocial assistance: Between promoting victims’ rights and the requirements of a criminal proceeding.*“

⁹⁵ Frauentruf Lübeck (2020): Psychosoziale Prozessbegleitung im Strafverfahren – Prozessbegleitung in Schleswig-Holstein, PPT, February 19, 2020



Assessment of vulnerability

Psychosocial assistance aims to support the most vulnerable victims in criminal proceedings including minors and adults who have been exposed to severe crimes. This objective corresponds with Art. 22 of Directive 2012/29/EU outlining the need for individual assessment to identify special protection needs of victims. Victim support professionals have claimed however, that determining the vulnerability of a victim to be eligible for psychosocial assistance remains a “grey zone” with the judge having the final say in the matter. Victims are also asked to “prove” their vulnerability through medical or psychiatric assessments – a circumstance that might have a disempowering effect on the victim. Some victim support advocates call for the annulation of the need to prove vulnerability while others have called for term to be defined.⁹⁶

Awareness of psychosocial assistance

Psychosocial assistance has been in place since 2017. Given its capacity to reduce secondary victimization one of the key tasks remains the promotion and awareness-raising of the instrument amongst police, judges, prosecutors and victim support groups. The police are commonly the first contact point responsible for providing information about various victim rights including psychosocial assistance. Further training is needed to improve the communication of information at a time when most victims are hardly receptive or able to retain such information. In addition, awareness-raising is needed amongst judicial stakeholders to emphasize the mandate of neutrality and professional training of psychosocial assistance practitioners. The presence of a victim support worker with specific psychosocial assistance credentials constitutes an added value for the court which previously perceived the relationship between the victim and a chosen support person as a “black box”.⁹⁷

Scope of eligible crimes for psychosocial assistance

The scope of eligible crimes for psychosocial assistance is defined in § 397a StPO. Judges and prosecutors are requested by law to initiate psychosocial assistance for eligible target groups. However, the past three years have demonstrated that judicial appointments for psychosocial assistance have predominantly been made for cases of sexual violence. Accordingly, the overwhelming majority of psychosocial assistance beneficiaries are female.⁹⁸ Other eligible types of violent crime with a higher percentage of male victims such as robbery, serious bodily harm or (attempted) homicide hardly ever result in the appointment of a psychosocial assistant by the judicial system. Awareness needs to be raised amongst the relevant professional groups that victims of this wider scope of crimes are legally entitled to assistance.

⁹⁶ Bundesministerium für Justiz und Verbraucherschutz (2020): Psychosoziale Prozessbegleitung, Bericht an den Normenkontrollrat, Beteiligung der Verbände, Juli 2020.

⁹⁷ Wenske, M. (2017): *Der Psychosoziale Prozessbegleiter (§ 406g StPO) – ein Prozessgehilfe sui generis*, in: Juristische Rundschau, 2017 (9), 457-466.

⁹⁸ Comparison of statistics provided by the Ministry of Justice of Schleswig-Holstein for 2017, 2018, 2019



In addition, victim advocates and judicial stakeholders alike have claimed that the right to psychosocial assistance should be extended to domestic violence, stalking, domestic burglary and dangerous bodily harm – as crimes that commonly entail a history of personal involvement with the accused and an increased risk of secondary and even tertiary victimization.⁹⁹

Quality standards of psychosocial assistance

Psychosocial assistance professionals face a number of challenges including insufficient financial compensation, high demands of flexibility, hurdles of information with courts and police as well as high degrees of emotional stress. It is therefore recommended to continuously evaluate the instrument and to promote the significant benefits that it bears for victims of violent crimes. A key element to ensure overall confidence in the instrument is the adherence to high quality standards both in training programs for psychosocial assistance as well as in the provision of services. State ministries of justice should also react flexibly and be supportive of psychosocial assistance professionals, identifying and addressing their needs in order to ensure the continued efficacy of the service as well as the health and integrity of those providing it.

Conclusion

Psychosocial assistance constitutes an important instrument to address the delicate nature of supporting victims before, during and after criminal proceedings and therefore contributes to the reduction of risks of secondary victimization. The service is granted through judicial appointment for a legally defined group of severe interpersonal crimes including sexual violence. Psychosocial assistance operates at the intersection of the requirements of the judicial system and the needs of the victim. The neutrality of the professional delivering the service and the separation between counseling and psychosocial support is therefore one of its core principles. Designed to reduce the risk of jeopardizing or influencing the case or the victim's testimony, psychosocial assistance helps ensure that victims understand the process, are not alone during interrogation and court proceedings, and can address concerns that arise after appearing in court including referral to psychological or other services. The delivery of psychosocial assistance is tied to high quality standards and professional training standards. As such, this practice addresses many of the concerns raised by the Victims' Directive by reducing the potential for harm deriving from participation in criminal proceedings.

For further information on the instrument of psychosocial assistance including training and quality standards please contact: Recht Würde Helfen – Institut für Opferschutz in Strafverfahren e.V.

⁹⁹ Wenske, M. (2017); Bundesministerium für Justiz und Verbraucherschutz (2020); Landgericht Hamburg (2019): *Zeuginnen- und Zeugenbetreuung – ein Aspekt professioneller Opferhilfe*, 25 year anniversary conference on witness protection and professional victim support, 20.11.2019.



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Chapter 4. Psychological assistance in criminal proceedings

Introduction

Psychological assistance represents a key issue in meeting the needs of victims of crime and protecting their rights in accordance with the Victims' Directive. While various models or practices can be adopted to provide this assistance, the Spanish model, implemented as a result of Spanish Law 4/2015, offers an example of how such assistance can be structured and implemented. This chapter focuses on the development and provision of psychological assistance in Spain in response to the Victims' Directive.

What rights apply

The Victims Directive outlines specific rights that relate to the provision of psychological assistance in criminal proceedings. These rights cover all phases of the proceedings from reporting/pre-trial to post-trial¹⁰⁰. More specifically:

Victims have the right to receive information from the first contact with a competent authority. Member States shall ensure that victims are offered information, without unnecessary delay on the type of support they can obtain and from whom, including, where relevant, basic information about access to psychological support.¹⁰¹

Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.¹⁰²

Victims have the right to receive support from victim support services that shall provide:

- information, advice and support on their role in criminal proceedings including preparation for attendance at the trial,
- information about or direct referral to any relevant specialist support services in place,
- emotional and, where available, psychological support,
- unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.

¹⁰⁰ See Annex for complete directive.

¹⁰¹ Article 4. Directive 2012/29/EU.

¹⁰² Article 8 Directive 2012/29/EU.



Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.¹⁰³

Victims have the right to protection. Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying.¹⁰⁴

Victims are entitled to safeguards in the context of restorative justice services. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services.¹⁰⁵

Spanish Law 4/2015 on the standing of victims of crime

Spanish Law 4/2015 is a direct response to the EU directives and states that the information that the victims are entitled to receive should be adapted to:

- their personal circumstances and situation;
- the nature of the offence committed; and
- the harm and loss suffered.

Victims should be granted the possibility to request protection measures and, where applicable, be informed of the procedure for doing so.

Victims have the right to access support services including psychological assistance. Those services are provided by public support offices and may be extended to relatives of the victim in cases where offence caused particularly serious harm.

The law calls on victim support to provide support in relation to restorative justice services and other extrajudicial solutions except in cases of gender-based violence as mediation is prohibited by law in these cases. The offices carry out the following restorative justice actions:

- Inform the victim of the different restorative justice measures;
- Submit a proposal to the court for the application of criminal mediation when it is considered beneficial for the victim; and
- Other actions to support extrajudicial measures.

¹⁰³ Article 9 Directive 2012/29/EU.

¹⁰⁴ Article 18 Directive 2012/29/EU.

¹⁰⁵ Article 12 Directive 2012/29/EU.



What is the psychologist’s role?

Psychological assistance

The goal of a victim assistance programme is to assist victims in dealing with emotional trauma, participating in the criminal justice process, obtaining reparation, and coping with problems associated with the victimization.¹⁰⁶

The response from the public authorities must be as broad as possible not only to repair damage in the context of criminal proceedings, but also to minimise any trauma that may result from the victim’s participation in the proceedings.¹⁰⁷

It is evident from research and experience that it is impossible to predict how an individual will respond to a particular crime. The initial reaction may include shock, fear, anger, helplessness, disbelief and guilt. These initial reactions may be followed by distressing thoughts about the event, nightmares, depression, guilt, fear and a loss of confidence and esteem. For many people this is followed by a period of reconstruction and acceptance. There are individual variations in the capacity to cope with catastrophic stress after a traumatic event. Different people appear to have different trauma thresholds, some being more protected and others more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

Some victims are particularly at risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender during criminal proceedings. It is possible that such a risk derives from the personal characteristics of the victim or the type, nature or circumstances of the crime. It is only via the use of individual assessments, carried out at as soon as possible, that such a risk can be effectively identified. Such assessments should be carried out for all victims to determine whether they are at risk of secondary and repeat victimisation, of intimidation and of retaliation and what special protection measures they require.¹⁰⁸

Secondary victimization refers to the victimization that occurs not as a direct result of the criminal act, but from the response of institutions and individuals. Institutionalized secondary victimization is most apparent within the criminal justice system. (UNODC, Handbook on Justice for Victims)

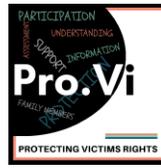
Emotional support and psychological assistance provided to the victim in the different stages of the criminal proceedings

The following support and assistance is provided during the investigation of the crime:

¹⁰⁶ Handbook on justice for victims.1999. p.11. UN Office for drug control and crime prevention.

¹⁰⁷ Law 4/2015 on the standing of victims of crime. Preamble.

¹⁰⁸ Recital 55 Directive 2012/29/EU.



- accompaniment when identifying the accused and participating in other criminal justice interviews
- accompaniment to evidentiary examinations
- support in connection with notification of death
- accompaniment of victims for the identification of bodies, the crime scene and evidence

During prosecution and trial:

- personal support during hearings, interviews, testifying and trial
- referrals for trauma counselling

After case disposition:

- supportive counselling during any appellate process

Crisis intervention

Crisis interventions are necessary in cases where the victim, or others, appears to be in need of immediate protection or stabilization. For victims of crime, a crisis may occur immediately after the commission of the crime and/or as a trigger response to something that happens after the crime. Assisting victims during these moments is essential to their protection and the protection of others who may be harmed by the victim’s traumatic response.

Victims should have the opportunity to tell their stories, talking about what happened and their reactions to the incident. They should be reassured of the validity of their reactions and assisted in preparing themselves to deal with the aftermath of the incident. Victims should expect that everyday events may trigger crisis reactions similar to the ones they suffered when the crime occurred. In addition to needing adequate and predictable information, victims need assistance in preparing for ways in which they can deal with the likely practical and emotional future.

Crisis Intervention – Methods of communication and action designed to protect, stabilize and mobilize individuals who are experiencing an event or a situation that they perceive is intolerable and which exceeds the person’s current coping mechanism. (US Office for Justice Programs, Office for Victims of Crime)

A further purpose of crisis intervention is to help victims in regaining a sense of control by letting them know some of the universal reactions that may arise as a result of victimization and what may happen in their interaction with the criminal justice system. The final step of crisis intervention is to help victims think through ways of coping with their concerns letting them know that their reactions and perceptions are common in traumatic situations. Trauma-specific counselling should seek to reassure victims that they are capable of functioning and



that, while the trauma itself may be painful, it is not unusual. It is in fact a normal reaction to experiencing crime.

While the majority of victims and survivors cope quite well, with a little assistance at the time of the crisis, some require additional counselling support. The trial itself may trigger stress reactions (see Chapter 3 on Psychosocial Assistance), and victims may be traumatized by the verdict or the sentence. If an arrest is not made, then victims may need continued support over time because of their perception that the criminal justice system has failed to do its job.

While most reactions are normal, there are some people with pre-existing mental health problems who have harmful reactions that may endanger themselves or others. There are also some who react to personal disasters in a way that is dangerous to themselves or to others. The intervener should always be alert to any words or other signs of suicidal thoughts or threatening behaviour towards specific individuals.¹⁰⁹

Psychological Assistance provided by the Victim Support Offices – Lessons from Spain

Psychologists are part of the multidisciplinary team of Victim Support Offices, which are free public services, created by the Ministry of Justice and by the Autonomous Communities with jurisdiction in matters of justice. The Victim Support Offices have the general objective of providing comprehensive, coordinated and specialised assistance to victims as a consequence of crime and responding to specific needs in the legal, psychological and social fields.

In order to do that, the offices develop and implement individualised assistance plans, working in coordination with all relevant competent services. The assessment of the victim's individual circumstances determines what assistance and support the victim should receive, which may include:

- The provision of psychological support and assistance
- Being accompanied to trial
- Information regarding psycho-social and welfare resources and, where the victim requests it, referral to them
- Special support measures that may be necessary for victims with special protection needs
- Referral to specialist support services

Victim Support Offices follow-up on the victim, especially the most vulnerable, throughout the entire criminal process and for an appropriate period time after completion, regardless of whether the identity of the offender and the outcome of the process are known.

¹⁰⁹ Handbook on justice for victims.1999. p.p.19-27. UN Office for drug control and crime prevention.



As regards the psychologist's role, the General Protocol for Victim Support Offices of Valencia sets out that psychologists should carry out the following actions:

- Welcome the victims, give them emotional support to help them overcome the psychological state after the crime. In case of emergency, psychological care shall be provided immediately by contacting the emergency telephone number.
- Guide the victims taking into account their specific support needs according to their individual assessment.
- Inform and advise the victim on the type of psychological action to be carried out in the office and on how to prevent secondary victimization, intimidation or retaliation.
- Propose specific protection measures, from a psychological point of view, taking into account the psychological state of the victim, the necessary measures in relation to accompaniment to judicial proceedings and informing the judicial body. The report on proposed specific protection measures must have the prior and informed consent of the victim in order to be sent confidentially to the competent judge or prosecutor.
- Treat the most vulnerable victims to help them reduce the crisis caused by the crime, be part of the judicial process, provide support throughout the process and enhance the victim's strategies and capacities, enabling collaboration with the victim's environment.
- Prepare and apply a psychological support plan for vulnerable victims or those in need of special protection. This is done by evaluating the physical and psychological consequences of the crime, the family and social environment that surrounds the victim and the risk of further attacks. The ability to overcome traumatic circumstances is also assessed.
- Design, develop and, where appropriate, implement therapeutic support programs for the following groups:
 - victims of gender violence
 - victims of family violence
 - sexual assault victims
 - terrorism victims ¹¹⁰

¹¹⁰ PROTOCOLO GENERAL BÁSICO DE ACTUACIÓN DE LA RED DE OFICINAS DE LA GENERALITAT DE ASISTENCIA A LAS VÍCTIMAS DEL DELITO Direcció General de Reformes Democràtiques y Acces a la Justicia Conselleria de Justícia, Administració Pública, Reformes Democràtiques i Llibertats Públiques. Generalitat Valenciana Enero 2018.



The Psychological Intervention Program with women victims of gender-based violence developed by the Gipuzkoa Provincial Council and the Gipuzkoa Official College of Psychology establishes the following intervention guidelines for psychological therapy:

- Psychological contact
 - Allow relief
 - Active listening
 - Reassure, give security
 - Contain emotions
 - Show empathy
 - Convey hope
 - Show a position against violence

- Helping actions
 - Examine the problem
 - Explore violence
 - Provide information about resources and rights
 - Promote decision-making
 - Assess the risk

- Offer security
 - Remove the aggressor
 - Provide host resources
 - Return home
 - Provide self-protection resources
 - Help end the relationship¹¹¹

Psychologists as expert witnesses

Psychologists may be asked to act as professional or expert witnesses in court. Psychologists acting as experts in criminal proceedings need to ensure that they can provide an independent and impartial opinion, and that their independence is clear to all. Any potential conflicts of

¹¹¹ Mariángeles Álvarez García et al. 2016. MANUAL DE ATENCIÓN PSICOLÓGICA A VÍCTIMAS DE MALTRATO MACHISTA. Colegio Oficial de la Psicología de Gipuzkoa



interest should be made explicit and should be reported as soon as they arise. This can extend to being asked to provide an expert report on someone the psychologist is providing with therapy. This dual relationship is an unacceptable conflict. The judge also decides whether or not the expert's assertions are relevant and, therefore, admissible in court.

Psychologists as experts in gender-based violence courts

Spanish Law 1/2004 on comprehensive protection measures against gender-based violence provides that the Government and the Autonomous Communities, which have assumed jurisdiction in matters of justice, will organize forensic assessment services for cases of gender-based violence.

The Institutes of Legal Medicine and Forensic Sciences has comprehensive forensic assessment units to guarantee specialised assistance to victims of gender-based violence and the design of global and comprehensive action protocols. These units are in charge of assisting the judicial bodies through the clinical and psycho-social evaluation of victims and aggressors. All units have psychologists and social workers, in addition to forensic doctors who deal with gender violence matters in all the courts in their territory.

The forensic response, comprehensive or specific, depends solely and exclusively on the request for an expert report made by the Judge or Magistrate, or by the Public Prosecutor assigned to the case. The forensic team does not act autonomously. Its main objective is to carry out a quality expert assessment within an open judicial procedure. This report is intended to assist legal practitioners in charge of assessment and decision-making with its specific knowledge. These legal practitioners determine the evidentiary aspects they need.¹¹²

The psychological assessment includes:

- Neuropsychological state of the person
- Previous neuropsychological state
- Personal characteristics
- Psychiatric or psychological history
- Other pathologies or treatments that may affect the psychological state
- Consumption of psychoactive substances
- Other stressors at the time of the facts
- Beliefs and justification in relation to the facts
- Current adaptive state of the person examined
- Current mental state
- Diagnosis of the person examined

¹¹² Guía y Manual de Valoración Integral Forense de la Violencia de Género y Doméstica. Ministerio de Justicia. Año LIX Suplemento al núm. 2000.(2005). p.16.



- Current treatments
- Subsequent measures
- Assessment of the causal relationship between the events referred to and the psychological state of the person explored
- Specific assessment of possible psychological injuries¹¹³

Psycho-social teams attached to juvenile courts

Psychologists are part of the Psycho-social Teams attached to the juvenile justice courts. They act as experts and assist prosecutors and judges in the juvenile court. They also play a key role in the implementation of victim-offender mediation and other restorative justice measures for minors.

According to Law 5/2000 on the criminal responsibility of minors, the technical team will inform, if it deems it appropriate and in the minor's interest, about the possibility of the minor carrying out a reparative or conciliation activity with the victim.

The Public Prosecutor may withdraw from the continuation of the file, taking into account the seriousness and circumstances of the facts and the minor, particularly the lack of violence or serious intimidation in the commission of the facts, and verify that the minor has reconciled with the victim or has committed to repair the damage caused to the victim.

Withdrawal in the continuation of the proceedings will only be possible when the fact imputed to the minor constitutes a less serious crime.

Conciliation shall be understood as produced when the minor acknowledges the damage caused and apologizes to the victim and the victim accepts his apology. Reparation shall be understood as the commitment assumed by the juvenile offender to carry out certain actions for the benefit of them or the community, followed by their effective execution. All this without prejudice to the agreement reached by the parties in relation to civil liability.

The corresponding technical team carries out the functions of mediation between the minor and the victim or injured party and informs the public prosecutor of the commitments acquired and their degree of compliance.

Once the conciliation has been produced or the reparation commitments assumed with the victim, or when one or the other could not be carried out due to causes beyond the control of the juvenile offender, then the public prosecutor asks the judge to the end the proceedings.

The public prosecutor continues with the proceedings in the event that the minor does not comply with the reparation.

¹¹³ Guía y Manual de Valoración Integral Forense de la Violencia de Género y Doméstica. Ministerio de Justicia. Año LIX Suplemento al núm. 2000.(2005). p.244.



The role of psychology in criminal proceedings

Psychological assistance is essential within criminal proceedings given the impact that experiencing crime has on victim’s psychological, emotional and mental state all of which influence the individual’s capacity to tell their story. The apparently simple concept of allowing a survivor to tell their story is in fact a complex process frequently characterized by confusion and apparent contradictions in the victim’s testimony. The first memory of the event is likely to be narrowly focused on a particular sensory perception or a particular activity that occurred during the event, such as an assailant’s knife, or their struggle to get away. As time goes by, memory will reveal other parts of the event. The victimization story will probably change over time as they learn new things and use the information to reorganize their memories. From a police perspective, the problem with this process of reconstructing a story is that it sometimes results in inconsistent or contradictory accounts, which undermine an investigation or prosecution. However, from a crisis intervention perspective, it is perfectly normal for the process of ventilation to reveal a more complete story over time.¹¹⁴

Assisting all parties involved in understanding the impact of the trauma on the telling of the victim’s story not only helps the victim, but the entire process. Secondary victimization through the process of criminal justice may occur because of difficulties in balancing the rights of the victim against the rights of the accused or the offender. More normally, however, it occurs because those responsible for ordering criminal justice processes and procedures do so without taking into account the perspective of the victim.¹¹⁵ The challenge faced by the justice system is that of balancing the rights of the victim with those of the accused. Providing victims with supportive victim-centred responses within the criminal justice system is important at all stages in the process. In particular, victims appreciate receiving caring, fair (procedurally just) and respectful treatment from criminal justice professionals.¹¹⁶

Conclusion

Psychological assistance performs numerous functions including the provision of support to victims who do not enter the criminal justice system. The comprehensiveness of services provided acts as a support to all victims, can assist in victims in understanding their situation and deciding to report the crime, and provide services for the duration needed including during proceedings. There are victims that never go to the Justice System.

¹¹⁴ Handbook on justice for victims.1999. p.23. UN Office for drug control and crime prevention.

¹¹⁵ Handbook on justice for victims.1999. p.9. UN Office for drug control and crime prevention.

¹¹⁶ Deirdre Healy, 2019.Exploring Victims’ Interactions with the Criminal Justice System: A Literature Review. p. 9. University College Dublin.



Chapter 5: Vulnerable Groups

Introduction

A key contribution of EU Directive 2012/29/EU is the recognition that all victims of crime have rights that include the provision of services, supports and protections. This recognition however, does not negate the existence of some more vulnerable groups and individuals who may need specialized services and treatment as well as special protection measures. This chapter lays out some of the key issues associated with: the identification of more vulnerable victims, individualized assessments, special

protection measures, and considerations for first contact and practitioners in general in working with vulnerable victims. This applies to groups of crime victims that, due to individual and crime-specific characteristics, are at a higher risk of secondary victimization, intimidation and retaliation from the person who committed the crime during criminal proceedings¹¹⁷.

The focus on vulnerable groups reflects both the Victims’ Directive and the 2020 European strategy on victims’ rights that aims to improve protection and support of the most vulnerable victims” by urging the member states to:

"take actions that build on the lessons learnt from the COVID-19 pandemic, in particular actions aimed at ensuring that victims of gender-based and domestic violence have access to support and protection; set up integrated and targeted specialist support services for the most vulnerable victims, including Child Houses, Family Houses, LGBTI+ safe houses, disability inclusive and accessible services and venues and independent detention bodies to investigate crime in detention; Facilitate cooperation and ensure a coordinated approach to victims’ rights between judicial and law enforcement authorities, health care and social workers, among others”¹¹⁸.

“For the most vulnerable victims, such as victims of gender-based violence, child victims, victims with disabilities, elderly victims, victims of hate crime, victims of terrorism or victims of trafficking in human beings, it is particularly challenging to go through criminal proceedings and to deal with the aftermath of crime.” (EC, Victims’ Rights: New Strategy to Empower Victims)

¹¹⁷ Machado & Gonçalves, 2002

¹¹⁸ European Commission “Victim’s Rights: New Strategy to Empower Victims”. June 24, 2020.

https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1168



Types of vulnerable groups

While there is agreement at international or European level “upon the criteria for identifying vulnerable and disadvantaged populations, an accepted definition of vulnerability, or a standard list of such groups, [...] human rights bodies deal with vulnerable and disadvantaged communities on an ad hoc basis.”¹¹⁹ However, within the context of human rights protection the following groups have generally been considered as vulnerable:

- women and girls
- children
- refugees
- internally displaced persons
- stateless persons
- national minorities
- indigenous peoples
- migrant workers
- disabled persons
- elderly persons
- HIV positive persons and AIDS victims
- Roma/Gypsies/Sinti
- lesbian, gay and transgender people¹²⁰

According to European Directive 2012/29/EU, victims of human trafficking, terrorism, violence in intimate relationships, sexual violence or exploitation, gender-based violence, ethnic minorities and hate crimes, victims with disabilities, elderly victims and children, tend to frequently suffer from a higher rate of secondary victimization, intimidation and retaliation. Thus, due to the degree of vulnerability associated with these types of victims, there is a need for them to be submitted to certain special protective measures.

In addition to the commonly accepted vulnerable groups, the Victims’ Directive underlines the fact that some vulnerable groups could be considered “particularly vulnerable” as they might “*find themselves in situations that expose them to a particularly high risk of harm, such as*

¹¹⁹ Audrey, C. and B. Carbonetti. 2011. *Human Rights Protections for Vulnerable and Disadvantaged Groups: The Contributions of the UN Committee on Economic, Social and Cultural Rights*. *Human Rights Quarterly*. Baltimore: Johns Hopkins University Press. P. 683.

¹²⁰ Icelandic Human Rights Centre. (n.d) Accessed August 21, 2020 from: The Human Rights Protection of Vulnerable Groups: <http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/the-human-rights-protection-of-vulnerable-groups>



persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents.”¹²¹

These groups are considered vulnerable as they have some common characteristics. Generally, the persons belonging to these groups are “able to be easily physically, emotionally, or mentally hurt, influenced, or attacked.”¹²² The types of vulnerability can therefore be categorised on the basis of **physical vulnerability, emotional vulnerability, social vulnerability and economic vulnerability.**

Naturally, the probabilistic nature of vulnerability may differ from person to another, even though the person belongs to a vulnerable group.

The factors that influence individual vulnerability can be categorised on the basis of:

- individual factors such as age and education;
- micro- social factors such as social networks, social settings, and place of origin; and
- macro-social factors such as national/international economic decline, wars, natural disasters, and the influence of culture and traditions.

Practitioners should therefore be aware of these factors and sensitive to the impact they may have on victims.

Intersectional vulnerability

Vulnerabilities do not exist in isolation in that individuals often have a series of vulnerabilities due to their belonging to several vulnerable groups (e.g., a young women growing up in an orphanage, who has been subjected, in a foreign country, to human trafficking by means of sexual exploitation and has developed drug addiction during the exploitation phase). In such cases, the specialised literature characterises this type of vulnerability as *intersectional vulnerability*.

The notion of “intersectionality” has at its root in the word “intersection”, defined as “A place where two roads intersect; crossing; the set of common points of two lines.” (DEX, 1998)

The concept of “intersectional vulnerable” derives from the combination of the notion of intersectionality with that of “vulnerability - the attribute of being vulnerable - Vulnerable - a person who can be injured; which can be easily attacked, which has weak parts” (DEX, 1998).

Thus, **intersectional vulnerability can be defined as a specific form of vulnerability that brings together all the common elements of at least two sets of vulnerabilities.**

¹²¹ EU Directive 2012/29/EU Chapter 4, Article 22

¹²² Cambridge Dictionary. (n.d.) Accessed September 2, 2020 at <https://dictionary.cambridge.org/dictionary/english/vulnerable>



Identification of special needs

The first European strategy to protect victims' rights highlights the fact that "the Victims' Rights Directive also requires that all victims have access to protection in accordance with their individual needs. Special attention must be paid to victims with specific needs of protection from the risks of secondary, repeat victimisation, intimidation and retaliation."¹²³

The following sections outline the treatment and services due victims of crime in relation to special needs.

Respectful treatment and recognition as victims

As mentioned in paragraph 19 of the Victim's Directive, "a person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them." The "status" of victimhood shall therefore not be attributed on the basis of procedural considerations but on the harmful events that have affected a person physically, psychologically or economically. Nevertheless, the recognition of victims as victims may cause some challenges in the work conducted with the victims themselves and hence in the identification and protection of individuals belonging to vulnerable groups. The label of "victim" effectively places the individual in a passive position, whereas in some cases it may be more appropriate the view the crime in terms of the neglect or expression of disrespect for the individual. Individual and cultural differences are therefore key in determining whether or not labelling as individual as a victim is perceived as beneficial by that individual.

When "Respectful Treatment" Causes Harm: An Example

A sexually exploited victim has been brought to a safe house after having been identified by the police as such during a night raid. The first thing she sees when entering the room of the safe house is a large bed placed in the middle of the room. After a long period of sleep deprivation most people would drop into the bed and fall asleep immediately. The victim however attempts to run out of the safe house as the sight of the large bed placed in the middle of the room reminds her of the room where she has been sexually exploited. After being calmed down, the victim spends the night sleeping on the floor, with her back towards the bed.

Respectful treatment, while apparently clear, represents a difficulty in work with specific vulnerable groups in that the effects of victimization influences how individuals respond to services and assistance. Apparently helpful and respectful actions need to be carried out with caution given the potential to trigger painful memories.

¹²³ European Commission, *Victims' Rights: New Strategy to empower victims*, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1168, p. 9, Accessed on 11 August 2020



Individuals providing services to highly vulnerable victims should have participated in targeted, victim sensitive training, developed for assisting victims of specific crimes. This enables practitioners to learn not only how to avoid causing secondary victimisation while trying to support the victims, but also ensure that they recognise the complexities of the harms caused and understand the specific needs that might arise.

Protection from intimidation, retaliation and further harm by the accused or suspected and from harm during criminal investigations and court proceedings

Paragraph 58 of the Victims Directive states that:

"victims who have been identified as vulnerable to secondary and repeat victimisation, to intimidation and to retaliation should be offered appropriate measures to protect them during criminal proceedings. The exact nature of such measures should be determined through the individual assessment, taking into account the wish of the victim. The extent of any such measure should be determined without prejudice to the rights of the defence and in accordance with rules of judicial discretion. The victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure."

In order to ensure that particularly vulnerable victims are not subjected to repeat victimization by the perpetrator(s), paragraph 32 states that:

"specific information about the release or the escape of the offender should be given to victims, upon request, at least in cases where there might be a danger or an identified risk of harm to the victims, unless there is an identified risk of harm to the offender which would result from the notification. Where there is an identified risk of harm to the offender which would result from the notification, the competent authority should take into account all other risks when determining an appropriate action. The reference to 'identified risk of harm to the victims' should cover such factors as the nature and severity of the crime and the risk of retaliation."

The above paragraphs point to the need to exercise additional caution and implement special protection measures (discussed later in this chapter) when working with particularly vulnerable victims.

Support, including immediate assistance following a crime, longer-term physical and psychological assistance and practical assistance

The support offered to victims should be offered as soon as the person has been identified as a victim in order to reduce the harm and effectively protect the victim and any indirect victims¹²⁴ that are often left out of the assistance mechanism, but usually directly influence

¹²⁴ Indirect victims are persons strongly linked to the direct victims either because they have witnessed the crime(s) or because of the strong personal ties which rely between the victims and the indirect victims.



the development of social and professional rehabilitation and collaboration between the victims and law enforcement.

Following first contact and the initial individual assessment procedure, **victims should be referred to specialized services providers that have the capacity and ability to address the special needs identified in a professional manner.**

Access to justice to ensure that victims are aware of their rights and understand them, and are able to participate in proceedings

Assuring access to justice and awareness of victims' rights is especially important for vulnerable groups who may encounter more barriers related to understanding, awareness, access to justice, and participation in criminal proceedings.

Victims should therefore have their rights explained in an individualized manner. Given the complexities of human nature and the traumatizing events many of the victims entering the justice system have experienced, a formalized procedure, within which a law enforcement representative hands a piece of paper to the victim that informs them of their rights or reads a series of rights out loud, does not fulfil either the aim, or the spirit of the directive.

I have rights. I am sure I have a lot of rights, but in order to exercise them I need to have a good lawyer, which I cannot afford...and this is approximately where my rights end...before being able to even exercise them. (Victim, Romania)

The following may inhibit or reduce a victim's understanding:

- The victim can neither read nor write.
- The victim can both read and write but cannot understand legal terms and formal language.
- The victim is a foreigner and is not familiar with the concepts translated as these are not identifiable within the justice system of the country of origin;
- The victim is foreigner and transposes the concepts or rights translated through the perspective of its own justice system differs from the country in which the crime took place. This leads to misunderstandings, passed deadlines, inactions or actions directed towards a wrong institution.
- Prior and after filing a criminal complaint the victim is usually not in an optimal mental/psychological condition and is not able to absorb a high quantity of information, as they are concentrated on what they are going to expose or have exposed through the complaint.



- The victim has mental or physical disabilities which makes her health condition being incompatible with a formalised information session.

Based on these considerations, **a special needs assessment should be carried out prior to the information session in order to inform victims about their rights.** This will allow the person conducting the information session to be aware of the victim's condition, making it possible to adjust the methods used to the identified needs. The person conducting the information session can:

- prepare and use, for instance, pictograms or graphics alongside of the explanations provided,
- adjust the language used to meet the needs identified,
- better understand the need to repeat information already provided,
- focus on relevant information that can be of particular use for the individual being informed, and
- direct the victim towards further information which the victim can practically access (e.g., if the victim does not have access to the internet, then it does not make sense to provide a long list of online information sources, but rather a list of addresses that they can search for in person).

Services and Special Protection

As previously mentioned, the Victims' Directive "lays down a set of rights for victims of crime and corresponding obligations on Member States. The Victims' Rights Directive is the major EU level instrument applicable to all victims of crime. It is the cornerstone of EU victims' rights policy."¹²⁵

In order to effectively address the needs identified within the individual needs assessments, "the EU has also adopted several instruments that deal with the specific needs of victims of particular types of crime (such as victims of terrorism¹²⁶, victims of trafficking in human

¹²⁵ European Commission, 2020.

¹²⁶ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L0541>



beings¹²⁷ or child victims of sexual exploitation¹²⁸). These instruments complement and build on the Victims' Rights Directive."¹²⁹

Therefore, given the fact that victims of certain crimes could be among the most vulnerable victims, the directive, under paragraph 57, draws Member States' attention to the fact that *"victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims tend to experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation."* Given these considerations, *"particular care should be taken when assessing whether such victims are at risk of such victimisation, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures."*

Specialist support services should be based on an integrated and targeted approach which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as the relationship between victims, offenders, children and their wider social environment.

A main task of these services and their staff, which play an important role in supporting the victim to recover from and overcome potential harm or trauma as a result of a criminal offence, should be to inform victims about the rights set out in this Directive so that they can take decisions in a supportive environment that treats them with dignity, respect and sensitivity.

¹²⁷ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036> As to its implementation, please refer to the 'Transposition report' (COM(2016) 722 final); 'Users report' (COM(2016) 719 final) and European Commission's Progress reports COM(2016) 267 final and COM(2018) 777 final and with regard to the victim centred, gender specific and child sensitive actions: https://ec.europa.eu/anti-trafficking/publications/eu-anti-trafficking-action-2012-2016-glance_en and https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_anti-trafficking_action_2017-2019_at_a_glance.pdf

¹²⁸ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0093>

¹²⁹ European Commission, 2020



The types of support that such specialist support services should offer could include providing shelter and safe accommodation, immediate medical support, referral to medical and forensic examination for evidence in cases of rape or sexual assault, short and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children as direct or indirect victims.¹³⁰

Example of Special Protection Measure: Human Trafficking

In cases of human trafficking victims, if, based on the assessment, there is a moderate or high risk of a secondary victimisation after the international repatriation procedure has been completed, a special protection measure could entail hosting the victim in a protected shelter situated in another city than that where the trafficking group is still being active (requires the consent of the victim, but is independent of the level of cooperation between the victim and law enforcement). The same could apply in cases where the trafficking took place internally. In such cases, the victim could be sheltered in a different city.

Additionally, if the victim was in close relationship with the perpetrators (like domestic violence or human trafficking where the recruitment was committed through the lover boy method), it is important to identify within the needs assessment which are the current links between them and to ensure the fact that adequate protection measures can be implemented in order for the victim to be able to develop an independent life, as recognised in paragraph 18 of the Directive.

Unless otherwise provided by other public or private services, specialist support shall, as a minimum, develop and provide:

- shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary or repeat victimisation, intimidation or retaliation;
- targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.¹³¹

The application of special protection measures should not be limited to direct victims. With severe crimes or when victims are particularly vulnerable, as determined by the needs assessment, then special protection measures should be provided to indirect victims if their

¹³⁰ Recital 38 Directive 29/2012/EU

¹³¹ Article 9, 3 Directive 29/2012/EU



well-being is likely to affect the victim’s well-being. The likelihood that the family members of the victims are threatened by the direct perpetrators or by their accomplices is relatively high in cases with more severe crimes. Therefore, unless the protection of the indirect victims is achieved by means of special protection measures it is very unlikely that the direct victims can successfully recover from the experience.

Foreign victims

If the victim who is being offered support is a foreign person, then a series of other needs (and fears) might arise. In case they decide to receive support services within the country where they have been identified, then the services offered have to be designed taking into account the cultural and language barriers and differences (for example conducting a psychotherapy in a foreign language is very difficult as conducting it with the help of a translator is not desirable).

In case the victim identified is an EU citizen, then they have the right to residency in any EU country. Non-EU citizens, however, face legal aspects might arise regarding to the right of residency in the country of identification potentially leading to a series of legal and procedural issues linked to the status of migrant or asylum seeker.

In case they decide to receive the supporting services within the source country then a repatriation procedure has to be developed and implemented, based on the transnational cooperation of social service providers, which raises another category of needs to be addressed by practitioners.

Special protections for vulnerable victims in practice – The Spanish psychological assistance model

In Spain, the evaluation is carried out most of the time by the professionals of Victim Support Offices but can also be carried out by the police and by forensic medics. The methods used for carrying out the assessment differ depending on the victim’s characteristics, the consequences or damages suffered by the victim, and the victim’s expressed desires. The State assumes the cost of the assessment.¹³²

The Law on the standing of victims of crime states that in the case of victims who are minors, the public prosecutor’s office must take particular care to ensure that this right to protection is complied with, adopting adequate measures in the victims’ best interests where necessary to prevent or reduce any harm which the conduct of the proceedings may cause them.

The individual assessment shall take into account:

- The personal characteristics of the victim and particularly:

¹³²Linda Maizener et al. EVVI Evaluation of victims. p. 11. EVVI Project co-funded by EU Criminal Justice Programme.



- whether the victim has disabilities or whether there is a relationship of dependence between the victim and the alleged offender;
- whether the victim is a minor or in need of special protection or whether there are factors which make the victim particularly vulnerable:
- The nature of the offence and the severity of the harm caused to the victim, as well as the risk of the offence being repeated. To that end, the assessment shall take particular account of the protection needs of victims of the following crimes:
 - Terrorist offences
 - Offences committed by a criminal organisation
 - orientation or identity, illness or disability.
 - Offences committed against the offender's spouse or against a person who is or has been in a comparable sentimental relationship with the offender, even when they do or did not live together or against the offender's own family
 - Offences against sexual freedom and indemnity
 - Human trafficking
 - Enforced disappearance
 - Offences with racist motives or other related to ideology, religion or beliefs, nationality, gender, sexual orientation or identity, illness or disability.
- The circumstances of the offence, in particular whether it involved violence

After the individual assessment process the Victim Support Offices may make a report proposing the adoption of protection measures and forward it to the judge or prosecutor with the prior and informed consent of the victim.

The following protection measures may be ordered:

- Victims may be interviewed in buildings specially designed and adapted for the purpose.
- Victims may be interviewed by professionals who have received special training to reduce or limit the harm to the victim, or with the help of such professionals.
- All statements from a single victim may be taken by the same person, except when doing so could have a significant adverse effect on the proceedings or where the statements must be taken by a judge or public prosecutor directly.
- The statements may be taken by a person of the same sex as the victim when the victim of some type of crimes (e.g., trafficking in human beings, gender-based violence) requests it, except when doing so could have a significant adverse effect on



the conducting of the proceedings or where the statements must be taken by a judge or public prosecutor directly.

- Measures to avoid visual contact between the victim and the alleged offender even when giving evidence, for which communication technologies may be used.
- Use of appropriate communication technologies to ensure the victim can be heard without being present in the courtroom.
- Measures to avoid victims being asked questions related to their private life, which are not relevant to the case.
- In the case of minors or people with disabilities, other measures may be taken such as recording by audio-visual means the statements taken during the investigation stage in order to be played later in court. In case of conflict of interest with their legal representatives, the public prosecutor shall obtain from the judge the appointment of a guardian to represent the victim in the criminal proceedings.

The Victim Support Offices develop a psychological support plan for vulnerable victims or those in need of special protection. This plan is designed to help victims throughout the criminal proceedings in order to avoid anguish, strengthen their self-esteem and their decision-making processes, in particular those related to judicial measures.

The psychological support plan is based on an evaluation of the physical and psychological effects of the crime, the environment of the victim, the risk of suffering new aggressions, and the family situation. Resilience is also assessed.

The Ministry of Justice and the autonomous communities with jurisdiction in justice matters may supervise the support plans carried out in their territorial area.

According to the Draft Organic Law for the comprehensive protection of children and adolescents against violence (June 19, 2020), the pre-constituted evidence is an adequate instrument to avoid secondary victimization that is particularly effective when the victims are minors or people with disabilities in need of special protection. Taking into account their special vulnerability, it is compulsory when the witness is a person under fourteen years of age or a person with a disability in need of special protection. In these cases, the judicial authority, once the pre-constituted evidence has been practiced, can only agree on its statement in the act of oral proceedings, when, asked by one of the parties, it is deemed necessary. Therefore, in court statements by minors under fourteen years of age or of people with disabilities in need of special protection becomes exceptional, establishing, as a general rule, the practice of pre-constituted evidence in the investigation phase and its reproduction in the act of trial preventing the time lapse between the first statement and the date of the oral trial from affecting the quality of the story, as well as the secondary victimization of especially vulnerable victims.



Conclusion

The issue of vulnerable groups or victims requires special attention at every phase of the criminal justice process as well as in victim support and other settings outside of the criminal justice system. Key issues related to the treatment of vulnerable groups are summarised below.

An individualised assistance and protection plan can be developed based on the results of the needs and risk assessment. This should contain:

- special protection measures (if needed),
- risk mitigation measures, and
- concrete rehabilitation measure like family integration/reunification, social and professional (re)integration, development of competencies needed in an independent life style, ultimately resulting in the prevention of a secondary victimisation.

Assessments of possible risks and development of appropriate risk mitigation measures should incorporate:

- Identification *who needs assistance and protection* via the individual assessment and risk assessment. This could be the direct victim as well as indirect victims (children of the victim, husband or wife, family members, relatives, close friends, witnesses, sometimes also the practitioners themselves designated to assist and protect the victim).
- Determination of *what exactly needs to be protected*. Is it the direct or indirect victims life? Is it their physical integrity and well-being (sometimes because of pre-existing medical conditions)? Is it the psychological integrity and well-being? Is it the economical integrity, the professional or personal reputation of a victim or a bit of everything?
- Establishment of *how high the likelihood* is that the expected negative event will occur (in case it has not happened yet) which will affect that aspect/those aspects in need of protection.
- Establishment of the *assistance and (special) protection measures* taking into account the willingness of the victim to accept the proposed measures.

Chapter 6 addresses the topic of individual assessments including considerations for vulnerable groups.



Chapter 6: Individual Assessments

Introduction

The Victims' Directive, under Art. 22 urges Member States to:

"ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation."

In order to identify the individual needs of each victim the directive calls on Member States to take into account, within the individual needs and risk assessment at least the following: "(a) the personal characteristics of the victim; (b) the type or nature of the crime; and (c) the circumstances of the crime."

What is an assessment?

An assessment is "the process of gathering and interpreting detailed information to describe, understand or evaluate the needs of a person..." (Center for Victim Research)

Additionally, within the individual needs and risk assessment procedure, the Directive highlights the fact that **"particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered."**

"Risk is simply defined to be the likelihood of a potential hazard becoming reality and the consequences if it does." (UNODC)

In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics and victims whose relationship to and dependence on the offender make them particularly vulnerable.

Child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. To determine whether



and to what extent they would benefit from special measures, child victims shall be subject to an individual assessment.

The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.

Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures.

The methods for conducting the individual needs and risk assessment differ based on several criteria:

- type of crime committed,
- the vulnerable group to which the persons belong,
- the extent of time within which the victim has been subjected to the crime,
- the time span between the moment the harmful actions have seized and the moment the assessment is being conducted,
- the preparations which have been made by the practitioners for the purpose of conducting a needs and risk assessment,
- the physical and psychological medical conditions of the person assessed,
- the willingness to cooperate,
- the relationship between the person assessed and the person conducting the assessment and, naturally,
- the cultural and language differences and barriers,
- the location in which the assessment is conducted,
- the timespan allocated for the assessment,
- the reason/the aim of why the assessment is conducted.

For example, if the person affected by a crime is undergoing an individual needs and risk assessment in order to conduct, in a safe and protected manner an international repatriation procedure, then the needs assessed and the risks estimated prior, during and after the repatriation procedure differ substantially from those assessed within criminal proceedings.

The Directive, under paragraph 56, also mentions the fact that:

"individual assessments should take into account the personal characteristics of the victim such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of



crime. They should also take into account the type or nature and the circumstances of the crime such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim's residence is in a high crime or gang dominated area, or whether the victim's country of origin is not the Member State where the crime was committed.”

Assessment as an on-going procedure

Good practice suggests that service providers should continually follow up the individual needs assessment to ensure that the services offered are amended and adjusted in line with the victim's recovery and changing needs.¹³³

If the elements that form the basis of the individual assessment have changed significantly, then Member States shall ensure that it is updated throughout the criminal proceedings.¹³⁴ This is especially true for vulnerable groups who may experience significant individual or situational changes.

For instance, a victim of a severe crime has immediate needs that have to be addressed just after identification. These needs are generally linked to a crisis intervention and involve the basic needs such as having a safe place to live, access to food and water, and access to medication or medical treatment where applicable.

Shortly after, the spectrum of needs widens to include issues such as being able to effectively communicate with the family or close friends, having the necessary clothing and hygiene products needed for the everyday life, and being able to walk alone for short distances.

The next step may include the need for psychological support and specialised counselling in order to be able to deal with the harm caused and its consequences. This process is usually the longest and the most complex.

Needs extend to include supports such legal advice and support during criminal proceedings.

Eventually needs like social, educational and professional reintegration should be addressed.

However, if the recovery process due to participation in criminal proceedings (e.g., as a witness in court), then practitioners might quickly be faced with the fact that everything goes back to stage 1 – crisis intervention.

¹³³ Linda Maizener et al. EVVI Evaluation of victims. p. 17. EVVI Project co-funded by EU Criminal Justice Programme.

¹³⁴ Article 22 Directive 29/2012/EU.



Assessment: Screening Interviews

It is important to remain open to the potential vulnerability and risk of all victims regardless of their belonging to a given vulnerable group. *Each individual needs to be assessed and addressed in an individual manner.*

The following questions can be used while conducting a screening interview with victims in order to assess their needs, special needs, risks and vulnerabilities.

Screening Interview Questions and Considerations Applicable to All Victims	
<p><u>Family background</u></p> <p>Is the person married? Does s/he have children? Does s/he have parents or close relatives? How is the relationship between the person and other family members?</p>	<p><u>To be assessed if:</u></p> <ul style="list-style-type: none"> - There are persons which can support him/her during the next period. - There are persons which also need support - There are persons which could be in risk additionally to the victim.
<p><u>Housing and subsistence</u></p> <p>Does the victim have shelter? Does he/she feel safe in the place where he/she lives? Is he/she able to continue living in that place? Does he/she need any long/short term support in order to live an independent life? Is he/she able to finance the costs of everyday life? Is there a need request social benefits? Is there a need appeal to an emergency fund?</p>	<p><u>To be assessed if:</u></p> <ul style="list-style-type: none"> - The person (and relatives) have appropriate housing conditions. - If living at the habitual domicile is unsafe or there is a need of temporary/permanent relocation. - If there is a need of a shelter, safehouse or other arrangement. - If the person has enough financial means to cover the costs of everyday life. - If there is need for specialised support (social worker, child protection, psychiatric support etc.)
<p><u>Health</u></p> <p>Does the person have any acute injuries? Does the person have any chronic medical conditions? If yes, does he/she have the necessary medication at hand? Does the person have any health related concerns? Do close family members have any health concerns? Is the person registered with a health insurance system?</p>	<p><u>To be assessed if:</u></p> <ul style="list-style-type: none"> - There is the need of any emergency intervention. - There is the need of organising any medical check-up. - There is the need of procuring any vital medication. - There are concerns about possible unwanted pregnancies, sexually transmitted diseases etc.



<p><u>Identity papers/documents</u></p> <p>Is the person in the possession of identity papers? Is the person aware that s/he lacks any documents (as a consequence of the crime committed?)</p>	<p><u>To be assessed:</u></p> <ul style="list-style-type: none"> - Access to all relevant documents by the victim and close relatives/indirect victims as appropriate (e.g., children). <p>*In case the offender has withdrawn the identity documents and the victim is a foreigner, then the embassies and consulates can issue, usually on the spot, a travel document, valid over a short period of time, to be used for the repatriation.</p>
<p><u>Perspectives towards the criminal case</u></p> <p>Is the person aware of the fact that he/she has been a victim of a crime? Is the person willing to file a complaint and cooperate with law enforcement officials? Is the person willing to receive support in relation to cooperation with law enforcement officials?</p>	<p><u>To be assessed if:</u></p> <ul style="list-style-type: none"> - The person is aware of the crime committed. - The person is open to addressing the issue within the criminal justice system.
<p><u>Aspects related to the crime committed</u></p> <p>When did the crime take place? For how long? When did it end? What is the relationship (if any) between the offender and the victim? What circumstances facilitated the commission of the crime? What are the consequences of the crime (physical, psychological, emotional)? How can the situation be addressed from his/her perspective (if it can be)?</p>	<p><u>To be assessed:</u></p> <ul style="list-style-type: none"> - The impact of the crime upon the victim - The risks associated with the crime <p><u>To be developed:</u></p> <ul style="list-style-type: none"> - Risk mitigation measures
<p><u>Aspects related to the aftermath of the crime</u></p> <p>Can he/she sleep? Has he/she thought about hurting him/herself? What is he/she doing in order to calm down? Does he/she feel the need to talk to a psychologist?</p>	<p><u>To be assessed:</u></p> <ul style="list-style-type: none"> - The psychological state - If there are indicators of suicidal behaviour <p><u>To be developed:</u></p> <ul style="list-style-type: none"> - Intervention plan
<p><u>Aspects related to cooperation with services and/or law enforcement</u></p>	<p><u>To be assessed:</u></p>



<p>What are the contact details? How often should the meetings take place? Which communication methods are to be used?</p>	<p>- The communication and cooperation method</p>
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The following considerations should be taken into account while conducting the screening interview:

- The privacy of the discussion should be ensured and the victim should be assured of the fact that the content of the discussion will remain private. The questions should be asked in a respectful and empathic manner so that the individual does not feel judged.
- Use language familiar to the victim and proportionate to the level of education and qualification.
- Give the victim the possibility to avoid eye contact in case he/she feels uncomfortable with the topic discussed (e.g., place the victim’s seat near a window).
- Do not engage in a lengthy conversation during the first meeting (maximum 1 hour).
- If the victim has been subjected to severe crimes refer them to specialised counselling centres.
- Do not ask for detailed answers about how the crime was committed. In case you are not a specialised service provider the answers will not be useful for you and could lead to subsequent victimisation. Further to these, if the victim’s psychological state deteriorates significantly, then you will not be able to handle the situation and will need the intervention of specialists.
- Make sure that the victim agrees to the risk mitigation measures you propose and is willing to assume them and carry them out.

Eventually, develop a rehabilitation plan together with the victim. Set milestones and adjust the plan according to developments.

Working with specific groups

No two victims are alike both in terms of the experience and their individual characteristics. Some considerations, however, generally apply to recognized vulnerable groups such as the elderly, children, and human trafficking victims. The following section outlines some suggestions in terms of practitioner behaviour when working with specific groups. These are intended as guidance. The practitioner should also rely on their expertise to identify signals of distress or factors that point to the adoption of a different approach.

The following intervention strategies and suggestions for good practice should be adopted by the front line intervention professionals when in contact with these types of victims.



Elderly victims

The physical and psychological process of aging can bring with it a decrease in the capacity of recovery of these victims from any aggressions incurred during the crime. This traumatic situation can be furthered worsened when confronted with economic difficulties and the lack of a social or family support network¹³⁵.

Therefore, first line professionals should adopt the following behaviours when in contact with these victims:

- Be sensitive to possible comprehension and expression difficulties that the victim might have and adjust the language and information to their needs
- Take time to understand and listen to the victim's narrative
- Establish and maintain eye contact
- Take frequent breaks so that the victims can take everything in and not feel pressured
- Choose an appropriate place to listen to the victims, without distractions, interferences, or background noise
- Only start speaking after capturing their attention and having established eye contact
- Speak in a clear and slow way, questioning in a simple and brief manner
- If necessary, raise your voice so that the victim can listen better, but without shouting
- Give written information that can summarise the most important points that were discussed so that the victim can access this information in the future
- Be empathic and listen to victims

Victims of sexual crimes

Sexual crimes represent one of the most traumatic forms of victimization. Victims of sexual abuse or rape have a higher level of vulnerability due to the trauma deriving from that victimization experience, the psychological humiliation and negative feelings associated with the violence, and the embarrassment of having to relive the episode, thereby revealing issues intimate issues to strangers, such as front line intervention professionals¹³⁶.

While victims are almost always the only witness of the crime – making their collaboration, essential for criminal proceedings - they usually show some reluctance in cooperating with justice authorities and with support services. This is mainly due to the crime's traumatic

¹³⁵ Manita, Ribeiro & Peixoto, 2009.

¹³⁶ Ibid.



impact on their physical, psychological, and social well-being as well as the personal and socio-cultural inhibitions associated with sexuality¹³⁷.

It is therefore essential that front line professionals take special care and approach victims in an appropriate way using the following strategies:

- Question the victim with sensitivity, attention, and care
- Do not ask unnecessary questions, minimize the amount of times that the victim must tell the details of the crime
- Encourage the victim to use the medico-legal services, so that they can undertake the necessary exams and medical procedures in order to produce criminal evidence, and explain what cautions they should have before carrying them out (e.g. not washing themselves, not changing clothes, not urinating)
- Explain the procedures that the victim will be confronted with throughout the medico-legal exam along with the reasons for and importance of these procedures
- Provide all necessary information about their rights and the legal status associated with their situation as well as available support services
- Be empathic and listen to the victims

Child victims

When a child is a victim of a crime, the experience can compromise the balance of their psychological and physiological functioning, having a strong impact on their integral development. Beyond the physical and psychological damage that the child suffers, the procedures that they will have to face and their entry into the criminal justice system will be a challenge to their capacity for psychological, social and emotional adjustment¹³⁸.

Adults (namely the professionals) are responsible for re-establishing the child's feeling of safety and helping the child cope with the different contexts, people and situations which they will have to face and with whom they will have to be in contact throughout the criminal proceedings¹³⁹.

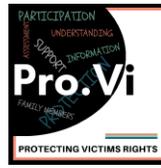
Front line professionals must know how to deal with this kind of audience and therefore adopt appropriate attitudes and behaviours in working with child victims such as:

- Use clear, appropriate language adapted to the child's age
- Avoid childish attitudes, language, and postures

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ibid.



- Explain to the child that they are not at fault for what happened to them and that they did nothing wrong
- Allow the child to play, whenever possible. This is an essential way of communicating with children, which allows for more disclosure about facts and feelings related to the experience
- Be empathic and listen to victims

Victims of Trafficking in Human Beings

Trafficking in human beings (THB) is a complex phenomenon with a hidden, constantly changing nature. As such it represents one of the most severe infringements to human rights¹⁴⁰. THB is a wide-ranging phenomenon that involves organized crime, gender equality issues and the vulnerabilities and fragilities of the exploited people. Women and children represent the most vulnerable groups and are therefore more susceptible to becoming victims of this crime¹⁴¹. Effective interventions, whether in the criminal justice system or via external supports and services, are much more difficult due to the crime’s complexity, diversity and continual state of change.

Front line professionals take on a crucial role in working with THB victims as they are the first to come into contact with these victims. These professionals may represent the only hope that a THB victim has of leaving. Given the seriousness of human trafficking and the significant negative impact it has on the victim’s life, professionals should act in a way that aims to mitigate suffering, while fulfilling their roles and duties with integrity and competence. They should also follow the country’s law: administrative policies and the ethical and deontological issues related to their profession or position.

“What we think would make sense...would be a group of experts in human trafficking and some in other areas...A group of experts who are sensitive, educated, able to listen to the victims, defend those victims...”
Stakeholder, Portugal

The following professional practices¹⁴² should be promoted when in contact with human trafficking victims:

¹⁴⁰ APF. (2020). Associação para o Planeamento da Família. Retrieved from <http://www.apf.pt/violencia-sexual-e-de-genero/trafico-de-seres-humanos>

¹⁴¹ OTSH. (2020). Observatório do Tráfico de Seres Humanos. Retrieved from <https://www.otsh.mai.gov.pt/tsh/>

¹⁴² UNODC – Gabinete das Nações Unidas sobre Drogas e Crimes. (2014). *Kit de intervenção imediata para órgãos de polícia criminal em situações de tráfico de seres humanos*. Comissão para a Cidadania e a Igualdade de Género.



- Never ignore any evidence that may suggest the practice of THB and assess the situation thoroughly
- The service and assistance should be given by a professional of the same gender as the victim to guarantee a higher degree of comfort and safety
- Do not accuse or blame the victim for the victimization experience
- Check for the existence of physical injuries and provide immediate medical assistance if necessary
- Put into practice the aforementioned listening skills
- Be empathic
- Use open ended questions when questioning, which support the establishment of trust with the victim
- Validate the victim's experience
- Encourage the victims to share their stories, without interrupting them as this may hold back the flow of valuable information about their victimization experience
- Contact specialized entities in THB victim support services as soon as possible, so that the victim can get the most appropriate intervention that is adjusted to the type of crime they were involved in
- Take note of the observations made throughout victim assistance, as well as of their statements, in the most precise way possible
- Control body language so that professionals do not show discomfort with the victim's statements. It is true you might hear disturbing stories, but your discomfort can prevent the victims from telling more about their victimization experience
- Give the necessary information to the victims, because that will give them a sense of control over the situation and it will increase the probability that they will continue cooperating in the next stages of the process

Due to their vulnerability, victims can present, as collateral effects of the victimization experience trauma, psychological disorders (such as post-traumatic stress disorder), anguish, insecurity, loss of or fragmented memory, dissociation, among others¹⁴³. Victims can also feel extremely intimidated by their traffickers, even when they are not in their presence, which can make them extremely distrustful or reluctant in cooperating with the services. Hence, it is imperative to guarantee that victims receive the appropriate service and care during their first contact with the protection system. This can increase the interventions' efficacy and their cooperation with the support service, avoiding further repercussions¹⁴⁴:

"(...) in the last cases that we had in court, there was already a concern for the victim's protection, that is, placing them in an isolated place, where they aren't in contact with

¹⁴³ Ibid.

¹⁴⁴ Ibid.



*the assailant, this sensitivity also exists in terms of the institution and the courts joint work, we communicate, we are present, they have the concern of isolating the victim, of never existing contact between them and their assailant, they testify without the presence of the other part, there has been an increase in care regarding the field of human trafficking victims (...)*¹⁴⁵

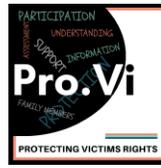
Conclusion

The individual assessment represents one of the key features of the Victims' Directive and represents an opportunity to connect with crime victims and provide them with necessary supports and services. Due to vulnerable situation in which many victims find themselves, the assessment must also be conducted in such a way as to avoid re-traumatization or secondary victimization. This requires practitioners to be well-trained and aware of which behaviours/approaches are most suitable to specific groups of victims. Practitioners also need to be aware of their own limits and have the capacity to realize when a victim is best served by being referred to specialists who have the knowledge and skills to work with a given group (e.g., children, human trafficking victims) in order to reduce the potential for secondary victimisation. Ultimately, the assessment process represents more than an initial assessment with the need for a continual procedure that enables the identification of new and/or changed needs.

¹⁴⁵ Stakeholder interview, Portugal



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Annex 1 – EU Directive 2012/29/EU





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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article
82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

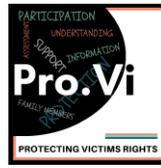
Having regard to the opinion of the European Economic and Social Committee [\(1\)](#),

Having regard to the opinion of the Committee of the Regions [\(2\)](#),

Acting in accordance with the ordinary legislative procedure [\(3\)](#),

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, the cornerstone of which is the mutual recognition of judicial decisions in civil and criminal matters.
- (2) The Union is committed to the protection of, and to the establishment of minimum standards in regard to, victims of crime and the Council has adopted Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings [\(4\)](#). Under the Stockholm Programme – An open and secure Europe serving and protecting citizens [\(5\)](#), adopted by the European Council at its meeting on 10 and 11 December 2009, the Commission and the Member States were asked to examine how to improve legislation and practical support measures for the protection of victims, with particular attention paid to, support for and recognition of, all victims, including for victims of terrorism, as a priority.
- (3) Article 82(2) of the Treaty on the Functioning of the European Union (TFEU) provides for the establishment of minimum rules applicable in the Member States to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, in particular with regard to the rights of victims of crime.
- (4) In its resolution of 10 June 2011 on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings [\(6\)](#) ('the Budapest roadmap'), the Council stated



that action should be taken at Union level in order to strengthen the rights of, support for, and protection of victims of crime. To that end and in accordance with that resolution, this Directive aims to revise and supplement the principles set out in Framework Decision 2001/220/JHA and to take significant steps forward in the level of protection of victims throughout the Union, in particular within the framework of criminal proceedings.

- (5) The resolution of the European Parliament of 26 November 2009 on the elimination of violence against women [\(7\)](#) called on the Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures, and called on the Union to guarantee the right to assistance and support for all victims of violence.
- (6) In its resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women [\(8\)](#) the European Parliament proposed a strategy to combat violence against women, domestic violence and female genital mutilation as a basis for future legislative criminal-law instruments against gender-based violence including a framework to fight violence against women (policy, prevention, protection, prosecution, provision and partnership) to be followed up by a Union action plan. International regulation within this area includes the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted on 18 December 1979, the CEDAW Committee's recommendations and decisions, and the Council of Europe Convention on preventing and combating violence against women and domestic violence adopted on 7 April 2011.
- (7) Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order [\(9\)](#) establishes a mechanism for the mutual recognition of protection measures in criminal matters between Member States. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims [\(10\)](#) and Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography [\(11\)](#) address, inter alia, the specific needs of the particular categories of victims of human trafficking, child sexual abuse, sexual exploitation and child pornography.
- (8) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism [\(12\)](#) recognises that terrorism constitutes one of the most serious violations of the principles on which the Union is based, including the principle of democracy, and confirms that it constitutes, inter alia, a threat to the free exercise of human rights.
- (9) Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. In all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, the personal situation and immediate needs, age, gender, possible disability and



maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity. Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.

- (10) This Directive does not address the conditions of the residence of victims of crime in the territory of the Member States. Member States should take the necessary measures to ensure that the rights set out in this Directive are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality. Reporting a crime and participating in criminal proceedings do not create any rights regarding the residence status of the victim.
- (11) This Directive lays down minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection.
- (12) The rights set out in this Directive are without prejudice to the rights of the offender. The term 'offender' refers to a person who has been convicted of a crime. However, for the purposes of this Directive, it also refers to a suspected or accused person before any acknowledgement of guilt or conviction, and it is without prejudice to the presumption of innocence.
- (13) This Directive applies in relation to criminal offences committed in the Union and to criminal proceedings that take place in the Union. It confers rights on victims of extra-territorial offences only in relation to criminal proceedings that take place in the Union. Complaints made to competent authorities outside the Union, such as embassies, do not trigger the obligations set out in this Directive.
- (14) In applying this Directive, children's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child adopted on 20 November 1989. Child victims should be considered and treated as the full bearers of rights set out in this Directive and should be entitled to exercise those rights in a manner that takes into account their capacity to form their own views.
- (15) In applying this Directive, Member States should ensure that victims with disabilities are able to benefit fully from the rights set out in this Directive, on an equal basis with others, including by facilitating the accessibility to premises where criminal proceedings are conducted and access to information.
- (16) Victims of terrorism have suffered attacks that are intended ultimately to harm society. They may therefore need special attention, support and protection due to the particular nature of the crime that has been committed against them. Victims of terrorism can be under significant public scrutiny and often need social recognition and respectful treatment by society. Member States should therefore take particular account of the needs of victims of terrorism, and should seek to protect their dignity and security.
- (17) Violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately, is understood as gender-based violence. It may result in physical, sexual, emotional or psychological harm, or economic loss, to the victim. Gender-based violence is understood to



be a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called ‘honour crimes’. Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.

- (18) Where violence is committed in a close relationship, it is committed by a person who is a current or former spouse, or partner or other family member of the victim, whether or not the offender shares or has shared the same household with the victim. Such violence could cover physical, sexual, psychological or economic violence and could result in physical, mental or emotional harm or economic loss. Violence in close relationships is a serious and often hidden social problem which could cause systematic psychological and physical trauma with severe consequences because the offender is a person whom the victim should be able to trust. Victims of violence in close relationships may therefore be in need of special protection measures. Women are affected disproportionately by this type of violence and the situation can be worse if the woman is dependent on the offender economically, socially or as regards her right to residence.
- (19) A person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them. It is possible that family members of victims are also harmed as a result of the crime. In particular, family members of a person whose death has been directly caused by a criminal offence could be harmed as a result of the crime. Such family members, who are indirect victims of the crime, should therefore also benefit from protection under this Directive. However, Member States should be able to establish procedures to limit the number of family members who can benefit from the rights set out in this Directive. In the case of a child, the child or, unless this is not in the best interests of the child, the holder of parental responsibility on behalf of the child, should be entitled to exercise the rights set out in this Directive. This Directive is without prejudice to any national administrative procedures required to establish that a person is a victim.
- (20) The role of victims in the criminal justice system and whether they can participate actively in criminal proceedings vary across Member States, depending on the national system, and is determined by one or more of the following criteria: whether the national system provides for a legal status as a party to criminal proceedings; whether the victim is under a legal requirement or is requested to participate actively in criminal proceedings, for example as a witness; and/or whether the victim has a legal entitlement under national law to participate actively in criminal proceedings and is seeking to do so, where the national system does not provide that victims have the legal status of a party to the criminal proceedings. Member States should determine which of those criteria apply to determine the scope of rights set out in this Directive where there are references to the role of the victim in the relevant criminal justice system.



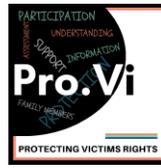
- (21) Information and advice provided by competent authorities, victim support services and restorative justice services should, as far as possible, be given by means of a range of media and in a manner which can be understood by the victim. Such information and advice should be provided in simple and accessible language. It should also be ensured that the victim can be understood during proceedings. In this respect, the victim's knowledge of the language used to provide information, age, maturity, intellectual and emotional capacity, literacy and any mental or physical impairment should be taken into account. Particular account should be taken of difficulties in understanding or communicating which may be due to a disability of some kind, such as hearing or speech impediments. Equally, limitations on a victim's ability to communicate information should be taken into account during criminal proceedings.
- (22) The moment when a complaint is made should, for the purposes of this Directive, be considered as falling within the context of the criminal proceedings. This should also include situations where authorities initiate criminal proceedings *ex officio* as a result of a criminal offence suffered by a victim.
- (23) Information about reimbursement of expenses should be provided, from the time of the first contact with a competent authority, for example in a leaflet stating the basic conditions for such reimbursement of expenses. Member States should not be required, at this early stage of the criminal proceedings, to decide on whether the victim concerned fulfils the conditions for reimbursement of expenses.
- (24) When reporting a crime, victims should receive a written acknowledgement of their complaint from the police, stating the basic elements of the crime, such as the type of crime, the time and place, and any damage or harm caused by the crime. This acknowledgement should include a file number and the time and place for reporting of the crime in order to serve as evidence that the crime has been reported, for example in relation to insurance claims.
- (25) Without prejudice to rules relating to limitation periods, the delayed reporting of a criminal offence due to fear of retaliation, humiliation or stigmatisation should not result in refusing acknowledgement of the victim's complaint.
- (26) When providing information, sufficient detail should be given to ensure that victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings. In this respect, information allowing the victim to know about the current status of any proceedings is particularly important. This is equally relevant for information to enable a victim to decide whether to request a review of a decision not to prosecute. Unless otherwise required, it should be possible to provide the information communicated to the victim orally or in writing, including through electronic means.
- (27) Information to a victim should be provided to the last known correspondence address or electronic contact details given to the competent authority by the victim. In exceptional cases, for example due to the high number of victims involved in a case, it should be possible to provide information through the press, through an official website of the competent authority or through a similar communication channel.



- (28) Member States should not be obliged to provide information where disclosure of that information could affect the proper handling of a case or harm a given case or person, or if they consider it contrary to the essential interests of their security.
- (29) Competent authorities should ensure that victims receive updated contact details for communication about their case unless the victim has expressed a wish not to receive such information.
- (30) A reference to a ‘decision’ in the context of the right to information, interpretation and translation, should be understood only as a reference to the finding of guilt or otherwise ending criminal proceedings. The reasons for that decision should be provided to the victim through a copy of the document which contains that decision or through a brief summary of them.
- (31) The right to information about the time and place of a trial resulting from the complaint with regard to a criminal offence suffered by the victim should also apply to information about the time and place of a hearing related to an appeal of a judgment in the case.
- (32) Specific information about the release or the escape of the offender should be given to victims, upon request, at least in cases where there might be a danger or an identified risk of harm to the victims, unless there is an identified risk of harm to the offender which would result from the notification. Where there is an identified risk of harm to the offender which would result from the notification, the competent authority should take into account all other risks when determining an appropriate action. The reference to ‘identified risk of harm to the victims’ should cover such factors as the nature and severity of the crime and the risk of retaliation. Therefore, it should not be applied to those situations where minor offences were committed and thus where there is only a slight risk of harm to the victim.
- (33) Victims should receive information about any right to appeal of a decision to release the offender, if such a right exists in national law.
- (34) Justice cannot be effectively achieved unless victims can properly explain the circumstances of the crime and provide their evidence in a manner understandable to the competent authorities. It is equally important to ensure that victims are treated in a respectful manner and that they are able to access their rights. Interpretation should therefore be made available, free of charge, during questioning of the victim and in order to enable them to participate actively in court hearings, in accordance with the role of the victim in the relevant criminal justice system. For other aspects of criminal proceedings, the need for interpretation and translation can vary depending on specific issues, the role of the victim in the relevant criminal justice system and his or her involvement in proceedings and any specific rights they have. As such, interpretation and translation for these other cases need only be provided to the extent necessary for victims to exercise their rights.
- (35) The victim should have the right to challenge a decision finding that there is no need for interpretation or translation, in accordance with procedures in national law. That right does not entail the obligation for Member States to provide for a separate mechanism or complaint procedure in which such decision may be challenged and should not unreasonably prolong the criminal proceedings. An internal review of the decision in accordance with existing national procedures would suffice.



- (36) The fact that a victim speaks a language which is not widely spoken should not, in itself, be grounds to decide that interpretation or translation would unreasonably prolong the criminal proceedings.
- (37) Support should be available from the moment the competent authorities are aware of the victim and throughout criminal proceedings and for an appropriate time after such proceedings in accordance with the needs of the victim and the rights set out in this Directive. Support should be provided through a variety of means, without excessive formalities and through a sufficient geographical distribution across the Member State to allow all victims the opportunity to access such services. Victims who have suffered considerable harm due to the severity of the crime could require specialist support services.
- (38) Persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents, should be provided with specialist support and legal protection. Specialist support services should be based on an integrated and targeted approach which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as the relationship between victims, offenders, children and their wider social environment. A main task of these services and their staff, which play an important role in supporting the victim to recover from and overcome potential harm or trauma as a result of a criminal offence, should be to inform victims about the rights set out in this Directive so that they can take decisions in a supportive environment that treats them with dignity, respect and sensitivity. The types of support that such specialist support services should offer could include providing shelter and safe accommodation, immediate medical support, referral to medical and forensic examination for evidence in cases of rape or sexual assault, short and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children as direct or indirect victims.
- (39) Victim support services are not required to provide extensive specialist and professional expertise themselves. If necessary, victim support services should assist victims in calling on existing professional support, such as psychologists.
- (40) Although the provision of support should not be dependent on victims making a complaint with regard to a criminal offence to a competent authority such as the police, such authorities are often best placed to inform victims of the possibility of support. Member States are therefore encouraged to establish appropriate conditions to enable the referral of victims to victim support services, including by ensuring that data protection requirements can be and are adhered to. Repeat referrals should be avoided.
- (41) The right of victims to be heard should be considered to have been fulfilled where victims are permitted to make statements or explanations in writing.
- (42) The right of child victims to be heard in criminal proceedings should not be precluded solely on the basis that the victim is a child or on the basis of that victim's age.
- (43) The right to a review of a decision not to prosecute should be understood as referring to decisions taken by prosecutors and investigative judges or law enforcement authorities such

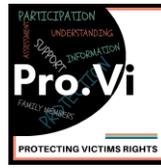


as police officers, but not to the decisions taken by courts. Any review of a decision not to prosecute should be carried out by a different person or authority to that which made the original decision, unless the initial decision not to prosecute was taken by the highest prosecuting authority, against whose decision no review can be made, in which case the review may be carried out by that same authority. The right to a review of a decision not to prosecute does not concern special procedures, such as proceedings against members of parliament or government, in relation to the exercise of their official position.

- (44) A decision ending criminal proceedings should include situations where a prosecutor decides to withdraw charges or discontinue proceedings.
- (45) A decision of the prosecutor resulting in an out-of-court settlement and thus ending criminal proceedings, excludes victims from the right to a review of a decision of the prosecutor not to prosecute, only if the settlement imposes a warning or an obligation.
- (46) Restorative justice services, including for example victim-offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim, but require safeguards to prevent secondary and repeat victimisation, intimidation and retaliation. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm. Factors such as the nature and severity of the crime, the ensuing degree of trauma, the repeat violation of a victim's physical, sexual, or psychological integrity, power imbalances, and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case to the restorative justice services and in conducting a restorative justice process. Restorative justice processes should, in principle, be confidential, unless agreed otherwise by the parties, or as required by national law due to an overriding public interest. Factors such as threats made or any forms of violence committed during the process may be considered as requiring disclosure in the public interest.
- (47) Victims should not be expected to incur expenses in relation to their participation in criminal proceedings. Member States should be required to reimburse only necessary expenses of victims in relation to their participation in criminal proceedings and should not be required to reimburse victims' legal fees. Member States should be able to impose conditions in regard to the reimbursement of expenses in national law, such as time limits for claiming reimbursement, standard rates for subsistence and travel costs and maximum daily amounts for loss of earnings. The right to reimbursement of expenses in criminal proceedings should not arise in a situation where a victim makes a statement on a criminal offence. Expenses should only be covered to the extent that the victim is obliged or requested by the competent authorities to be present and actively participate in the criminal proceedings.
- (48) Recoverable property which is seized in criminal proceedings should be returned as soon as possible to the victim of the crime, subject to exceptional circumstances, such as in a dispute concerning the ownership or where the possession of the property or the property itself is illegal. The right to have property returned should be without prejudice to its legitimate retention for the purposes of other legal proceedings.



- (49) The right to a decision on compensation from the offender and the relevant applicable procedure should also apply to victims resident in a Member State other than the Member State where the criminal offence was committed.
- (50) The obligation set out in this Directive to transmit complaints should not affect Member States' competence to institute proceedings and is without prejudice to the rules of conflict relating to the exercise of jurisdiction, as laid down in Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings [\(13\)](#).
- (51) If the victim has left the territory of the Member State where the criminal offence was committed, that Member State should no longer be obliged to provide assistance, support and protection except for what is directly related to any criminal proceedings it is conducting regarding the criminal offence concerned, such as special protection measures during court proceedings. The Member State of the victim's residence should provide assistance, support and protection required for the victim's need to recover.
- (52) Measures should be available to protect the safety and dignity of victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, such as interim injunctions or protection or restraining orders.
- (53) The risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender or as a result of participation in criminal proceedings should be limited by carrying out proceedings in a coordinated and respectful manner, enabling victims to establish trust in authorities. Interaction with competent authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them through, for example, video recording of interviews and allowing its use in court proceedings. As wide a range of measures as possible should be made available to practitioners to prevent distress to the victim during court proceedings in particular as a result of visual contact with the offender, his or her family, associates or members of the public. To that end, Member States should be encouraged to introduce, especially in relation to court buildings and police stations, feasible and practical measures enabling the facilities to include amenities such as separate entrances and waiting areas for victims. In addition, Member States should, to the extent possible, plan the criminal proceedings so that contacts between victims and their family members and offenders are avoided, such as by summoning victims and offenders to hearings at different times.
- (54) Protecting the privacy of the victim can be an important means of preventing secondary and repeat victimisation, intimidation and retaliation and can be achieved through a range of measures including non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of the victim. Such protection is particularly important for child victims, and includes non-disclosure of the name of the child. However, there might be cases where, exceptionally, the child can benefit from the disclosure or even widespread publication of information, for example where a child has been abducted. Measures to protect the privacy and images of victims and of their family members should always be consistent with the right to a fair trial and freedom of expression, as recognised in Articles 6



and 10, respectively, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

- (55) Some victims are particularly at risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender during criminal proceedings. It is possible that such a risk derives from the personal characteristics of the victim or the type, nature or circumstances of the crime. Only through individual assessments, carried out at the earliest opportunity, can such a risk be effectively identified. Such assessments should be carried out for all victims to determine whether they are at risk of secondary and repeat victimisation, of intimidation and of retaliation and what special protection measures they require.
- (56) Individual assessments should take into account the personal characteristics of the victim such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime. They should also take into account the type or nature and the circumstances of the crime such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim's residence is in a high crime or gang dominated area, or whether the victim's country of origin is not the Member State where the crime was committed.
- (57) Victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims tend to experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation. Particular care should be taken when assessing whether such victims are at risk of such victimisation, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures.
- (58) Victims who have been identified as vulnerable to secondary and repeat victimisation, to intimidation and to retaliation should be offered appropriate measures to protect them during criminal proceedings. The exact nature of such measures should be determined through the individual assessment, taking into account the wish of the victim. The extent of any such measure should be determined without prejudice to the rights of the defence and in accordance with rules of judicial discretion. The victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure.
- (59) Immediate operational needs and constraints may make it impossible to ensure, for example, that the same police officer consistently interview the victim; illness, maternity or parental leave are examples of such constraints. Furthermore, premises specially designed for interviews with victims may not be available due, for example, to renovation. In the event of such operational or practical constraints, a special measure envisaged following an individual assessment may not be possible to provide on a case-by-case basis.
- (60) Where, in accordance with this Directive, a guardian or a representative is to be appointed for a child, those roles could be performed by the same person or by a legal person, an institution or an authority.



- (61) Any officials involved in criminal proceedings who are likely to come into personal contact with victims should be able to access and receive appropriate initial and ongoing training, to a level appropriate to their contact with victims, so that they are able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner. Persons who are likely to be involved in the individual assessment to identify victims' specific protection needs and to determine their need for special protection measures should receive specific training on how to carry out such an assessment. Member States should ensure such training for police services and court staff. Equally, training should be promoted for lawyers, prosecutors and judges and for practitioners who provide victim support or restorative justice services. This requirement should include training on the specific support services to which victims should be referred or specialist training where their work focuses on victims with specific needs and specific psychological training, as appropriate. Where relevant, such training should be gender sensitive. Member States' actions on training should be complemented by guidelines, recommendations and exchange of best practices in accordance with the Budapest roadmap.
- (62) Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations working with victims of crime, in particular in policymaking initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of measures to support and protect victims of crime. For victims of crime to receive the proper degree of assistance, support and protection, public services should work in a coordinated manner and should be involved at all administrative levels — at Union level, and at national, regional and local level. Victims should be assisted in finding and addressing the competent authorities in order to avoid repeat referrals. Member States should consider developing 'sole points of access' or 'one-stop shops', that address victims' multiple needs when involved in criminal proceedings, including the need to receive information, assistance, support, protection and compensation.
- (63) In order to encourage and facilitate reporting of crimes and to allow victims to break the cycle of repeat victimisation, it is essential that reliable support services are available to victims and that competent authorities are prepared to respond to victims' reports in a respectful, sensitive, professional and non-discriminatory manner. This could increase victims' confidence in the criminal justice systems of Member States and reduce the number of unreported crimes. Practitioners who are likely to receive complaints from victims with regard to criminal offences should be appropriately trained to facilitate reporting of crimes, and measures should be put in place to enable third-party reporting, including by civil society organisations. It should be possible to make use of communication technology, such as e-mail, video recordings or online electronic forms for making complaints.
- (64) Systematic and adequate statistical data collection is recognised as an essential component of effective policymaking in the field of rights set out in this Directive. In order to facilitate evaluation of the application of this Directive, Member States should communicate to the Commission relevant statistical data related to the application of national procedures on victims of crime, including at least the number and type of the reported crimes and, as far as



such data are known and are available, the number and age and gender of the victims. Relevant statistical data can include data recorded by the judicial authorities and by law enforcement agencies and, as far as possible, administrative data compiled by healthcare and social welfare services and by public and non-governmental victim support or restorative justice services and other organisations working with victims of crime. Judicial data can include information about reported crime, the number of cases that are investigated and persons prosecuted and sentenced. Service-based administrative data can include, as far as possible, data on how victims are using services provided by government agencies and public and private support organisations, such as the number of referrals by police to victim support services, the number of victims that request, receive or do not receive support or restorative justice.

- (65) This Directive aims to amend and expand the provisions of Framework Decision 2001/220/JHA. Since the amendments to be made are substantial in number and nature, that Framework Decision should, in the interests of clarity, be replaced in its entirety in relation to Member States participating in the adoption of this Directive.
- (66) This Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, it seeks to promote the right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of non-discrimination, the principle of equality between women and men, the rights of the child, the elderly and persons with disabilities, and the right to a fair trial.
- (67) Since the objective of this Directive, namely to establish minimum standards on the rights, support and protection of victims of crime, cannot be sufficiently achieved by the Member States, and can therefore, by reason of its scale and potential effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (68) Personal data processed when implementing this Directive should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters [\(14\)](#) and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified.
- (69) This Directive does not affect more far reaching provisions contained in other Union acts which address the specific needs of particular categories of victims, such as victims of human trafficking and victims of child sexual abuse, sexual exploitation and child pornography, in a more targeted manner.
- (70) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, those Member States have notified their wish to take part in the adoption and application of this Directive.



(71) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

(72) The European Data Protection Supervisor delivered an opinion on 17 October 2011 [\(15\)](#) based on Article 41(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [\(16\)](#),

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Objectives

1. The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.

2. Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.

Article 2

Definitions

1. For the purposes of this Directive the following definitions shall apply:



(a) ‘victim’ means:

- (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
- (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;
- (b) ‘family members’ means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim;
- (c) ‘child’ means any person below 18 years of age;
- (d) ‘restorative justice’ means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party.

2. Member States may establish procedures:

- (a) to limit the number of family members who may benefit from the rights set out in this Directive taking into account the individual circumstances of each case; and
- (b) in relation to paragraph (1)(a)(ii), to determine which family members have priority in relation to the exercise of the rights set out in this Directive.

CHAPTER 2

PROVISION OF INFORMATION AND SUPPORT

Article 3

Right to understand and to be understood

1. Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority.
2. Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.
3. Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in



the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

Article 4

Right to receive information from the first contact with a competent authority

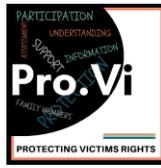
1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:

- (a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;
- (b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;
- (c) how and under what conditions they can obtain protection, including protection measures;
- (d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;
- (e) how and under what conditions they can access compensation;
- (f) how and under what conditions they are entitled to interpretation and translation;
- (g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;
- (h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;
- (i) the contact details for communications about their case;
- (j) the available restorative justice services;
- (k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

2. The extent or detail of information referred to in paragraph 1 may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may also be provided at later stages depending on the needs of the victim and the relevance, at each stage of proceedings, of such details.

Article 5

Right of victims when making a complaint



1. Member States shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned.
2. Member States shall ensure that victims who wish to make a complaint with regard to a criminal offence and who do not understand or speak the language of the competent authority be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance.
3. Member States shall ensure that victims who do not understand or speak the language of the competent authority, receive translation, free of charge, of the written acknowledgement of their complaint provided for in paragraph 1, if they so request, in a language that they understand.

Article 6

Right to receive information about their case

1. Member States shall ensure that victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by the victim and that, upon request, they receive such information:
 - (a) any decision not to proceed with or to end an investigation or not to prosecute the offender;
 - (b) the time and place of the trial, and the nature of the charges against the offender.
2. Member States shall ensure that, in accordance with their role in the relevant criminal justice system, victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by them and that, upon request, they receive such information:
 - (a) any final judgment in a trial;
 - (b) information enabling the victim to know about the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification.
3. Information provided for under paragraph 1(a) and paragraph 2(a) shall include reasons or a brief summary of reasons for the decision concerned, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.
4. The wish of victims as to whether or not to receive information shall bind the competent authority, unless that information must be provided due to the entitlement of the victim to active



participation in the criminal proceedings. Member States shall allow victims to modify their wish at any moment, and shall take such modification into account.

5. Member States shall ensure that victims are offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention. Furthermore, Member States shall ensure that victims are informed of any relevant measures issued for their protection in case of release or escape of the offender.

6. Victims shall, upon request, receive the information provided for in paragraph 5 at least in cases where there is a danger or an identified risk of harm to them, unless there is an identified risk of harm to the offender which would result from the notification.

Article 7

Right to interpretation and translation

1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings.

2. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings.

3. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge, to the extent that such information is made available to the victims. Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim's request, reasons or a brief summary of reasons for such decision, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

4. Member States shall ensure that victims who are entitled to information about the time and place of the trial in accordance with Article 6(1)(b) and who do not understand the language of



the competent authority, are provided with a translation of the information to which they are entitled, upon request.

5. Victims may submit a reasoned request to consider a document as essential. There shall be no requirement to translate passages of essential documents which are not relevant for the purpose of enabling victims to actively participate in the criminal proceedings.
6. Notwithstanding paragraphs 1 and 3, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.
7. Member States shall ensure that the competent authority assesses whether victims need interpretation or translation as provided for under paragraphs 1 and 3. Victims may challenge a decision not to provide interpretation or translation. The procedural rules for such a challenge shall be determined by national law.
8. Interpretation and translation and any consideration of a challenge of a decision not to provide interpretation or translation under this Article shall not unreasonably prolong the criminal proceedings.

Article 8

Right to access victim support services

1. Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.
2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.
3. Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim.
4. Victim support services and any specialist support services may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis.



5. Member States shall ensure that access to any victim support services is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

Article 9

Support from victim support services

1. Victim support services, as referred to in Article 8(1), shall, as a minimum, provide:
 - (a) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;
 - (b) information about or direct referral to any relevant specialist support services in place;
 - (c) emotional and, where available, psychological support;
 - (d) advice relating to financial and practical issues arising from the crime;
 - (e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.
2. Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.
3. Unless otherwise provided by other public or private services, specialist support services referred to in Article 8(3), shall, as a minimum, develop and provide:
 - (a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;
 - (b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

CHAPTER 3

PARTICIPATION IN CRIMINAL PROCEEDINGS

Article 10

Right to be heard

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



2. The procedural rules under which victims may be heard during criminal proceedings and may provide evidence shall be determined by national law.

Article 11

Rights in the event of a decision not to prosecute

1. Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

2. Where, in accordance with national law, the role of the victim in the relevant criminal justice system will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

3. Member States shall ensure that victims are notified without unnecessary delay of their right to receive, and that they receive sufficient information to decide whether to request a review of any decision not to prosecute upon request.

4. Where the decision not to prosecute is taken by the highest prosecuting authority against whose decision no review may be carried out under national law, the review may be carried out by the same authority.

5. Paragraphs 1, 3 and 4 shall not apply to a decision of the prosecutor not to prosecute, if such a decision results in an out-of-court settlement, in so far as national law makes such provision.

Article 12

Right to safeguards in the context of restorative justice services

1. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:

(a) the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time;



- (b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;
- (c) the offender has acknowledged the basic facts of the case;
- (d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;
- (e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.

2. Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.

Article 13

Right to legal aid

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.

Article 14

Right to reimbursement of expenses

Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system. The conditions or procedural rules under which victims may be reimbursed shall be determined by national law.

Article 15

Right to the return of property

Member States shall ensure that, following a decision by a competent authority, recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings. The conditions or procedural rules under which such property is returned to the victims shall be determined by national law.

Article 16



Right to decision on compensation from the offender in the course of criminal proceedings

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.
2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

Article 17

Rights of victims resident in another Member State

1. Member States shall ensure that their competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed, particularly with regard to the organisation of the proceedings. For this purpose, the authorities of the Member State where the criminal offence was committed shall, in particular, be in a position:
 - (a) to take a statement from the victim immediately after the complaint with regard to the criminal offence is made to the competent authority;
 - (b) to have recourse to the extent possible to the provisions on video conferencing and telephone conference calls laid down in the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 [\(17\)](#) for the purpose of hearing victims who are resident abroad.
2. Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.
3. Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.

CHAPTER 4

PROTECTION OF VICTIMS AND RECOGNITION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS



Article 18

Right to protection

Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

Article 19

Right to avoid contact between victim and offender

1. Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.
2. Member States shall ensure that new court premises have separate waiting areas for victims.

Article 20

Right to protection of victims during criminal investigations

Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that during criminal investigations:

- (a) interviews of victims are conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the competent authority;
- (b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation;
- (c) victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary;
- (d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.

Article 21

Right to protection of privacy



1. Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under Article 22, and images of victims and of their family members. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.
2. In order to protect the privacy, personal integrity and personal data of victims, Member States shall, with respect for freedom of expression and information and freedom and pluralism of the media, encourage the media to take self-regulatory measures.

Article 22

Individual assessment of victims to identify specific protection needs

1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.
2. The individual assessment shall, in particular, take into account:
 - (a) the personal characteristics of the victim;
 - (b) the type or nature of the crime; and
 - (c) the circumstances of the crime.
3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.
4. For the purposes of this Directive, child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. To determine whether and to what extent they would benefit from special measures as provided for under Articles 23 and 24, child victims shall be subject to an individual assessment as provided for in paragraph 1 of this Article.



5. The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.
6. Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures as provided for in Articles 23 and 24.
7. If the elements that form the basis of the individual assessment have changed significantly, Member States shall ensure that it is updated throughout the criminal proceedings.

Article 23

Right to protection of victims with specific protection needs during criminal proceedings

1. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment provided for in Article 22(1), may benefit from the measures provided for in paragraphs 2 and 3 of this Article. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.
2. The following measures shall be available during criminal investigations to victims with specific protection needs identified in accordance with Article 22(1):
 - (a) interviews with the victim being carried out in premises designed or adapted for that purpose;
 - (b) interviews with the victim being carried out by or through professionals trained for that purpose;
 - (c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice;
 - (d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.
3. The following measures shall be available for victims with specific protection needs identified in accordance with Article 22(1) during court proceedings:
 - (a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;



- (b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology;
- (c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and
- (d) measures allowing a hearing to take place without the presence of the public.

Article 24

Right to protection of child victims during criminal proceedings

1. In addition to the measures provided for in Article 23, Member States shall ensure that where the victim is a child:

- (a) in criminal investigations, all interviews with the child victim may be audiovisually recorded and such recorded interviews may be used as evidence in criminal proceedings;
- (b) in criminal investigations and proceedings, in accordance with the role of victims in the relevant criminal justice system, competent authorities appoint a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family;
- (c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.

The procedural rules for the audiovisual recordings referred to in point (a) of the first subparagraph and the use thereof shall be determined by national law.

2. Where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall, for the purposes of this Directive, be presumed to be a child.

CHAPTER 5

OTHER PROVISIONS

Article 25

Training of practitioners

1. Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate



to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.

2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase the awareness of judges and prosecutors of the needs of victims.

3. With due respect for the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of lawyers of the needs of victims.

4. Through their public services or by funding victim support organisations, Member States shall encourage initiatives enabling those providing victim support and restorative justice services to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

5. In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

Article 26

Cooperation and coordination of services

1. Member States shall take appropriate action to facilitate cooperation between Member States to improve the access of victims to the rights set out in this Directive and under national law. Such cooperation shall be aimed at least at:

- (a) the exchange of best practices;
- (b) consultation in individual cases; and
- (c) assistance to European networks working on matters directly relevant to victims' rights.

2. Member States shall take appropriate action, including through the internet, aimed at raising awareness of the rights set out in this Directive, reducing the risk of victimisation, and minimising the negative impact of crime and the risks of secondary and repeat victimisation, of intimidation and of retaliation, in particular by targeting groups at risk such as children, victims of gender-based violence and violence in close relationships. Such action may include information and awareness raising campaigns and research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders.



CHAPTER 6

FINAL PROVISIONS

Article 27

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 16 November 2015.
2. When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

Article 28

Provision of data and statistics

Member States shall, by 16 November 2017 and every three years thereafter, communicate to the Commission available data showing how victims have accessed the rights set out in this Directive.

Article 29

Report

The Commission shall, by 16 November 2017, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including a description of action taken under Articles 8, 9 and 23, accompanied, if necessary, by legislative proposals.

Article 30

Replacement of Framework Decision 2001/220/JHA

Framework Decision 2001/220/JHA is hereby replaced in relation to Member States participating in the adoption of this Directive, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law.

In relation to Member States participating in the adoption of this Directive, references to that Framework Decision shall be construed as references to this Directive.



(1) [OJ C 43, 15.2.2012, p. 39.](#)

(2) [OJ C 113, 18.4.2012, p. 56.](#)

(3) Position of the European Parliament of 12 September 2012 (not yet published in the Official Journal) and decision of the Council of 4 October 2012.

(4) [OJ L 82, 22.3.2001, p. 1.](#)

(5) [OJ C 115, 4.5.2010, p. 1.](#)

(6) [OJ C 187, 28.6.2011, p. 1.](#)

(7) [OJ C 285 E, 21.10.2010, p. 53.](#)

(8) [OJ C 296 E, 2.10.2012, p. 26.](#)

(9) [OJ L 338, 21.12.2011, p. 2.](#)

(10) [OJ L 101, 15.4.2011, p. 1.](#)

(11) [OJ L 335, 17.12.2011, p. 1.](#)

(12) [OJ L 164, 22.6.2002, p. 3.](#)

(13) [OJ L 328, 15.12.2009, p. 42.](#)

(14) [OJ L 350, 30.12.2008, p. 60.](#)

(15) [OJ C 35, 9.2.2012, p. 10.](#)

(16) [OJ L 8, 12.1.2001, p. 1.](#)

(17) [OJ C 197, 12.7.2000, p. 3.](#)

