

Victim Support
Europe



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SAFE JUSTICE FOR VICTIMS OF CRIME

DISCUSSION PAPER

CHALLENGING HOW WE PERCEIVE SUCCESS IN JUSTICE:

Moving towards an integrated, victim-sensitive system

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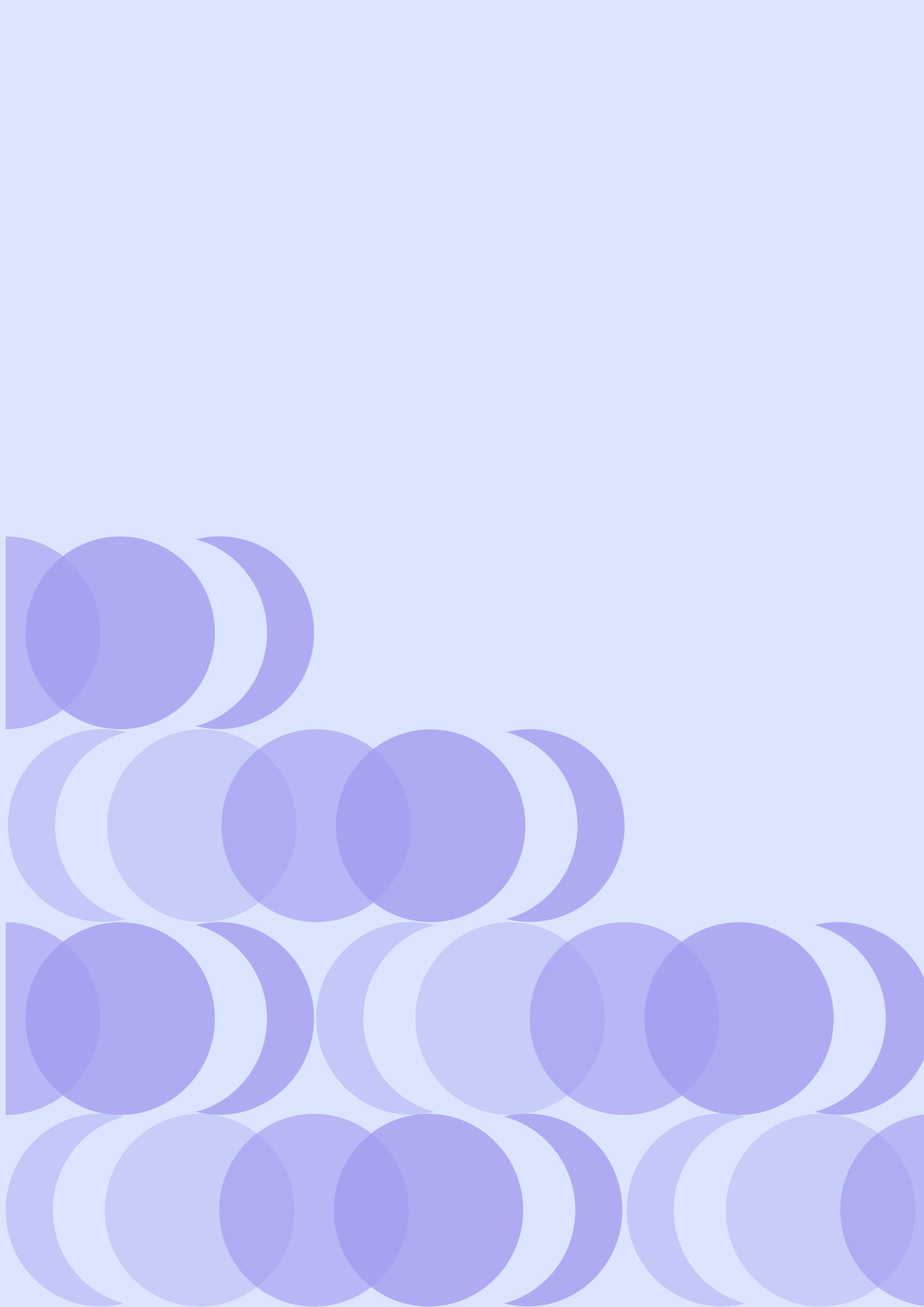
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Victim Support Europe (VSE) is the largest umbrella organisation advocating for the rights of all victims of all crimes in the European Union. VSE represents 70 national member organisations providing support and information services to more than 2 million people affected by crime every year in 34 countries.

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1. INTRODUCTION

“That’s what I wonder about to this day, whether I made a difference at all [...] [Testifying as a witness] is the only moment where you have the possibility to contribute something yourself [...]. Otherwise, it is like you are imaginarily tied up and closed off. You can watch, shake your head or cry, but you are not allowed to interact.”

Quote from a German victim, interviewed after criminal proceedings had ended.¹

Pan-European criminal justice systems have taken hundreds of years to develop; they started with rules implemented by the family, tribe, church, or sovereign through to the establishment of state law courts. Where in the past crime may have been perceived as a wrong on a micro-level, against a family or even a sovereign, today **crime is considered a wrong carried out against society as well as the individual.**²

Under criminal law theory, the primary goals of criminal justice are generally retribution, deterrence, incapacitation, rehabilitation and restoration (of victims). Given the significant focus on the perpetrator, it is therefore not surprising that principles of justice developed as much from ideas of fairness as from the recognition that an imbalance of power, or bias in those investigating, prosecuting and judging the accused, create fundamental flaws in the system.

European States have thus sought to address such flaws by establishing rules of law that ensure independence, impartiality, separation of duties, and the fundamental right to a fair trial. Whilst not perfect, these systems are, by and large, successful in protecting the innocent and punishing the guilty.

More recently, EU Member States have increasingly incorporated the victim’s perspective when establishing wide-ranging victims’ rights, services, and obligations, driven – in the most part – by directives from international bodies such as the UN, Council of Europe, and the European Union. Since 1985, a series of international norms have been adopted across the EU, starting with the **UN Basic Principles of Justice for Victims of Crime and Abuse of Power**³ and including, more recently, the **Council of Europe Recommendation CM/Rec(2006)8**⁴ on assistance to crime victims and the **2012 EU Victims’ Rights Directive**⁵ (the latter two both due for revision in 2023).

1 European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 26.

2 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, 57–73 (hereafter referred to as Victims' Rights Directive or VRD), Recital 9.

3 UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, resolution adopted by the General Assembly, 29 November 1985, A/RES/40/34, <https://www.refworld.org/docid/3b00f2275b.html>.

4 Council of Europe Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims, Adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies

5 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, p. 57–73

Yet, the implementation of these norms has been piecemeal: **many criminal justice systems are still under-developed** in terms of giving victims a voice, reducing the harm they encounter, and maximising the positive experience and outcomes of proceedings.

Success in justice cannot be claimed while vast numbers of victims choose not to report even the most serious of crimes, while victims feel they are not heard, or while victims do not have a voice. A system which treats victims disrespectfully, which further harms victims or fails to protect them, and leaves them dissatisfied by their experience, cannot be considered successful no matter how efficient it is, nor what the final verdict is. Equally, a justice system that causes vicarious trauma to its actors, in particular witnesses and members of the jury, should not be considered a success story.⁶

We have to ask whether our basic understanding of the objectives of justice – grounded in action against the perpetrator for the benefit of society – is so limiting that it is a fundamental barrier to transforming behaviours, rules, and the infrastructure of justice systems to meet victims' rights.

For our justice systems and society, to be truly successful in responding to crime, it is argued that as much importance should be placed on the experience, participation, and safety of victims as on the protection of the innocent, the guilty verdict, and the efficiency of the criminal process. This paper thus initiates a discussion on what is realistically required for justice to keep victims safe and be successful from the victim's viewpoint. In other words, how must our justice systems evolve to fully meet victims' needs and ensure their rights can be genuinely enjoyed.

For the purposes of this paper, safe justice is regarded as an **'holistic, systematic, needs-driven, rights-based, victim-sensitive approach to justice which ensures the physical, psychological, and emotional safety of the victim. Safe justice includes topics on empowerment and participation, protection measures, prevention of repeat victimisation, respectful treatment, and the minimisation of harm at every stage of the process, thus benefitting the justice system as a whole and supporting the creation of a fairer, safer society'**.

This paper is largely based on desk research supplemented by views and opinions of experts in the field via consultation with a panel of six experts from different professional backgrounds (victim advocates, academics, victim support workers, policy makers, judges, prosecutors) and from various European countries. In addition, consultations took place with VSE members during a Safe Justice Workshop and during VSE Executive Board meetings. During the drafting process, the expert panel discussed the proposed approaches and the issues raised by the research. Workshops focused largely on practical issues and best practices as well as on recommendations associated with the concept of safe justice in (VSE) member countries.

In the following sections, we examine notions of justice, judicial systems, and how the term 'victim' is defined as well as the role assigned to victims in criminal proceedings and how the implementation of victims' rights impacts that role. We also reflect on the needs of victims following a crime and how crime affects victims; and, finally, we address victim-centric approaches to the practical barriers faced by victims. We subsequently explore what is required to make our criminal justice systems truly effective.

⁶ For example, a juror in the R. Kelly federal trial on charges of child pornography in Chicago, USA, had to be replaced after suffering a panic attack following the description of the crimes that Mr. Kelly committed against children. See: <https://www.nbcnews.com/news/us-news/juror-excused-r-kelly-child-sex-abuse-trial-panic-attack-closing-argum-rcna47306>

This paper is not an extensive, in depth analysis of all aspects of the justice system. Rather, it is based on a range of research reports and the direct experiences of victims and frontline practitioners; its objective is to encourage Europe-wide discussion about how we should design our justice systems to better include the victim's perspective, ultimately to the benefit of our entire society.

1.1 Existing criminal justice approaches

1.1.1 Concept of justice

Justice, in its broadest sense, is understood as fairness, or receiving what one 'deserves', which in turn, is determined by various moral, ethical, religious, or legal norms. It is also considered to be the first virtue of social institutions.⁷

Many theories of justice exist; they argue for various approaches that demonstrate what is just and how justice can be achieved: utilitarianism, egalitarianism, and social contract, to name just a few. Historically, theories of justice can be divided into two main categories:

- the first views justice as objective and fixed, reflecting a natural order of things (as theorised by John Locke, for instance); and
- the second views it as a socially constructed set of norms reflecting the interests and values of dominant interest groups⁸, or at the very least, as subjective, effect-based principles.

The former approach is characteristic of many earlier theories, while the latter tends to apply to more recent thinking on justice. Beyond these two broad distinctions, there are several ways to categorise justice. For instance, we can talk about distributive justice (determining who receives what), procedural justice (determining how fairly people are treated), retributive justice (punishing someone who has done something wrong) and restorative justice (which tries to restore relationships between victim and offender).⁹ Another, more recent, approach is 'integral justice'.¹⁰ This defends the need for a more integrated approach,¹¹ and can be broken into the following separate but intertwined categories: politico-legal, societal, cultural, ecological, and spiritual/metaphysical justice.

The types of justice covered by this paper will be those associated with **retributive and politico-legal justice** which better reflect the current European context. The paper will also explore other forms and types of justice, many of which hope to serve victims of crime in better ways. Finally, the paper focuses on criminal justice systems (rather than on civil or administrative proceedings) in the European Union; as a way to clearly define their scope, and to formulate applicable policy recommendations.

7 John Rawls (1999). *A Theory of Justice*, Revised Ed. (Cambridge: Belknap Press of Harvard University Press), 3.

8 George Bragues (2006). David Hume vs. Thomas Reid: Is Justice Socially Constructed or Natural?, *SSRN Electronic Journal*, 2, <https://doi.org/10.2139/ssrn.882205>

9 Michelle Maiese & Heidi Burgess (2020). Types of Justice, *Beyond Intractability*, accessed 30 January 2022, https://www.beyondintractability.org/essay/types_of_justice#narrow-body

10 Inge Vanfraechem, Antony Pemberton & Felix M. Ndahinda (2014). *Justice for Victims: Perspectives on Rights, Transition and Reconciliation* (New York: Routledge), <http://site.ebrary.com/id/10888541>

11 Vanfraechem, Pemberton & Ndahinda (2014), 189.

1.1.2 Justice systems

All legal systems share the goal of regulating and harmonising society. In the West, their evolution was based on one of the following **legal traditions: common law and civil law**, whose use can be illustrated by England and France respectively:¹² note that a combination of these two systems is implemented in some European countries.

Common law, or case law, is based on precedent and thus relies on published judicial opinions of specific cases. Civil law, stemming from Roman law, on the other hand, relies on broad, general principles, expressed through codified legal statutes. In reality, nearly all current legal systems present components of common law and civil law traditions, and thus rely on both Parliamentary laws and the acceptance, to some extent, of precedent-setting by judicial instances.

These legal traditions impact the nature of investigation and adjudication within criminal proceedings and, therefore, the rights and role of the victims.¹³ In common law countries, the proceedings are **adversarial or accusatorial** in nature: the prosecutor, along with the police, and the defence are responsible for conducting their own investigations into the case, while the judge serves as an arbiter between the claims of both parties, and as a referee to ensure fairness and the accurate application of procedural rules.

In these systems, equality is generally delivered by having only prosecution and defence representatives as parties to the proceedings, with victims relegated to the role of witness. Verdicts in these systems are dominated by the jury trial system.

Civil law systems adopt an **inquisitorial** approach to criminal justice proceedings, characterised by a thorough pre-trial investigation and evidence-gathering phase. During the inquisitorial process, the judge serves as an examiner, actively involved in determining the facts of the case. The prosecution and defence are allowed to present short summations, but do not have the right to cross-examine witnesses. With the judge having a more active role in the inquiry phase and with the option to incorporate rights to a civil claim in criminal proceedings, we see that victims are often recognised as parties to the proceedings and benefit from additional rights. Verdicts are primarily decided by a judge or panel of judges rather than by a jury.

Today, legal systems generally consist of both inquisitorial and adversarial elements. Each legal system is defined as an operational set of legal institutions, procedures, and rules¹⁴; choices concerning roles, enquiry and investigation, and who will determine a verdict, are intertwined in an effort to seek a balance of power between the defence and the prosecutor/accuser whilst ensuring the suspect receives a fair trial.

The choice of legal system has a direct impact on the victims' standing: how they are formally recognised within the proceedings, what their role is and what rights they have. However, arguably, **victims should**

¹² Joseph Dainow (1966). The Civil Law and the Common Law: Some Points of Comparison, *The American Journal of Comparative Law* 15, no. 3, 419, <https://doi.org/10.2307/838275>

¹³ Philip L. Reichel (2018). *Comparative Criminal Justice Systems: A Topical Approach*, 7th Ed. (New York: Pearson Education Inc.), 124.

¹⁴ William Tetley (2000). Mixed Jurisdictions: Common Law v. Civil Law (Codified and Uncodified), *Louisiana Law Review* 60, no. 3, 681.

be afforded a wide set of rights, irrespective of the type of proceedings and the role they are provided. This would particularly be the case if providing such rights would not affect the balance of powers, or perhaps, would better balance those powers to increase the likelihood that the truth, and therefore justice, is found.

1.2 How do victims fit within the criminal justice system?

When understanding the position of victims, two factors play an important role in how they are recognised and what rights they may benefit from.

Firstly, the adopted **definition of victim** could act to **include or exclude victims** or in some way limit their recognition or access to rights. In many jurisdictions, the term ‘victim’ may be replaced by ‘injured party’ or another similar expression may be used.

Secondly, as mentioned above, depending on the jurisdiction, **victims may have different roles** in the criminal proceedings, which in turn **affects their position or standing in proceedings** and the rights they benefit from. The question is whether assigning privileges to the victims’ role, rather than to their needs, is an effective means of ensuring victims’ their **rights**.

1.2.1 Definition of a victim

In the VRD, **a victim is defined as**

*‘(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’.*¹⁵

Importantly, this definition covers only natural, rather than legal persons (such as businesses). The definition acknowledges harm, and recognises indirect victims in the form of family members of those who were killed. While all EU Member States have implemented definitions that are in line with the EU Directive, some have retained prior terminology, such as injured party, and excluded references to harm¹⁶.

This raises the question of **whether the harm requirement is necessary or even appropriate**. Should people not be regarded as victims from the moment the crime occurs, regardless of whether harm is suffered? According to the EU Fundamental Rights Agency (FRA), victims’ rights should **change from a harm-based approach to a rights-based approach by removing any reference to harm in the VRD definition**. The victim should be recognised as a “person wronged by the offender” instead.¹⁷ Indeed, such an approach has already been adopted by the Council of Europe, for example in

¹⁵ Victims’ Rights Directive, Article 2.1 (a).

¹⁶ For a detailed review of national definitions see APAV (2016). IVOR Report: Implementing Victim-Oriented Reform of the Criminal Justice System in the European Union, 113, <https://victim-support.eu/publications/ivor-report-implementing-victim-oriented-reform-of-the-criminal-justice-system-in-the-european-union/>

¹⁷ European Union Agency for Fundamental Rights (2019). Victims’ rights as standards of criminal justice. Justice for victims of violent crime: Part I (Luxembourg: Publications Office of the European Union), 21-24, <https://fra.europa.eu/en/publication/2019/victims-rights-standards-criminal-justice-justice-victims-violent-crime-part-i>

the Istanbul Convention, which defines a victim as any natural person who is subject to certain crimes specified in the Convention.¹⁸

Whilst the harm-based definition could affect perceptions of victims and the overarching approach to them, research carried out for this paper – and in the evaluation of the VRD – has not identified explicit problems or barriers for victims from use of the harm-based definition. Therefore, we will not focus on this definition henceforward.

1.2.2 The victim's role in proceedings

A victim's role in proceedings can significantly impact both their treatment and their rights; the victim may be known as a 'civil party', 'injured party', 'witness', 'assistant'/'auxiliary prosecutor', each having specific legal capacity. In the Netherlands, for instance, a person may participate in criminal proceedings as a witness, a plaintiff, a reporter of crime, or as an injured party. A reporter of crime can be someone other than a victim; however, they will not be granted the same rights in criminal proceedings as a participant who is a victim.¹⁹

These different roles are usually associated with various rights and obligations, depending on the national legal system. Legal traditions impact the role taken by victims within proceedings: in common law countries, such as Ireland and England, the adversarial system tends to exclude victims from being actively involved in the criminal proceedings.²⁰ This in turn tends to reduce the rights applicable to the victims.

However, is the way in which legal traditions allocate roles the best means of ensuring that victims are able to access their rights? Perhaps the **starting point should be examining the core principles set out in international victims' legislation**; these establish the key objectives for victims' rights.

Only once victims' rights are aligned with these principles, should they be adjusted in line with other objectives such as a balance of powers, neutrality, fair trial rights etc. The following section explores some of the key principles that should underpin victim-centric policies and laws .

1.3 Core principles of victim's policy and law

Over the last forty years, the same key approaches to determining action for victims have been used across European and international legislation including the VRD, and crime specific EU victims' legislation covering e.g. child sexual abuse, human trafficking, combatting terrorism etc.

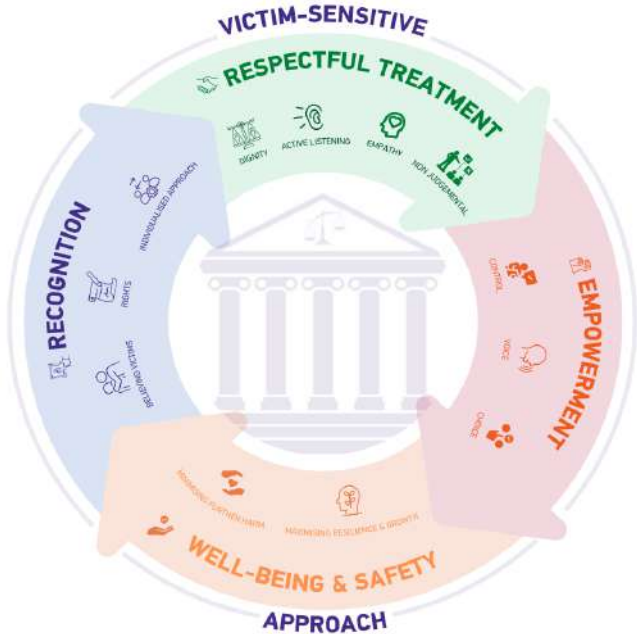
It is necessary **to understand how crime impacts victims** and **to establish their needs** before they can **recover** from the effects of the crime and **return to successful and fulfilled** lives. This impact determines the flow of associated victim-orientated principles or objectives; **safety** should be ensured,

¹⁸ Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11 May 2011, Council of Europe Treaty Series no. 210, hereafter referred to as "Istanbul Convention", Article 3.e.

¹⁹ APAV (2016). IVOR Report, 109.

²⁰ *Idem.*, 110.

which will **minimise re-traumatisation (including secondary victimisation)** whilst **maximising well-being**. Enhancing a **victim’s feeling of control and empowerment** – through active participation in the justice process, being heard and being given choices – will help them overcome the trauma, loss of control, and shame following a crime. Such empowerment requires both the **recognition of victims and an empathetic and victim-sensitive approach**.



1.4 Impact of crime on victims and society

Crime affects **‘direct’ victims** – those who experienced the crime – as well as their **families and friends**, rippling out from the victim to **witnesses, first responders, local communities, and society** as a whole.²¹ It impacts victims through psychological trauma, secondary victimisation, financial burdens, lifestyle changes, legal costs and having to cope with burdensome and often painful tasks linked to the criminal proceedings. These effects may act as barriers to recovery or to a fulfilling life, and may directly affect a victim’s ability to access justice, victims are most affected on emotional, physical, financial, psychological and social levels.²²

Experiencing a crime influences how a victim looks at the world as their emotions, behaviours and ideas may change. In the crime’s immediate aftermath, victims may be shocked or in denial a, a state which could last from a few moments up to several years and which often leaves victims in need of care. The **emotional impact of victimisation** may evolve to include anger or revenge, fear, frustration, confusion, self-blame, shame or grief.

Victims may experience **physical effects** following the crime, either from injuries or from long term health issues. Short-term reactions can include an increase of adrenalin in the body, increased heart rate, hyperventilation, numbness and other signs of physical arousal. Victims can have a range of **physical injuries**, both visible (like scratches, bruises, stab wounds) or internal (organ or brain injuries).

²¹ The Annex to the EU Handbook on Victims of Terrorism provides more information about the circles of impact in the context of victims of terrorism. EU Centre of Expertise for Victims of Terrorism (2021). Annex to the EU Handbook on Victims of Terrorism, https://ec.europa.eu/info/sites/default/files/law/annex_to_eu_handbook_on_victims_of_terrorism_2021_01_15_en.pdf
²² Canadian Resource Centre for Victims of Crime (2005). The Impact of Victimization. <https://www.crcvc.ca/docs/victimization.pdf>

In some cases, injuries can result in disfigurement or permanent disability. Health-related problems, such as headaches, stomach aches, muscle tension, insomnia, can continue to occur in the longer term, leading to more serious illnesses which may overlap with **mental health issues** such as depression or addiction.

Victims, as well as society, can be **impacted financially**. Victims' property may be damaged or stolen and have to be replaced. Practical measures may be required to address a victim's safety, such as installing alarms and security lighting. Crime may force unplanned lifestyle changes, such as unemployment, withdrawal from studies, loss of housing or becoming a caregiver, in the case of the murder of a close relative, for example.

Victimisation has an economic impact on society. For example, in 2014, the European Institute for Gender Equality (EIGE) estimated that the cost of gender-based violence across the EU was 366 billion euros, which included emotional and economic losses as well as reductions in e.g. societal productivity and criminal justice system costs.²³ As a further example, collective entities, such as hospitals, multinationals or government institutions, are increasingly targeted by cyber-crime; the losses suffered by such entities may be financial – affecting individuals as well as corporate clients – and/or may involve the theft of confidential information.²⁴

As noted above, victims of crime may suffer from **trauma**, which affects people in several ways; it is therefore difficult for practitioners to accurately predict the **psychological impact** of victimisation. Although crime is identified as a major stressor, victims may not show symptoms of trauma until several months, or even years, after the crime occurred: a victim of abuse, for instance, might develop Post-Traumatic Stress Disorder (PTSD) long after the attack took place. If the victim has never reported the crime nor received information on their rights as a victim of crime, it will be more challenging for them to request help from support services at a later stage.

Trauma may result in memory loss, in difficulties in processing and retaining information, and in recalling the events of the crime.²⁵ This could, for example, result in inconsistencies in a victim's statement. Furthermore, victims will experience individual emotional reactions, from outpourings of grief or anger to numbness and silence. If police officers are unaware of how trauma affects victims, they might not take the victim seriously or they may not accept the victim's statement rather than working with the victim to build a full and correct picture. Equally, victims may not be able to process and recall information given to them by police officers; if this information is not reiterated, at different times, victims may fail to receive access to the support they need.

After a crime, inappropriate societal or institutional responses can further affect a victim, causing **secondary victimisation**. Victims might find dealing with onerous administrative tasks, linked to the criminal justice proceedings, difficult to carry out, which in turn may prevent them from accessing justice. Even if the proceedings result in the offender being convicted, victims may retain a sense of

23 European Institute for Gender Equality (n.d.). Estimating the costs of gender-based violence in the European Union, accessed 27 October 2022, <https://eige.europa.eu/gender-based-violence/estimating-costs-in-european-union>

24 APAV (2021). ROAR Manual – From understanding and preventing cybercrime to supporting and empowering victims, 70, <https://victim-support.eu/publications/roar-manual-from-understanding-and-preventing-cybercrime-to-supporting-and-empowering-victims/>

25 For instance: Jessica D. Payne, Lynn Nadel, Willoughby B. Britton & Jake W. Jacobs (2004). The Biopsychology of Trauma and Memory, In *Memory and Emotion*, Daniel Reisberg & Paula Hertel (Eds.), 94-112 (Oxford: Oxford University Press), doi.org/10.1093/acprof:oso/9780195158564.003.0003; Kristin W. Samuelson (2011). Post-traumatic stress disorder and declarative memory functioning: a review. *Dialogues Clin Neurosci* 13, no.3, 346-351, doi: 10.31887/DCNS.2011.13.2/ksamuelson

injustice if they were not treated with respect and dignity throughout the criminal justice process.

As can be seen, depending on the type of crime and a range of other factors, the impact of crime on victims can be harmful and long lasting. A **flexible and comprehensive response framework to address these multi-faceted harms** is therefore required to address the trauma experienced by victims. Having explored the impact of crime on its victims, we must next identify their needs.

1.4.1 Victims' needs following a crime

Whilst victims' needs vary according to the individual, they broadly fall into **five categories** relating to the **need for recognition, respectful treatment, protection from re-victimisation, intimidation and secondary victimisation, and access to support, justice and compensation/ restoration.**



These needs are reflected in European law and are seen in the EU's VRD which highlights rights regarding recognition and respect, protection, support and information, participation in proceedings, and compensation.

The first, and the most essential need, is **recognition**; it is widely agreed that those harmed by crime need to be recognised as victims and their suffering needs to be acknowledged. Furthermore, victims need to maintain their dignity and be treated with respect during any interaction with police officers, investigating authorities, legal professionals, judicial staff and others involved in the judicial process. It is important that vulnerable victims, such as children or victims of terrorism, are always treated with respect.

Support, including the provision of information, is fundamental to a victim's recovery and their understanding of what to expect, in the short- and longer term. Victims often require help from multiple stakeholders; assistance may take the form of emotional, psychological, financial, legal or practical support. The sooner help is made available the more it prevents larger (and possibly more expensive) issues. Victims may need support over a long period (depending on the severity of the crime) and it may even include training for new jobs or moving home (particularly relevant to victims of human trafficking or gender-based violence).

Victims often have a variety of **protection** needs, they may need to be protected from further criminal acts by the offender, supporters of the offender or from new crimes. Victims need to be protected from secondary victimisation, such as "victim-blaming", caused by the behaviours, reactions and attitudes of stakeholders and others interacting with the victim. Victims must be protected from secondary victimisation throughout criminal proceedings.

A victim's need for **access to justice** can be summarised as needing to see justice done (outcome

focus/distributive justice) and being confident about how this is achieved (procedural justice). Access to justice includes the accessibility of court processes, the ability to exercise rights within proceedings, the ability to participate and in some way influence proceedings, and access to informal legal processes (such as penal mediation). Whilst a guilty verdict is something all victims will seek, it has been found that how victims are treated during the proceedings, and how they are able to participate, influences their satisfaction with the justice system, even if the final verdict is unfavourable.

Victims of crime need **compensation and restoration**, which address financial harms as well as the need for wider social recognition. Significantly, international and EU legislation and guidelines clearly state that victims of violent crime should receive financial compensation and restoration. In addition to financial compensation from the offender or the state, restitution may be achieved through a range of measures and may integrate redress by means of, for example, restorative justice processes. Such restitution is not solely focussed on financial reparations but could include other forms of recognition such as an apology or community service.

While these broad sets of needs are common to all types of crime victims, specific victim groups will have their own distinct needs. Additionally, the nature of an individual victim’s need may be exacerbated by the nature of the crime endured. For instance, victims of terrorism, injured by attacks that were intended to harm society, may need special consideration, support, and protection due to the nature of the crime committed against them.²⁶ Furthermore, each victim’s needs will depend on their personal characteristics and background, such as previous victimisation or stressful life events, mental health and resilience, social network, socio-economic situation, cross border situation, daily stressors etc. These needs evolve over time and responding to them requires an individualised victim-sensitive approach. A way of visualising victims’ needs is to use a pyramid approach (see Figure 1).

A targeted and individualised approach
 Victim sensitive responses should be guided by general needs to ensure efficient and comprehensive systems, but should also be flexible and adaptable to ensure a targeted and individualised approach.

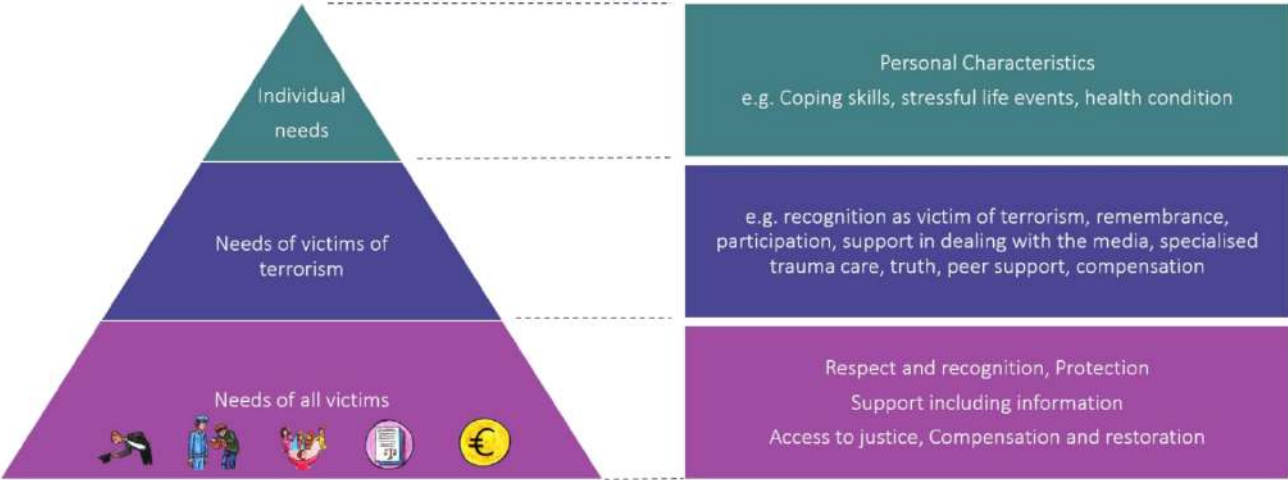


Figure 1: The pyramid of victims’ needs (VSE)

²⁶ EU Centre of Expertise for Victim of Terrorism (2021). EU Handbook on Victims of Terrorism, 6, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/eu-centre-expertise-victims-terrorism_en

1.4.2 Recognition of victims

The recognition of victims is at the heart of EU victims' law. The 2012 Victims Directive sets out the objective that **Member States must ensure victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner**. The importance of recognition should not be underestimated, it ensures that victims are able to get access to justice and to exert their rights, and it addresses the harm they experienced.

Recognition takes several forms. As set out earlier, the very definition of a victim can be unclear; some people may never be recognised as victims, either because they do not fulfil the definition of a victim, or they are deemed not to have suffered a crime. For example, in some countries stalking is not specified as a crime.²⁷ Demonstrating that a string of acts are 'harassment' or a threat, as is required, significantly limits the ability of victims of stalking to be recognised and, thus, to access their rights.

Recognition can be achieved via other routes – whether through respectful treatment, acknowledgement, commemoration or the acceptance of a victim's report or testimony. The acceptance of a victim's initial statement, rather than its immediate dismissal or disbelief in a crime having been committed, signifies recognition.

Professionals, coming into contact with victims, should act in a manner that reflects the fundamental notion that the victim is heard and taken seriously, their testimony neither doubted nor dismissed. This does not mean that the victim's statement should not be investigated. This simply refers to the way the victims are to be treated and the recognition they are to be shown while law enforcement professionals interact with them.

This may seem obvious, but victims' reports are frequently dismissed or ignored for numerous reasons: including lack of belief in the person, complexity of the case, the sexual nature of the crime or the belief it is 'private' and the responsibility of family members. The victims may not be considered 'credible' due to their communication abilities, their backgrounds (especially if they are homeless), very young or very old, have disabilities, are undocumented migrants, etc.

Just as a suspect's background should not determine their guilt or innocence, nor should such factors determine the extent to which a victim is believed. **The notion of the 'ideal' victim does not exist** i.e. a person who shows an acceptable range of emotions or reflects a model of citizenship when reporting a crime to the competent authorities and acts in an accepted manner throughout the criminal justice process.

²⁷ Suzan van der Aa (2017). New Trends in the Criminalization of Stalking in the EU Member States, <https://link.springer.com/article/10.1007/s10610-017-9359-9>

Believing victims

The treatment of victims must be respectful and must reflect – through direct and indirect means of communication – the notion that the victim is believed, that their words are taken seriously, properly recorded and investigated, and not dismissed out of hand. Those working with victims should operate under the assumption that an act of victimisation has occurred, if that is what the victim reports. Victims should never be made to feel that they were not victimised nor that it was their fault.

The IVOR report provides an exceptionally good summary of this topic:

The recognition of the victims' situation is key to the efforts to improve the position of victims of crime in the criminal justice system. The observation that victims were routinely blamed for their own victimization (e.g. Frazier & Haney, 1996) and were subjected to insensitive and even insulting behaviour at the hands of the police and other criminal justice agencies (the phenomenon of secondary victimization, Montada, 1994) is a main theme in the 'emancipation' of victims of crime (e.g. Van Dijk, 2009).

A cornerstone of the recognition of crime victims is the presumption of victimhood (Groenhuijsen & Kwakman, 2002). It does so in similar vein to the manner in which the presumption of innocence does so for the protection of the rights of the suspect. Where it is in the interest of someone suspected of committing crime to be treated as not-guilty, it is in the interest of victims that criminal justice actors treat them as if the crime indeed took place. Upon reporting the crime, criminal justice agencies should automatically treat the person in the capacity of 'victim', until the moment when either law enforcement officials or a court determines that there was no crime or that the person did not suffer as a result of the crime committed (see Brienen & Hoegen, 2000). In many cases no such judgement is made. Even when the suspect is acquitted, the verdict might not have any bearing on the question whether or not the victim suffered a crime. In addition, victims' rights largely protect victims' interests in the pre-trial and trial phases, before any determination of the guilt of the suspect is possible.²⁸

1.4.3 Victim-sensitive approach

The previous sections have focused on understanding how victims are affected by crime and what needs should be addressed. From this, an overarching vision has been developed as to how victims should be treated and how policies, laws and practices should be adjusted to minimise further harm whilst best addressing their needs. This is a **victim-centred or victim-sensitive approach**.

²⁸ APAV (2016). IVOR Report, 38.

The concept of a victim-centred approach²⁹ was developed by the United Nations (UN) for policies dealing with combating sexual and gender-based violence and terrorism, to ensure that **the protection, rights and dignity of victims** are a primary goal and that **victims' voices** are heard. This reflects the **principle of “do no harm”** and upholding victims' well-being.³⁰

With this in mind, a victim-centred approach is defined by the UN as³¹:

*“a way of engaging with victim(s) that **prioritizes listening** to the victim(s), **avoids re-traumatization**, and systematically focuses on their **safety, rights, well-being**, expressed **needs and choices**, thereby giving back as much **control** to victim(s) as feasible and ensuring the **empathetic and sensitive** delivery of services and accompaniment in a **non-judgmental** manner.”*

For the purposes of this paper, we refer to a victim-sensitive approach as one which follows the UN definition of a victim-centred approach, whilst recognising that this should be balanced with the other priorities and goals of individual justice systems. In particular, the rights and needs of victims should be equal to and properly balanced with the rights of the defence. Thus, **a victim-sensitive approach ensures victim-centric priorities exist, are effective and are not inferior to defence rights, and guarantee respectful treatment, victim empowerment, well-being and safety.**

1.4.3.1 Respectful treatment

Victims of crime may suffer harm or mental trauma as a result of the criminal offence. To avoid further exacerbating their condition, victims should be treated with **dignity and respect**. Respect can be reflected not only in the day to day interactions between officials and victims, but also in the laws, policies, procedures, and infrastructure that determine how judicial actors engage with victims, how victims access their rights and what their overall experience of the justice system will be.

At a personal level, it may involve actively **listening** to their narratives and **empathising** with them. Taking a report of their crime without judgement, offering a comfortable environment for them to talk or to give their testimony. At a procedural level, it may involve adjusting the timing of interviews or other proceedings to be more suited to the victim's situation. It may entail recognising victims' personal limitations, fatigue or the concerns of a mother or father who has to collect children from school. These issues may be addressed at a personal ad hoc level, or they can be embedded into the procedural norms of an organisation. As a result, they can positively influence a victim's overall experience, their belief in the justice system, and even the quality of their testimonies.

29 For instance: UNHCR (2020). Policy on a Victim-Centred Approach in UNHCR's response to Sexual Misconduct, UNHCR/HCP/2020/04, 4, <https://www.unhcr.org/protection/women/5fdb345e7/policy-victim-centred-approach-unhcrs-response-sexual-misconduct.html>; United Nations Office of Counter-Terrorism (2022). UN Model Legislative Provisions to support the needs and protect the rights of victims of terrorism, Article 3.4 (b), https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/220204_model_legislative_provisions.pdf.

30 *Ibid.*

31 UNHCR (2020). Policy on a Victim-Centred Approach in UNHCR's response to Sexual Misconduct, UNHCR/HCP/2020/04, 4 and 6. Emphasis added by the author.

Empathy underpins the respectful treatment of victims. It is understood either as the ability to experience or to understand the emotions of another human being.³² Empathy thus reflects a process whereby one individual perceives what another experiences, and responds to their emotions in an appropriate manner.

Professor Antony Pemberton, a Dutch expert in victimology, makes an important distinction between sympathy and empathy³³, arguing that sympathy involves a degree of self-centred paternalism, while **empathy involves respecting the person one interacts with**. Pemberton argues,

“Our duties to victims of crime and the rights that are on offer to them can be grounded in a ‘meta-duty’ of respect. This respect should be seen as recognition respect for the fact of victimisation, which should be distinguished from appraisal respect for the victims’ stance following victimisation. The respect that grounds victims’ rights is not the respect for the hero victim, nor should it be made contingent on a victim’s capability to display praiseworthy characteristics.”³⁴

1.4.3.2 Empowerment

When a person falls victim to crime, they lose control over part of their life; they are disempowered. This is often combined with a sudden realisation that the world is not safe, that crime can happen at any time to anyone. These thoughts can be crippling for victims, preventing them from seeking help, continuing with work or schooling or carrying out the most basic of tasks.

To support a return to some normality, victims have to feel they are **back in control – empowered**. This helps them to (re)build their **resilience**, act on their own choices, and provides them with the **tools to cope** with the consequences of the crime.³⁵ Empowerment entails helping victims to take control over processes by expressing their needs, having a voice, and being respected in their choices.³⁶

It includes overcoming stigma, building skills, promoting self-growth, and setting boundaries—important elements of victim-sensitive safe justice.³⁷ **A victim-sensitive justice system, should be organised to empower victims**, enable them to participate and to be heard such that they are encouraged to make educated decisions on what is best for them.³⁸

32 Jillian Peterson, Roxane Cohen Silver (2015). Developing an Understanding of Victims and Violent Offenders: The Impact of Fostering Empathy, https://www.researchgate.net/publication/279726577_Developing_an_Understanding_of_Victims_and_Violent_Offenders_The_Impact_of_Fostering_Empathy [accessed Jan 30 2023].

33 Vanfraechem, Pemberton, and Ndahinda (2014), 40–44.

34 Vanfraechem, Pemberton, and Ndahinda (2014), 44.

35 Republic of South Africa, Department of Social Development (2009). *National Policy Guidelines for Victim Empowerment*, https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/Shelters/National_policy_guidelines_for_victim_empowerment.pdf

36 *Ibid.*

37 WISE (2021). Empowerment Model, <https://wiseuv.org/wp-content/uploads/2021/04/Empowerment-Model.pdf>

38 Social Issue Report (2011). Empowering Victims of Domestic Violence, <https://rootcause.org/wp-content/uploads/2019/05/Empowering-Victims-of-Domestic-Violence-Social-Issue-Report.pdf>

1.4.3.3 Well-being and safety

There is no singular definition of well-being nor any single path to achieving it. Nevertheless, it has been the pursuit of individuals and States for thousands of years. 2500 years ago, the Greek philosopher, Plato spoke of the notion of Eudemonia:³⁹

"The good composed of all goods; an ability which suffices for living well; perfection in respect of virtue; resources sufficient for a living creature."

Buddhism, Stoicism and modern psychological techniques, such as cognitive behavioural therapy, adopt similar approaches to the pursuit of human 'flourishing'.⁴⁰ Concurrently, the psychologist Abraham Maslow, developed his hierarchy of **human needs**,⁴¹ starting with physiological needs, the need for **safety**, the need for **love/belonging**, the need for **esteem**, and ending with the needs for **self-actualisation** and **self-transcendence** (see Figure 2 below). He argues that humans reach individual well-being if they achieve self-actualisation, a stage where the driver of behaviour is not deficiency but the desire for personal growth.

After ensuring their individual well-being, humans may want to achieve a broader perspective and engage in developing joint strategies and joint solutions to issues. This is reflected in the need to find spirituality and **meaning in life**; all of which are ways to reach the need of self-transcendence. More recently, psychologists argued that humans can reach self-actualisation and self-transcendence, even where their basic needs, like physiological needs and need for safety, are not fulfilled, thereby departing from the hierarchy that Maslow connected to his theory.⁴² Moreover, others argue that Maslow's hierarchy is overly focused on the individual and misses the importance of **humans as social beings** who flourish as much from giving and helping others and focusing on their own wellbeing.

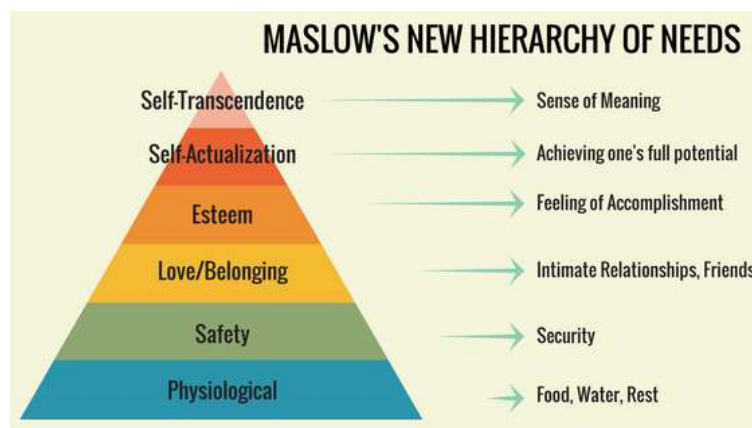


Figure 2: Abraham Maslow's Updated Hierarchy of Human Needs

Objectives for human well-being are not limited to the philosophical, religious, and psychological realms. Increasingly states require better measures of success than simply using a country's Gross

³⁹ Ruth Stevens, Ann Petermans, Anna Pohlmeyer, Rebecca Cain and Jan Vanrie (2020), *Wellbeing, happiness and flourishing in Design for Wellbeing: an Applied Approach*, Routledge, New York.

⁴⁰ *Ibid.*

⁴¹ Jessy Christian (2018). The New Hierarchy of Needs — Maslow's lost apex, <https://jessichristian.medium.com/the-new-hierarchy-of-needs-maslows-lost-apex-5e51031ce3fb>

⁴² Kendra Cherry (2020). Updating Maslow's Hierarchy of Needs, <https://www.verywellmind.com/updating-maslows-hierarchy-of-needs-2795269>

Domestic Product.

Wellbeing as an objective of EU policy is being developed through the notion of the **Economy of Wellbeing**. This model focusses on **health and wellbeing-in-all-policies**, aiming to reduce environmental, work-related, and economic stressors. It strengthens **resilience** and contributes to better health outcomes and disease prevention, with the aim of fostering more inclusive and sustainable societies. This model has also been adopted by the WHO⁴³ and OECD⁴⁴.

The 2019 European Council conclusions state:

“The Economy of Wellbeing is a Policy orientation and governance approach which aims to put people and their wellbeing at the centre of policy and decision-making. While people’s wellbeing is a value in itself, the Economy of Wellbeing underlines the mutually reinforcing nature of wellbeing and economic growth.”

“Taking wellbeing into account in all policies is vitally important to the Union’s economic growth, productivity, long-term fiscal sustainability and societal stability. People’s wellbeing is a principal aim of the European Union. The Economy of Wellbeing brings into focus the raison d’être of the Union as enshrined in the Treaties and in the Charter of Fundamental Rights of the European Union. The creation of an environment that enables people to reach their full potential and to enjoy their fundamental rights is a central component of the Economy of Wellbeing.”

As mentioned by the President of EuroHealthNet in 2021, the adoption of an Economy of Well-Being model should reflect measures that **systematically and structurally rebuild societies** “to improve the social conditions and strengthen the fabric of society in ways that deliver health and wellbeing for all. This is the only way to ensure resilience.”⁴⁵.

With this in mind, the **well-being and safety of victims must be an integral part of the Economy of Well-Being model**. Consideration should be given to the following factors which determine the well-being and safety of victims of crime by minimising further harm and building resilience.

1.4.3.3.1 Preventing Secondary Victimisation

Following a crime, victims can be affected by further harm – resulting from poor interaction with law enforcement officers, judicial staff and others (secondary victimisation) – occurring before, during, and after the criminal proceedings (and in the absence thereof).

Such harm results from human reactions and behaviours, and from badly designed systems and inadequate services with which victims engage.⁴⁶ Secondary victimisation may be caused, for instance, by repeated exposure to the perpetrator, repeated questioning, inappropriate language or insensitive

43 WHO Charter of Wellbeing. https://cdn.who.int/media/docs/default-source/health-promotion/geneva-charter-4-march-2022.pdf?sfvrsn=f55dec7_21&download=true

44 European Health Forum Gastein (2021). Accessed on 7 April 2022. Collaborative leadership for health and well-being. How to rise to the challenge? <https://www.ehfg.org/conference/programme/sessions/collaborative-leadership-for-health-and-well-being>

45 EuroHealthNet (2021). Recovery and Resilience Plans: drivers to promote health and wellbeing in the European Union?, <https://eurohealthnet.eu/publication/recovery-and-resilience-plans-drivers-to-promote-health-and-wellbeing-in-the-european-union/>

46 Victim Support Europe (2021). VSE Strategy 2021-2025, <https://victim-support.eu/who-we-are/our-policy-and-strategy/>

comments from those interacting with the victim.⁴⁷

The prevention of secondary victimisation must be a priority for all those coming into contact with victims of crime. It can be achieved through adaptations to laws, rules, procedures, infrastructure and personal behaviours. Training tools such as those developed by the European Crime Prevention Network⁴⁸ are important but are not sufficient by themselves.

1.4.3.3.2 Maximising resilience and growth

Whilst crime can harm victims, growth, or positive change, may also be experienced.⁴⁹ **Positive growth**, or change, stems from **resilience**, which indicates how people can adapt in the face of adversity.⁵⁰

A variety of factors influence a person's resilience; their individual characteristics, their upbringing, beliefs, socio-economic situation and their social network. The interaction between a person and their social environment can positively influence resilience and healthier outcomes.⁵¹ Therefore, it is important to create **resilient societies**, consisting both of individuals who possess the tools to cope with trauma and recover from it as well as individuals ready and able to help those who experience trauma.

A person, who is equipped to be resistant and flexible in the face of a crime, is more likely to submit a report a crime, is less likely to need professional support and, if they do need it, they are more likely to ask for help. This ultimately leads to healthier and more cohesive societies with reduced crime and harm rates.

Creating **resilient societies**, a **VSE strategic objective for 2021-2025**⁵², requires **systemic action**. Individual, community, and institutional resilience are important components of a well-adapted society. For instance, the creation of a resilient system of justice, which is able to adapt and adjust to new challenges and its own shortcomings, could be a goal of such a society. A resilient justice system which ensures safe justice practices for all participants (including the wellbeing of practitioners) can help victims to cope, participate and recover whilst building their trust in the system. This improves outcomes not only for victims but for society as a whole.

47 EIGE (n.d.). Secondary Victimization, <https://eige.europa.eu/thesaurus/terms/1358>

48 European Crime Prevention Network (n.d.). Toolbox for Preventing Secondary Victimization, <https://eucpn.org/document/toolbox-7-preventing-secondary-victimization-policies-practices>

49 Benjamin Roebuck, Holly Johnson, Diana Eisenfeld, Maryann Roebuck & Jennifer Barkley (2020). Resilience and Survivors of Violent Crime (Ottawa: Victimology Research Centre, Algonquin College), <https://www.algonquincollege.com/arie/files/2020/12/Resilience-and-Survivors-of-Violent-Crime.pdf>

50 *Ibid.*; Vanfraechem, Pemberton, and Ndahinda (2014), 332.

51 Benjamin Roebuck, et al. (2020).

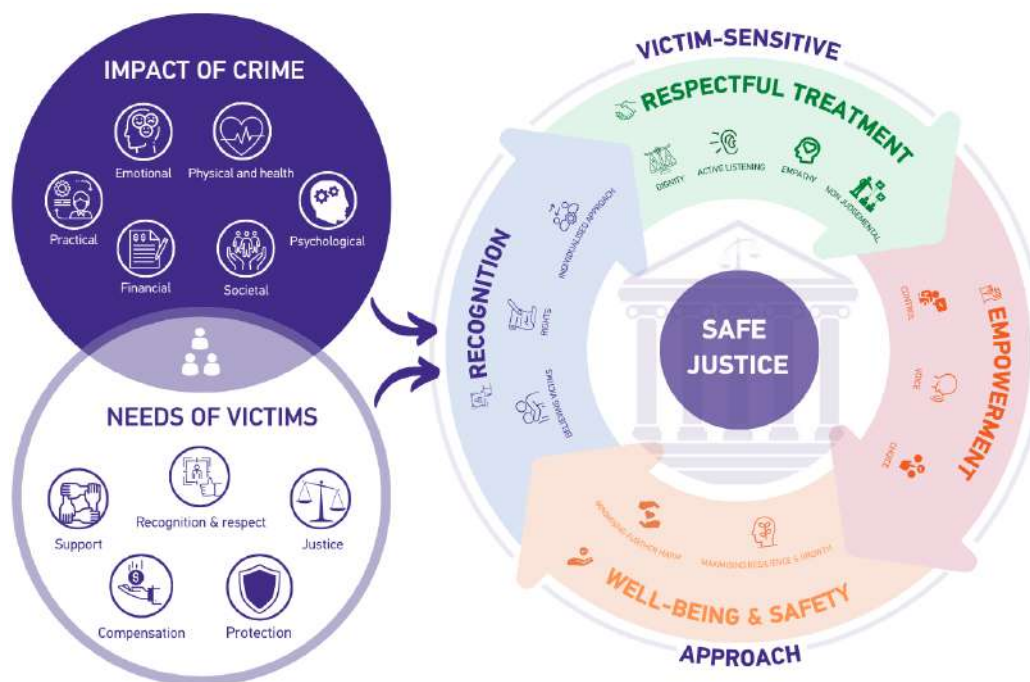
52 Victim Support Europe (2021). VSE Strategy 2021-2025, <https://victim-support.eu/who-we-are/our-policy-and-strategy/>

1.5 Safe Justice

The concept of safe justice is one where victims' rights develop from:

- 1) The requirement to **address any (consequences of) harm experienced by victims of crime**
- 2) The requirement to **meet the needs of victims** arising from the crime
- 3) The requirement to **operate in a victim-sensitive way**

These rights should subsequently be reviewed to achieve a fair balance taking into account wider justice principles such as fair trial rights, impartiality, due process, non-discrimination, balance of power/equality of arms.



Ultimately it is the combination of these approaches which will result in an effective, humane and compassionate, system of safe justice. From the above principles, the following definition of safe justice is suggested:

Safe justice is a 'holistic, systematic, needs-driven, rights-based, victim-sensitive approach to justice which includes in its objectives upholding of victim's rights and the protection of the physical, psychological, and emotional safety of the victim, thus benefitting the justice system as a whole and supporting the creation of a fairer, safer society.'

Safe justice includes topics on empowerment and participation, protection measures, prevention of repeat victimisation, respectful treatment, and the minimisation of harm at every stage of the process.

In the following chapters, the various stages of a victim's journey from the moment of victimisation, through any criminal proceedings and on to recovery is examined from the perspective of safe justice. The aim is to explore to what extent existing criminal proceedings support the achievement of safe justice and what changes to national justice systems and European rules on criminal justice could advance the goal of safe justice.

2. HELPING VICTIMS TO ACCESS JUSTICE BY REPORTING CRIME

Every year, across Europe, many thousands of crimes are reported to authorities, investigated and eventually prosecuted. Despite this, many crimes go unreported, leaving victims without justice and help, while giving perpetrators the feeling of impunity. Reporting a crime is fundamental to the rule of law and to stable, successful societies; in this chapter, we explore the barriers which prevent or discourage victims from doing so and what can be done to reduce these barriers.

2.1 WHY IS IT IMPORTANT TO REPORT A CRIME, AND HOW IS A CRIME REPORT MADE?

To understand the difficulties behind reporting a crime, we must look at how a crime report may bring an offender to justice. After a crime has been committed, the first step is to inform the police that a crime has taken place – whether in person, by telephone or by other means. However, this alone may not be sufficient to trigger formal criminal proceedings. For this to happen, the report must be officially registered by the police as a complaint against a specific person or against persons unknown, this leads to the report receiving a crime number.

While this process is often carried out in a straightforward manner; for example, it may be that a victim comes forward, perhaps to complain about a domestic violence incident; however, the victim then decides not to pursue the matter, in which case the complaint may not be registered and the matter may not be pursued. In this paper, reporting a crime covers both these scenarios.

Whilst crime may come to the attention of authorities by various means, having victims lodge a report directly is key. Not only can justice authorities pursue criminals following the report of a crime, but victims are better able to access their rights and valuable data can be collated on the prevalence of crime, the types and resources needed to address them, and its cost to society. Such data is crucial to understanding our response to crime and, of course, to achieving justice for victims. Despite its importance, victims face many barriers to submitting a report, thus preventing many from coming

2.2 WHY DON'T VICTIMS REPORT A CRIME?

Underreporting of certain types of crime, by certain groups of victims, is a well-documented problem, though data varies depending on which groups are focused on. However, in broad terms it seems that victims least likely to report a crime are those most in need of protection: children, migrants, people with disabilities, victims of human trafficking etc.⁵³

Where the focus is on the type of crime, we consistently see low reporting rates. For example, according to the FRA, between 9 and 40% of victims of physical violence report cases to the police whilst only 5 to 31% of victims of report harassment.⁵⁴ Interestingly, these low reporting rates are also reflected in data on other ways that victims may seek help. For example, 17% of people, who experienced an incident of violence, contacted their healthcare services – a doctor, health centre or hospital; 8 % reported to social services, 7% - to a lawyer, and 6% to a victim support organisation.⁵⁵

The most common reasons, cited by survey respondents across the EU-27, for not reporting an act of violence to the police are the following⁵⁶:

- Crime perceived as not serious enough (40%)
- Person took care of it themselves (28%)
- Police won't do anything about it (18%)
- 'Other reasons' (18%)
- Fear of reprisals (11%)
- Too much trouble (11%)
- Don't trust the police (9%)
- Reported to other authorities (4%)

Whilst such data are helpful, they can be misinterpreted as suggesting that underreporting is due to a(n) (acceptable) reluctance to report a crime. However, it is necessary to examine the reasons for such decisions, to determine which should be most urgently addressed.

Various research frameworks may be used to identify the factors that influence reporting decisions following a crime. Goudriaan et al. argue that too much emphasis is placed on the crime itself, and instead look at the:

- **situational context (the face-to-face interaction with the offender);**
- **the social context** (e.g. the victims environment, family);
- **normative** considerations (social norms and expectations); and
- **cost-benefit considerations** (what was the harm, what does a victim get from reporting the crime, what is the effort required).

Torrente et al. support the general idea that victims base their decisions on a **cost-benefit analysis** but

⁵³ Victim Support Europe (2019). A Journey from Crime to Compensation: An Analysis of Victims' Access to Compensation in the EU, https://victim-support.eu/wp-content/files_mf/1574261567A_Journey_From_Crime_To_Compensation_2019.pdf

⁵⁴ *Ibid.*, 26.

⁵⁵ *Ibid.*, 78.

⁵⁶ *Ibid.*, 82.

underline the highly subjective nature of perceived costs and benefits, which can be diverse (economic, psychological, time related, relational).⁵⁷

The authors systematise existing models of crime reporting behaviours and split them into four main categories: **rational**, **psychological**, **institutional**, and **community models**.

- The **rational** models suppose that people report crimes if the benefits outweigh the costs. It takes an individualistic worldview that people are rational actors isolated from their broader social environment. **Severity of crime** vs. **the burden of reporting** are central to these models.
- The **psychological** models emphasise components, such as **fear of the perpetrator**, in the cost-benefit analysis.
- The **institutional** models turn their attention to institutions like the police and entire justice systems, and how they interact with victims. **Trust in the authorities** is often studied within these models.
- the **community** models study the importance of the victims' immediate environment (family, friends, colleagues and other social networks) in their decision to report a crime.⁵⁸

There are multiple socio-economic and individual characteristics which influence outcomes:

- women are slightly more likely to report a crime than men;
- older people report crime more often than young people;
- white and indigenous communities report crime more frequently than migrants and ethnic minorities;
- house owners more than renters;
- middle-income groups more than the lower and higher income groups; and
- those with a higher education attainment level more than those with a lower level.⁵⁹

While different models focus on different factors and place varying degrees of importance on them, there is a significant overlap between the models outlined above. For instance, with different wording and levels of influence assigned, **the severity of the crime** certainly remains a key factor influencing an individual's decision. This is consistent with self-reported answers to the FRA survey from participants who had experienced victimisation and chose not to report it. The wording and the focus may differ, but it is possible to synthesise the key areas of influence. For example, the survey contains answers such as 'Don't trust the police' or 'Police won't do anything about it' which can be grouped together into 'Trust in the police and perceptions of criminal justice systems'.

Overall, the models, together with the survey data, consistently mention the following factors as influencing decisions on reporting a crime:

- **Perceived severity of the crime**
- **Administrative burden**
- **Fear of the perpetrator**

⁵⁷ Diego Torrente, et al. (2017). Comparing Crime Reporting Factors in EU Countries, 153–74.

⁵⁸ Diego Torrente, et al. (2017). Comparing Crime Reporting Factors in EU Countries, 153–74.

⁵⁹ *Ibid.*

- **Trust in the police and perceptions of criminal justice systems**
- **Individual characteristics and social networks**

2.2.1 Perceived severity of a crime

Many victims do not consider the crime they experienced to have been serious enough to report. Studies show⁶⁰ that the most serious crimes are reported more often because the expected benefits outweigh the cost of time, money and other inconveniences. (Crime severity can be expressed in terms of weapon usage, force, injuries, economic loss or intrusion of privacy, etc.) This is in line with the cost-benefit models which explore the relationship between perceived gains and losses and reporting a crime.

The perception of severity may be affected if the victim does not fully understand the scope or context of the crime, or if victims become habituated to a crime through repetition. For example, several studies have shown that victims do not report recent incidents of bias-motivated harassment; some 38 % of respondents to EU-MIDIS II said the incident was too minor or happened too frequently to report, while the figure for Muslim respondents (to the same EUMIDIS II question) was 41 %. A similar proportion (43 %) of respondents to FRA's second Survey on Discrimination and Hate Crime against Jews considered an antisemitic incident not serious enough to file a report. LGBTI victims of bias-motivated harassment (51 %) did not report incidents to the police because they felt it was too minor or not serious enough.⁶¹

Furthermore, according to anecdotal reports, some victims of harassment or stalking appear unaware that certain behaviours are crimes and thus do not file a report. It is more difficult to identify the scale of this problem since by definition people will not self-identify as victims. It's notable, for example, that this option is not provided in the previously mentioned FRA survey.

Crimes, which victims don't consider important enough to report, may hide more pervasive outcomes for both individuals and society as a whole. For instance, victims may not report phishing or credit card fraud if they believe they have only suffered a small financial loss. However, these petty crimes are widespread and together have a financial impact on society. Because these crimes are underreported, the police may not prioritise them, which in turn fosters a climate of impunity.

For other crimes, whilst a single incident may be small in nature, its repetition can have extensive consequences on a person's emotional and psychological well-being and on their feelings of safety. Discrimination and harassment may perpetuate prejudices which, if unaddressed, can lead to more serious crimes. Overall, there can be wider social imperatives to reporting such crimes.

Addressing barriers to reporting crimes that are perceived to be less serious

When a crime is perceived by individuals to be less serious than other types of crime, it may be beneficial to increase public knowledge about and simplify the methods of reporting such a crime:

⁶⁰ Diego Torrente, et al. (2017). Comparing Crime Reporting Factors in EU Countries, 153–74.

⁶¹ *Ibid.*

Increase knowledge	Methods of reporting a crime
<ul style="list-style-type: none"> • define what constitutes a crime; • highlight crimes which are less well understood or which may be more hidden; • address the impact of crime on victims and its wider social implications; and • the broader benefits of reporting crime beyond any personal gains. • raise awareness in specific populations e.g. ethnic or religious minorities, migrants, in schools; and • co-ordinate with community groups to raise awareness. 	<ul style="list-style-type: none"> • simplified reporting structures for certain crimes; • offer online reporting opportunities; • use reports for statistical purposes e.g. low level crimes; • review of evidentiary requirements and methods for providing evidence.

2.2.2 Administrative burdens

According to the FRA, many respondents do not report incidents of violence or harassment because they perceive the associated procedures to be **overly bureaucratic and time consuming**.⁶² This applies not only to the act of reporting a crime but to everything that follows. Should a criminal investigation be instigated: a victim may be required to undergo additional interviews, appear in court, incur travel costs, lose pay, etc.

In most Member States, the only way to report a crime is by going to a police station in person. Not only is this time consuming, but a victim might, for example, be too afraid, or may not be physically able, to go to a police station.

Victims resident in another Member State experience specific barriers to reporting a crime.⁶³ Article 17 of the VRD states that cross-border victims should be able to make a complaint in the country where the crime took place and in their country of residence. The latter option is only available if the offence was serious, and the victim is not able to lodge the report in the Member State where the offence was committed.

Despite this provision, police officers in some Member States refuse to register the complaint, due to a lack of jurisdiction or knowledge of the victim's right. Language barriers and insufficient knowledge of national procedures and context may prevent victims from making a complaint in the Member State where the offence took place.⁶⁴

How to address administrative barriers

Several countries have sought to reduce these barriers by providing multiple reporting routes and by reducing administrative burdens. In particular, for some crimes there exists the possibility of online reporting. At the same time, broadening options for evidence collection using new technologies, and interviewing via video link for example, have simplified processes.

⁶² Diego Torrente, et al. (2017). Comparing Crime Reporting Factors in EU Countries, 153–74.

⁶³ APAV (2016). IVOR Report, 143-149.

⁶⁴ *Ibid.*

Barriers to reporting based on administrative burdens can be reduced by developing new channels for reporting, reducing and streamlining administrative procedures and using new technologies to simplify processes such as evidence collection and provision.

2.2.3 Fear of the perpetrator

A key factor preventing people – particularly vulnerable victims – from coming forward is fear of or control by the perpetrator. There are a wide range of situations where this may be a factor; however, this is most common or obvious where

- a victim is in a high crime or gang environment;
- where there is an organised crime connection;
- where the crime relates to stalking, harassment or hate; and
- where the victim knows the perpetrator or is in some way controlled by them. This often happens in an abusive relationship, or in human trafficking cases, or when a person is cared for by family members or an institution e.g. people with disabilities, children, refugees.

In addition, the personal nature of certain crimes can leave the victim feeling humiliated and afraid to embarrass their family.⁶⁵

How to address fear as a barrier

Overcoming fear caused by control is particularly difficult and there is no single solution, though a variety of measures may help encourage victims to come forward. As with administrative barriers, establishing multiple reporting channels can help. This includes anonymous, online, and third-party reporting options. For instance, offering anonymous channels increases reporting rates by making it easier to report a crime and protect victims from retaliation.⁶⁶

At the same time, it is necessary to increase opportunities for victims to speak about their situation and to improve public knowledge on what to do in such an event. This has been particularly effective during covid lockdowns where innovations such as code words passed on to pharmacy staff alerted them to domestic violence situations. Similar approaches are available to victims when speaking to the police – using coded phrases – by phone. However, this requires educating the population and those most likely to be contacted, to ensure both victims and the receivers of information know the system and know what to do in response.

For certain crimes, specialist responses may be required which include comprehensive planning for when the report is made, to ensure the safety of the victim and their loved ones. In any of these situations, robust risk assessments should be in place if there is an identified threat or for certain types of crimes. This should be coupled with support referral arrangements to ensure wrap-around services for at least the most vulnerable. **To overcome barriers erected by fear of the perpetrator:**

- **multiple reporting options – anonymous, third party and online – should be available;**

⁶⁵ Victim Support Europe (2019). A Journey from Crime to Compensation: An Analysis of Victims' Access to Compensation in the EU, 14.

⁶⁶ Lily Zheng (2020). Do Your Employees Feel Safe Reporting Abuse and Discrimination?, *Harvard Business Review*, accessed 27 October 2022, <https://hbr.org/2020/10/do-your-employees-feel-safe-reporting-abuse-and-discrimination>

- information on how victims can inform people other than the police of their situation (e.g. through coded language) should be made available
 - those receiving information should be trained on what to do
 - national systems should be established to collate data on these reports
 - needs and risk assessments to address identifiable threats and risks should be carried out
- referral mechanisms to support services should be used

2.2.4 Trust in the police and perceptions of criminal justice systems

As noted above, victims of crime need respect and recognition⁶⁷, yet often they have the opposite experience. When reporting a crime, victims and stakeholders comment on how a lack of respect and thoughtless treatment by police officers discourage victims from seeking support and pursuing criminal proceedings.

According to both victims and support professionals, in addition to their treatment by officers, underreporting was attributed to a lack of trust in the police. This lack of trust may result from the experiences discussed above, but may also be a result of:

- poor justice-based outcomes (e.g., conviction of offenders);
- poor response to the report of a crime; or
- a perception of inefficiency in the justice system.

FRA's study on hate crime reporting, which covers bias-motivated violence and harassment against multiple groups, states that "The most commonly given reason for not reporting the most recent incident of bias-motivated violence or harassment, across all groups, is that nothing would happen or change if the victim reported it. At least one third of respondents to each of FRA's surveys who had experienced such an incident thought this."⁶⁸

In addition to personal treatment and justice outcomes, people in precarious situations or those who may themselves be in conflict with authority, tend to have low trust or fear the police. This includes homeless people, sex workers and undocumented migrants. Undocumented migrants are unlikely to report even serious crimes⁶⁹ as they fear becoming 'known' to the immigration authorities. According to the Platform for Undocumented Migrants ('PICUM'), the criminalisation of irregular migration instils fear in the undocumented, distrust which is further aggravated by policing and surveillance methods used in minority communities.

Individuals fear engaging with public authorities, especially the police, in case they are detained and ordered to leave the territory. The systematic failure of the state to recognise, investigate and remedy abuses committed against undocumented victims denies them recognition and accountability.⁷⁰

⁶⁷ See Introduction.

⁶⁸ European Union Agency for Fundamental Rights (2021). Encouraging hate crime reporting – The role of law enforcement and other authorities, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-hate-crime-reporting_en.pdf

⁶⁹ European Commission (2019, September 9). 'They are already citizens': What will it take to bring Europe's undocumented out of the shadows?, *Horizon, The EU Research & Innovation Magazine*, accessed 7 November 2022, <https://ec.europa.eu/research-and-innovation/en/horizon-magazine/they-are-already-citizens-what-will-it-take-bring-europes-undocumented-out-shadows>

⁷⁰ PICUM (2021). Preventing Harm, Promoting Rights: Achieving Safety, Protection and Justice for People with Insecure Residence Status in the EU, 4, https://picum.org/wp-content/uploads/2021/02/Preventing-harm-promoting-rights_EN.pdf

How to address trust barriers

As with other barriers, no single solution will suffice, nor will any action necessarily see immediate results. As is commonly said, trust can take decades to build and seconds to lose. Nevertheless, a combination of different actions can be implemented as part of wider police efforts to build better relations with citizens and specific communities.

In relation to poor or disrespectful treatment, a change in behaviour is required together with a change in practitioners' understanding of their job priorities and objectives. By simply improving the treatment of victims, through active listening, respectful behaviour, and victim-centric staff training, their experience with police officers, belief in the justice systems, and quality of their testimonies will be positively enhanced.

This means that training must be combined with leadership commitment, development of rules, protocols, tools and oversight or supervision to assist practitioners in their engagement with victims. Training covering respect, empathy, effective communication (including listening skills), trauma sensitivity, victim vulnerabilities and victims' rights, is essential.⁷¹ Leadership, rules and supervision, help ensure that this training is taken seriously and implemented in practice – understanding that behaviour cannot be achieved through training alone.

Notably, even where respectful treatment may remain a problem, the accompaniment of victims by professional support workers can reduce this risk. Where victims are accompanied, support services report that victims tend to receive better treatment and are more likely to be able to exercise their rights. This is important not only for the occasion when a victim reports a crime, but also throughout the proceedings.

Whilst justice outcomes, such as decisions to investigate and prosecute as well successful trials, are part of much broader efforts to address the efficiency and effectiveness of justice, specific victim and reporting oriented actions can be taken to improve procedural approaches and transparency.

In other words, action should be taken to better inform victims and the wider population about decision making processes, and the way that investigations and prosecutions are developed. Where action cannot be taken, this should be fully explained. The wider benefits of reporting crime should also be set out and systems should be in place to make full use of such reports for trend analysis or e.g. to support the accumulation of evidence for certain types of crimes such as hate crimes, sexual violence or abuse by individuals or in institutions. In this way, victims will see their case as part of a wider system to address crime.

Similarly, with respect to perceptions of inefficiency, greater transparency and regular communication can help reassure victims of any progress, even if this alone will not speed up proceedings.

⁷¹ Victim Support Europe (2019). *A Journey from Crime to Compensation: An Analysis of Victims' Access to Compensation in the EU*, 25; Victim Support Europe (2023). *Transforming how we communicate with victims*, forthcoming.

Trust in police and respectful treatment requires organisational and behaviour change in practitioners, and greater awareness raising efforts. This means a combination of:

- training with leadership, rules, protocols and oversight mechanisms;
- transparency regarding decision making;
- regular information updates;
- the use of crime reports for wider trend analysis and accumulation of evidence;
- raising awareness of the wider social and long term benefits of reporting crime;
- accompaniment of victims by professional support workers directly influences the way they are treated by law enforcement and justice actors.

2.2.5 Individual characteristics and social networks

As discussed above, individual and socio-economic characteristics influence whether an individual reports a crime. Only recently have community models, which look at personal and interpersonal factors, gained traction with that data indicating that certain characteristics may influence reporting outcomes.

Individuals, whose characteristics include victim vulnerability factors (people with low incomes, disabilities, undocumented migrants, etc.) are exposed to a greater risk of harm than others in the population. Such vulnerabilities contribute to low levels of personal resilience which contributes to low reporting rates. It is argued that this makes the severity of crime less important than the individual's characteristics.

Additionally, a person's social network also influences their decision-making process. Recent research highlights the importance of the victim's immediate environment (family, friends, colleagues, and other social networks) in decisions to report a crime. Family and social networks, including school, church, employment, etc., are important sources of opinion and advice in times of stress.⁷² In addition, systemic societal inequalities often lead to victims from disadvantaged groups having more negative experiences with the police and judicial authorities than more privileged persons.⁷³ Such experiences become part of the wider communities knowledge, experience and expectation of law enforcement and justice.

Overcoming barriers related to individual and social characteristics

As with trust, there are no quick or easy solutions, they rest in wider actions to address poverty, social inclusion, discrimination and other social factors that put individuals and communities into vulnerable situations.

⁷² Diego Torrente, et al. (2017). Comparing Crime Reporting Factors in EU Countries, 153–74.

⁷³ End Violence Against Women (2021, October 26). IOPC investigation highlight police abuse and failings to women, accessed 7 November 2022, <https://www.endviolenceagainstwomen.org.uk/iopc-police-abuse-failings-women/>; Abigail Abrams (2020, June 25). Black, Disabled and at Risk: The Overlooked Problem of Police Violence Against Americans with Disabilities, *TIME*, accessed 7 November 2022, <https://time.com/5857438/police-violence-black-disabled/>

At the same time, from an individual perspective, more action can be taken to:

- Build the resilience of individuals before and after trauma;
- Build the ability of a victims social network to support victims;
- Ensure victims have access to support services which can help them feel safe, stabilise them emotionally, raise awareness of how to report and why reporting is beneficial so victims feel they have a choice and the power to act.

Once victims have decided to report a crime, they may have wide ranging needs and may suffer greatly as a result of their participation, whether as a witness supporting the investigation and prosecution, or as a victim with rights to participate, or as a party with enhanced rights, during criminal proceedings.

The following sections explore some of the key aspects of a victim's involvement in proceedings, examining the existing rights at the European level, the barriers that victims experience in exercising those rights and the problems in ensuring impacts are addressed, needs met, and a victim-sensitive approach is adopted.

Whilst the issues will overlap and reoccur during different stages of the proceedings, the following key themes are discussed:

- Helping victims to be informed
- Enabling victims meaningful participations
- Helping victims' to be safe

- Helping victims to achieve restoration

3. HELPING VICTIMS TO BE INFORMED

When reporting a crime to the police and in the subsequent stages of criminal proceedings, victims both need and have a right to information. According to the VRD, this applies to:

- Written acknowledgement of a crime report;
- Information on rights and services on first contact;
- Updates on the proceedings;
- Translation and interpretation.

3.1.1 Information Rights

When a victim reports a crime to the police, the victim should receive a **written acknowledgement of their formal complaint (article 5 VRD)**, which as a minimum lays out “the basic elements of the criminal offence concerned”.

The crime report should include at least:

- the type of crime
- time of the crime
- place of the crime
- any damage or harm caused
- a file number
- the time and place where the report was made (to serve as evidence that a crime had been reported for insurance and other purposes)

In some jurisdictions, the prosecution may initiate proceedings for so-called ‘public’ crimes, such as murder, kidnap, and domestic violence, without a victim first reporting the crime.⁷⁴ In line with recital 22 of the VRD, victims of such crimes should thus receive the required information without delay upon first contact with an official.⁷⁵

⁷⁴ This is for example the case in Portugal. See APAV, Infovictims, https://www.infovictimas.pt/pt_en/003_Proc_crime/003_Proc_Crime.html

⁷⁵ Recital 22 of the Victims’ Rights Directive states: “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.”

In addition to this written acknowledgment, according to article 4 of the VRD, victims should receive **information on their rights and on access to support services** from their first contact with a competent authority and without unnecessary delay.⁷⁶ Information should be offered on

- legal and extra-legal procedures related to the crime,
- accessing emotional, medical, legal, financial (etc.) support,
- obtaining compensation and reimbursement of expenses during criminal proceedings, and
- rights to translation and interpretation services.

Additionally, Article 6 of the VRD stipulates that all victims have **the right to receive updates on their case**, without unnecessary delay. This covers:

- decisions to not prosecute or to end the investigation;
- information on the time and place of case hearings; and
- information on the escape or release of the offender from detention.

Depending on their role in the criminal justice system, victims should also receive information on the status of the criminal proceedings, including any final judgment. Information provided to victims should be in accordance with their wishes, meaning that victims may ask to not receive information. If a victim should change their mind about not receiving such information, the competent authorities should take the necessary measures to conform with their wishes.

According to the VRD, information should be provided in a timely manner, in multiple formats, in simple accessible language and should be repeated at different times. The goal is to ensure the proactive delivery of information⁷⁷ and to ensure that victims effectively understand the information provided to them.⁷⁸

The provision of information has been identified as being critical to a victim's recovery and experience of the justice system.⁷⁹ Access to information as set out in Article 4 of the VRD, allows victims to assert their rights and their participation to the criminal proceedings as soon as they lodge a formal report.

A victim-sensitive approach to the implementation of this article calls for the provision of information in a form which ensures not only that victims understand it but also that they can act upon it. This means the provision should take into account the particular circumstances of the victim, including trauma which may affect a person's ability to understand, absorb, retain, and act on the information provided.⁸⁰ This means that being given only one opportunity to receive information, or an oral summary, is unlikely to be adequate for many victims.

⁷⁶ For more information, see Victims' Rights Directive, Article 4, 25-27.

⁷⁷ *Ibid.*

⁷⁸ European Commission, Directorate-General for Justice and Consumer Protection (2013). DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 14.

⁷⁹ Victim Support Europe & APAV (2019). VOIARE Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 25, https://victim-support.eu/wp-content/files_mf/1564677465VOIARE_Synthesis_Reportweb.pdf

⁸⁰ Victim Support Europe (2019). A Journey from Crime to Compensation: An Analysis of Victims' Access to Compensation in the EU, 21.

3.1.2 Challenges in information provision

In practice, victims face multiple problems in terms of access to useable information. Firstly, with respect to written acknowledgement, Member State authorities systematically fail to provide such written acknowledgment automatically and some authorities only provide this document if explicitly requested by the victim. According to the VOciare Synthesis Report, in only one third of the cases surveyed (35%) were victims systematically provided with a written acknowledgment of their complaint. Simultaneously, a quarter of victims never (10%) or only sometimes (14%) received such acknowledgment, despite the obligation required by the Directive.⁸¹

Additional challenges are met by victims at the first contact, information provision is incomplete, complex to understand and overwhelming. On average, only 20% of victims receive all the information proscribed by Article 4 of the Victims' Directive⁸². The language of information provided, whether orally or in writing, is usually complex, using legal terminology and is sometimes offered only in the format of the national legal provisions (for example in Lithuania and the Netherlands).

Most victims interviewed in the 2019 FRA study indicated that they were poorly informed on the progress of their case. If victims were given updates by the police and prosecutorial services, the information was often unavailable in simple easily accessible formats.⁸³

Complex language and standardised formats, which don't meet the specific needs of certain victims, are a particular challenge for victims with disabilities, as noted during the Safe Justice Workshop. For example, 29% of professionals working with victims reported that information is rarely provided through internet (online platforms, websites, etc.) and 26% said that information is never provided via video.⁸⁴ As a result, victims are not always able to fully comprehend the information they receive.⁸⁵

During the pre-trial stages, victims often feel that their requests for information and support, in light of their pending case, are regarded as annoying. In longer investigations, victims may also feel that their situation is not a priority to law enforcement officers.⁸⁶ The 2019 FRA study showed that over 70% of victims interviewed would have liked to receive more information on their potential role in the criminal proceedings,⁸⁷ while almost 80% of practitioners agreed that victims should be better informed about **the criminal proceedings and their potential roles** therein.⁸⁸

81 Victim Support Europe & APAV (2019). VOciare Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 35.

82 *Ibid.*

83 In contrast with recital 21 of the VRD calling for: "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.** ..."; European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 61-62.

84 Victim Support Europe & APAV (2019). VOciare Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 25, https://victim-support.eu/wp-content/files_mf/1564677465VOciare_Synthesis_Reportweb.pdf

85 *Ibid.*, 26.

86 Deirdre Healy (2019). Exploring Victims' Interactions with the Criminal Justice System: A Literature Review, 23-29, <https://www.gov.ie/en/publication/6e6d52-exploring-victims-interactions-with-the-criminal-justice-system-a-li/>

87 European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 54-58.

88 *Ibid.*

Notably, when information is provided correctly, and repeated for later comprehension, victims' feelings of negativity and dissatisfaction with the justice system can be mitigated. Victims therefore require additional help and support in accessing information on criminal proceedings, or to **decipher overly legalistic and bureaucratic language**.

Despite a long-term commitment to information provision, the EU FRA Study and the VOciare report demonstrate widespread problems in the provision of information across all EU Member States.

The key reason for these problems appears to be the complexity and diversity of the obligation. Many different actors are required to provide different information at different times, all of which should be suitably adapted so that victims, who may be traumatised or have other limitations, can understand and act on the information. Such information provision must be carried out by authorities and individuals who may not consider this work to be a priority and who are often burdened with other duties.

The key limitation in implementing victims' rights to information is the ad hoc, localised, and incoherent manner in which it is carried out. However, resolving these challenges does not address other problems related to how victims themselves provide information and are thus heard.

3.1.3 Helping victims to be informed and understood: a communications framework to co-ordinate information provision between victims and justice actors

Given the nature of information given to victims, the complexity of its provision, and the different actors involved, whilst also taking into account the fact that information rights are not yet fully implemented, a shift in approach is required. To best solve this problem, rather than reviewing individual rights to information on an ad hoc basis, they can be effectively addressed by means of a comprehensive communication framework.

Such a move would not only improve the way information is communicated to victims but also how they benefit from it, practically and emotionally. It would focus on enabling victims in their communication with justice practitioners – meeting their needs for empowerment, empathy and active listening. This shift would ensure that appropriate tools and means to accommodate victims with individual needs, such as visual, speech and hearing impairments, are made available and that trauma and other impacts of crime are taken into account within the framework.⁸⁹

A concerted strategic approach would help address who should provide what information, when and how so that all organisations and sectors co-ordinate their communication with victims: in a consistent manner, according to the same quality standards, avoiding duplication, gaps, and confusion. As a starting point, a communications strategy together with decision, implementation and co-ordination structures should be adopted. This would present not only the concept but would also identify which actors would be responsible for providing information, and under what circumstances. The strategy should also determine standards and key principles related to information provision. These could include the following:

⁸⁹ Validity Foundation (2022). Humanising Justice: International report from Voices for Justice: Communicating with Victims of Crime with Disability, 68-74, https://validity.ngo/wp-content/uploads/2022/06/International_Report_Voices-FINAL-1.pdf

- 1) Information is deliverable and available in various formats
- 2) Information is accurate, credible and trusted
- 3) Information is simple and easy to understand
- 4) Information is accessible for all victims
- 5) Information is timely and repeated
- 6) Information is adapted to individual needs and relevant
- 7) Information is actionable

Implementation of the strategy should focus on ensuring that its core principles are adhered to through a coherent communication delivery plan. Detailed recommendations for a communication strategy are not possible in this paper though some points are discussed below. For a more comprehensive review, please look out for the upcoming Infovictims policy paper which will contain a communication framework for victims of crime.⁹⁰

- **Ensure information is provided:** To address failures to provide information, national rules should establish mandatory requirements for authorities within their service objectives and staff obligations. Staff should receive appropriate training in the adoption of guidelines and in using tools for information provision. As with other victims' rights, suitable complaint mechanisms and remedies should be established which would support enforcement of victims' information rights.
- **Ensure information is understandable and useable:** Information should be available via different media and at different stages of a victim's journey. Furthermore, in order to be understood by all victims, the content must be adapted to the victim's age, personal circumstances, communication needs, and language skills.⁹¹

Authorities should jointly develop multiple formats for the delivery of information including by means of leaflets, documents, websites, videos, infographics, interactive guides, etc. Such tools should be subject to plain language guides and standards; versions adapted to specific situations or needs e.g. for people with disabilities or translated to common foreign languages should also be available.

An example of such information provision can be found in the Infovictims project.⁹² The project website, **www.infovictims.com**, currently hosts content (from the 11 partner countries) on victims' rights and individual criminal justice systems. Similarly, several Member States have produced their own leaflets and websites outlining **easy-to-understand information on the criminal justice system and the roles of victims** e.g. France.⁹³

In addition to information materials, oral explanations by justice practitioners remain an important means of delivering information. To support this, effective communication training should be provided to those working with victims. Training should focus on the types of information victims need, which is delivered through a trauma informed, victim-sensitive approach, and how to adapt information provision and delivery to meet a victim's individual circumstance and personal needs.

⁹⁰ Victim Support Europe (2023). Transforming how we communicate with victims, forthcoming.

⁹¹ Victim Support Europe & APAV (2019). VOCIARE Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 29.

⁹² For more information on Infovictims, please visit: <https://victim-support.eu/what-we-do/our-projects/ongoing/prjct-infovictims-iii/>

⁹³ One-stop victims' information and declaration portal for Victims of Terrorism in France, available at: <https://www.gouvernement.fr/guide-victimes/en-accueil>

A strategic approach to communicating information reflects victims' diverse and individualised needs and acknowledges the many ways in which people gather and absorb information. It allows authorities organise information provision efficiently; to cater for the needs of a broad range of victims, or in a more targeted fashion to cater for the needs of specific groups and individuals based on their characteristics and history. It also demonstrates a victim-sensitive approach by reflecting individual needs, providing choice, empathising with and empowering victims.

- **Communications infrastructure – case management systems**

Online information sharing platforms and **case management systems**, offering victims secure access to their legal cases, may significantly improve their ability to access information and updates, whenever they wish. Such systems can also be used to facilitate communication with practitioners either directly or by using Q&A and FAQ based approaches. Calendar information – for example dates of hearings, or appointments – can be displayed, allowing all parties to more efficiently organise their time or request adjustments.

In the most advanced systems, the competent authorities update their systems to deliver a single overview on the progress of the case. Organising solutions in this way could be used for individual needs assessments, protection measures, and the provision of electronic evidence.

The various competent authorities must regularly review and revise each case; by simply logging into a single system, victims would then be able to find an up-to-date overview of their case (in accordance with their rights) as well as the contact details of all relevant services. Thus, instead of continuously asking for information, victims can track the case themselves which reduces the administrative burden on law enforcement services.

Since 1 February 2020, victims of crime in the Netherlands can access their case history via a webpage. Victims log in using their national ID to view updated case-related information, including details of the judicial actors involved, information on their rights, etc. This online case management system is run in close cooperation with Victim Support Netherlands.⁹⁴ This approach is particularly empowering as it allows victims to take control of accessing and providing information.

In addition, to these technical solutions, victims should be offered regular or programmed meetings with justice practitioners, allowing them to directly ask questions about the ongoing investigation.⁹⁵ This could be achieved either face-to-face or through video conferencing, or other communication tools. For instance, after a terrorist attack, the German Federal Government Commissioner acts as an intermediary between the victims and those responsible for the criminal investigation. The Commissioner sets up meetings between the two parties, enabling victims to direct their questions at those leading the investigation.⁹⁶

A combination of online and face-to-face solutions reflects the diverse needs and situations of victims e.g. not all victims have access to the internet or are technologically competent. Alternative options

⁹⁴ Online case management system in the Netherlands, available at: <https://www.mijnslachtofferzaak.nl/kb/home>

⁹⁵ Deirdre Healy (2019). Exploring Victims' Interactions with the Criminal Justice System: A Literature Review, 23-29.

⁹⁶ EU Centre of Expertise for Victim of Terrorism (2021). EU Handbook on Victims of Terrorism, https://ec.europa.eu/info/sites/default/files/law/eu_handbook_on_victims_of_terrorism_december_2021_en.pdf

empower victims by allowing them to choose how to communicate with and obtain information from official sources.

3.2 Translation and interpretation services

Language barriers hamper effective communication with and provision of information to victims. Throughout proceedings, these barriers impact victims who cannot successfully communicate in the language of the police officer, prosecutor or judge.

In accordance with the VRD, from their first contact with a competent authority (article 4, see above), victims should be made aware of their right to understand and be understood, including their right to interpretation and translation services. Article 5 also states that victims should be able to make a complaint in a language they understand and speak.

When victims do not understand, or speak the language of, the competent authority, they should receive appropriate linguistic assistance in addition to a free of charge translation of the acknowledgement of their complaint, when requested.

In its explanatory note to the Directive, the European Commission makes a distinction between 'linguistic assistance' in article 5 and the right to translation and interpretation in article 7; linguistic assistance does not require a qualified interpreter and can thus be provided by any person who speaks the language of the victim.⁹⁷ However, the interpretation and translation obligations under articles 5 and 7 VRD, are limited in the following ways⁹⁸:

- Victims must request the services;
- Interpretation is available to all victims but only for their active participation in court or at interim hearings;
- Other interpretation is available in accordance with a victim's role (e.g. civil party);
- Translation is available upon request, in accordance with a victim's role, for information essential to the victim being able to exercise their rights e.g. decisions ending criminal proceedings;
- Essential information, which is not necessary for a victim's active participation, does not need to be translated;
- Interpretation and translation requirements should not unreasonably prolong criminal proceedings.

The VRD does not prescribe the mechanisms determining what is essential nor active participation.

⁹⁷ European Commission, Directorate-General for Justice and Consumer Protection (2013). DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 17.

⁹⁸ Victim Support Europe & APAV (2019). VOIARE Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 45-51; Victim Support Europe (2017). Cross-border Victimisation. Challenges and solutions with respect to the provision of support to victims of crime in a cross-border situation, 31-34.

3.2.1 Challenges in providing translation and interpretation

The consequences of the above limitations are extensive. In particular, because interpretation and translation must be requested, some victims needing these services do not understand that they must submit a request, and thus never receive assistance. Additionally, victims are often reluctant to ask for help, so the most effective means to ensuring their rights is through the proactive provision of all necessary support.

Next, even when they do request the services, these may be denied if such assistance is not considered essential. As it is up to the justice authorities to determine what is 'essential', they may only consider elements that are relevant to their work, rather than relevant to the needs or wishes of the victim. Not only can this limit a victim's understanding of the case, but it can also increase dissatisfaction as the victim feels 'used' by the system. Some victims, who are denied interpretation and translation services, resort to private providers; costs related to such private services financially impact the victims.

Even when victims do receive interpretation and translation assistance, it may be delayed or of poor quality. For example, whilst writing this paper, a victim support worker mentioned that, in their experience, even competent interpreters can cause secondary victimisation by making statements such as "you should not go to a shelter, those places are terrible": they have no training in working with victims.

Overall, practitioners' surveys indicate that improvements to accessing interpretation and translation services are needed to overcome existing barriers⁹⁹, especially as access to information is the victim's gateway to achieving justice.¹⁰⁰ The current legal implementation of interpretation and translation rights is unsatisfactory, it does not achieve an appropriate balance between the needs of victims, the needs of the state and judicial actors, and feasibility or cost effectiveness.

The current approach in the VRD results from three key issues.

The first issue is how the role of the victim, and its value to the justice process, is perceived. In contrast to interpretation rights for victims, such rights for suspects are well established under EU law. This reflects an approach to justice whereby the accused must have agency in the process since it is against them. Therefore, it is not enough that victims have the right to interpretation, a system must be in place to ensure they receive that right whenever they need it.

This contrasts with the general view that victims are peripheral to the justice system. Interpretation and translation services maximise the usefulness of victims to the proceedings, rather than providing victims' agency and understanding. This is why the right can be limited if it is deemed to prejudice or slow the proceedings. The concept is that 'we accept the ability of victims to understand what is and will happen, as long as it doesn't get in the way of our work'.

However, the concept of safe justice includes a victim-sensitive approach in its fundamental objectives.

⁹⁹ Victim Support Europe & APAV (2019). VOciare Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 45-51; Victim Support Europe (2017). Cross-border Victimisation. Challenges and solutions with respect to the provision of support to victims of crime in a cross-border situation, 31-34.

¹⁰⁰ Victim Support Europe & APAV (2019). VOciare Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 37-38.

Enabling a victim's understanding is an objective in itself, even if this doesn't help achieve other objectives such as the determination of innocence or guilt. Only by using this as the starting point can we genuinely ensure the development of interpretation and translation rights to help victims who don't speak the language of the proceedings.

There are further, practical, questions beyond the objectives of justice. States fear that a strict implementation of interpretation rights, in all circumstances and without limits, could unduly delay proceedings thereby negatively impacting both suspect and victim.

They are equally concerned about the potential costs of any such system and its associated administrative obligations. These concerns relate to an assessment of the value or benefits of interpretation compared to the costs. Whilst, of course, costs must be controlled and minimised, any cost benefit analysis should properly quantify the benefits to victims as well to the justice system itself.

With these issues in mind, solutions – which seek to align these rights with victim-centric principles whilst considering practical constraints – will be explored below. We will see how combining minimal requirements for official language services with a less formal delivery of assistance, and accompaniment by support services can bring together the victim's ability to exercise their legal rights and to protect their legitimate interests, while allowing them to understand and engage in the proceedings.

3.2.2 Helping victims to access interpretation and translation services

In adopting a victim-sensitive approach, a **two-tier system of interpretation and translation** could be established. Firstly, the need for **formal or official interpretation and translation services** should remain for **essential information and active participation** in proceedings, in line with the existing VRD.

However, since having to **request interpretation and translation services** acts as an unnecessary **barrier** for victims, this **requirement should be removed**. Instead, states should be required to **offer interpretation and translation** assistance when the victim indicates they do not speak or understand the language of proceedings, or when authorities become aware of such difficulties.

Clarification should be provided as to **what information is deemed essential**: the EU should carry out further research on which information should be translated/interpreted. Similarly, parameters should be developed to help **determine what is or is not an unreasonable prolongation of proceedings** with a transparent decision-making process in which victims can be heard.

Essential translation and interpretation services should be offered only by qualified, accredited, interpreters. Clear quality standards should be established for interpreters and translators working in criminal proceedings. As part of their education, interpreters in the criminal justice system should receive training on victim-related topics and on trauma-informed and empathic approaches to victims.

Sufficient funding should also be foreseen for these essential services. Member States should further consider funding innovative **cross-border practices**, such as remote telephone, video interpreting and AI based services and the EU should support enhanced cross-border co-operation to improve access to qualified interpreters.

At a second level – to minimise costs whilst achieving the overall objective of helping victims to understand proceedings – victims should be able to use **unofficial translation and interpretation services for non-essential matters**. For example, if victims attend the hearing on a day when they are not actively participating, they could be accompanied by a native speaker who will provide unofficial interpretation during the hearing. Equally, if victims wish to read a non-essential extract from a (interim) judgment or decision then an unofficial translation could be made by a native speaker.

These services could be provided by a person speaking the language, including a victim support worker or a legal representative, in a more informal manner. However, to protect the victim from biased or incorrect translations, any **linguistic assistance should be guided by common standards**, set at the national level. States should establish schemes for such informal services to facilitate access.

The proposals above reflect the need to provide interpretation and translation to victims for reasons other than their benefit to the justice system. However, they also recognise the need to balance this right with practical and financial constraints.

Overall, a well organised system is needed which includes clear and precise rights, transparent decision making processes that allow the victims to provide input and be heard, appropriate delivery standards, and sufficient funding to meet demand.

Whilst not perfect, the EU Directive on the right to interpretation and translation in criminal proceedings (for suspects)¹⁰¹ goes a long way to establishing such a system. As part of a safe justice approach, victims' rights to interpretation and translation should be more closely aligned with suspects rights.

101 Directive 2010/64/EU - <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:en:PDF>

4. HELPING VICTIMS TO BE SAFE

After reporting a crime, some victims may be at a heightened risk of reprisals or of further crime from an offender or those associated with the offender. Research shows that victims and witnesses are increasingly targeted by threats and violence aimed at preventing them from going to competent authorities, thus creating a barrier of intimidation that negatively impacts their **wellbeing and safety**.¹⁰²

This can be the case with crimes such as domestic violence or human trafficking, or for crimes committed by people known to the victim, or for cases of organised crime, or if the victim lives in an area with a high rate of crime or a large number of gangs.

Where justice systems fail to provide adequate protection measures, victims may forfeit their right to participation. For example, in an ongoing case of stalking and sexual assault in Belgium, a young victim gave up her status as civil party before the hearing commenced, out of fear of being confronted by an offender who, using a fake dating app profile, reached out to her and sexually assaulted her.¹⁰³

In addition, many victims experience further trauma resulting from how they were treated by professionals, and society, following a crime (secondary victimisation): whether in criminal proceedings, by those addressing their needs or by societal reactions to crime and individual victims.

Not only can such harm significantly impact victims' psychological and physical health, but it also puts the rule of law into jeopardy by:

- reducing the willingness of victims to report crime;
- reducing the likelihood that they will continue to support criminal proceedings; and
- reducing their ability to communicate effectively within proceedings.

It is therefore essential for the wellbeing of victims and for the success of our criminal justice responses that subsequent re-traumatisation and violence are prevented.

¹⁰² European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 35-36.

¹⁰³ Jan Antonissen (2022, August 22). 'Hij benaderde meisjes op datingapps, maakte hen geil, beloofde geld en werk. Hij kreeg dingen gedaan die je niet voor mogelijk houdt', *De Morgen*, accessed 21 November 2022, <https://www.demorgen.be/nieuws/hij-benaderde-meisjes-op-datingapps-maakte-hen-geil-beloofde-geld-en-werk-hij-kreeg-dingen-gedaan-die-je-niet-voor-mogelijk-houdt-b6f11860/>

The following issues should be addressed to help ensure the overall safety of victims:

- Individualised approach to identifying risk and addressing it by timely, repeated assessments of a victim's specific protection needs;
- Privacy protection of victims' personal data, from media and societal intrusion;
- Physical protection from intimidation, retaliation or further harm by the offender and others;
- Protection from secondary victimisation, minimising harm caused to victims by criminal justice and other responses.

4.1 Protection rights

Several provisions of the VRD aim to **protect victims and their families**.

According to article 18 of the VRD, measures should be in place to

- **protect the dignity of victims and their family members** during interviews in the pre-trial stage and when testifying in the trial stage,
- to **protect them “from secondary victimisation, retaliation and intimidation**, including the risk of emotional or psychological harm”.

In particular, **potential contact between the victim and their family, and the offender should be avoided**. Article 19 of the VRD, together with recital 53, require that practical measures be taken to minimise such contact; however, it does not impose a specific requirement, rather provides examples such as the provision of separate entrances and waiting areas in court buildings, and inviting victims and offenders to attend court hearings on different days.

With respect to new court premises i.e. those built or created after the 2015 implementation date, Member States have the explicit obligation to ensure separate waiting areas are provided for victims (Article 19.2).

To ensure **victim protection during the evidence gathering stage**, Article 20 states that, without prejudice to defence rights and rules regarding judicial discretion, **victim interviews** should take place **without unjustified delay and with minimal repetition**. **Victims should have the option of being accompanied by a legal representative and/or person of trust** during criminal investigations (unless a reasoned decision has been made to the contrary). Furthermore, **medical examinations** should be kept to an absolute **minimum**.

Victims' privacy during criminal proceedings is protected under article 21 of the VRD. It requires that measures are taken to **protect the privacy of victims**, in particular to prevent the dissemination of any identifiable information related to child victims. Furthermore, Member States should encourage the media to adopt and implement self-regulatory measures whilst respecting freedom of expression and pluralism (following article 21.2).

The current VRD **does not suggest specific measures for the physical protection** of victims and victims' families; it merely stipulates that the right to protection may cover physical protection measures for victims and victims' families, where they are established under national law.

Depending on their circumstances, victims may have specific protection needs due to their vulnerability. According to Article 22, victims should receive a timely **individual assessment** to determine whether they are vulnerable to secondary or repeat victimisation, to intimidation and to retaliation, and what protection measures they should be provided to mitigate such risks.

This assessment is based on the type or nature of the crime, its circumstances, and the victim's personal characteristics. This assessment determines the need for special measures in the course of criminal proceedings (split between the investigation and trial), set out in Articles 23 and 24 of the VRD. Examples of these special measures are:

- interviews with victims being carried out by trained professionals;
- interviews carried out by officers of the same sex as the victim, for sexual, intimate partner, and gender-based offences;
- use of communication technology to avoid visual contact with offenders when victims are giving evidence;
- recording of interviews with child victims should be allowed and made available for evidentiary purposes.

4.2 Challenges in ensuring adequate protection for victims

In practice, the protection available to victims is inadequate, many victims continue to suffer harm. The main challenges in implementing an individual assessment and resulting protection measures are discussed below.

4.2.1 Individual assessment of victim's specific protection needs

The individual assessment as set out in the VRD was an innovation in EU victims' law. For the first time, it specifies which vulnerabilities are being addressed and explicitly recognises that vulnerability and protection are not solely connected to the type of crime a victim has suffered. This contrasts with previous approaches, which focused on specific types of crimes such as domestic violence, sexual violence, stalking, human trafficking etc. or on specific groups such as children.

The overarching approach is to ensure that the system of protection identifies all victims who are at risk, not only those from a certain crime group. **Whilst seemingly innocuous, the application of the assessment to all victims was thus a significant shift in thinking.**

The consequence has been that whilst EU Member States have put in place requirements on assessments, in reality they have struggled to implement them. Specifically, there are difficulties in ensuring that victims receive a **genuine and meaningful assessment** that is designed to **identify risks** and ensure that **measures are put in place** in a **timely** way for all those **who need them**.

Some of the major challenges include:

- How to assess all victims and whether the nature/ extent of the assessment should be changed based on the seriousness of the crime or other factors;
- How to carry out assessments in the field vs in a more stable environment e.g. police station;
- How to ensure the assessment doesn't overburden authorities whilst ensuring it doesn't become a tick-box exercise – achieving a balance between standardisation and individualisation;
- How to ensure each assessment remains accurate over time;
- How to ensure that victims receive the measures that have been set out in the assessment;
- How and whether to adjust the assessment approach depending on factors such as type of crime e.g. different assessment formats may be needed for trafficking or domestic violence crimes;
- How to better connect protection needs and support needs to ensure a holistic approach.

These issues are reflected in a range of problems that can occur across different States and may be national in nature or local to specific authorities:

- not all victims receive assessments; for example, some States may focus only on certain types of crime;
- assessments are carried out in different ways across and within States;
- assessments vary in their efficacy in identifying vulnerability and ensuring that victims, who need protection, get it;
- variations in the efficiency and ease of assessments are widespread;
- assessments may be treated as one-off actions, meaning they are not updated when a victim's circumstances change;
- authorities don't necessarily co-ordinate the use of assessments and the provision of protection, resulting in duplication, gaps or conflicting conclusions;
- assessment processes are not appropriately accompanied by specific questionnaires, protocols, guidelines, or other tools which are a necessary precondition to ensuring that the process takes into consideration the entirety of a victim's situation and appropriately responds to their actual needs¹⁰⁴.

4.2.2 Protection of privacy

The notion of a victim's privacy can generally be summed up as ensuring that personal information is not made available to those who don't need that information for legitimate purposes. When ensuring the fundamental right to privacy, there are four overarching issues:

- Firstly, personal information about the victim has to be collected during the investigation, and in order to carry out a prosecution;
- Secondly, information has to be collected to support the implementation of victims' rights;
- Thirdly, the defence may have a legitimate need to have access to the victim's information, in line with fair trial rights;
- Fourthly, the media and the public may have generalised or legitimate 'public interest' reasons

¹⁰⁴ Victim Support Europe & APAV (2019). VOCLARE Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 153.

for knowing about a criminal case and its circumstances, including the victims.

This means that a balance has to be achieved between a person's fundamental right to privacy, fair trial rights, and freedom of information. According to the European Convention on Human Rights (ECHR), the right to privacy can be limited when 'necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.' Freedom of information, at the same time, can be limited when it is 'prescribed by law and [...] necessary in a democratic society [...] for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'.¹⁰⁵

The consequence of this environment is that information on the victim:

- may have to be disseminated and therefore could be misused,
- information may be inadvertently shared by mistake or due to poor procedures;
- actors may deliberately seek ways to obtain information about a victim through legitimate and/or illegal means.

It should also be borne in mind that the loss of a victim's privacy covers not only their actual or recorded data but also the ability of people to recognise the victim during the investigation and, in particular, during the trial. Disseminating information about the victim, which allows them to be publicly recognised, can be harmful to the victim from both emotional and security perspectives.

As such, States must establish systems to enable the sharing of personal data in a way that protects both the data and the victim. Effective mechanisms to address inappropriate access must be established. In other words, an approach which combines preventative or proactive action with reactive action is necessary.

The key ways in which a victim's privacy can be affected are:

- Provision of information to the defence;
- Provision of information to authorities other than those working on the case;
- Media access to information;
- Publicity of trials and information provided to or accessible by the public.

With this in mind, the following problems were identified in both the VOciare report¹⁰⁶ and during research for this report:

- Personal information may be included in the case file, which is accessible by the defence, even when it is not relevant to the case or has been obtained for a needs assessment and not for the investigation;
- Information obtained about the victim can be passed on to authorities unrelated to the case e.g. immigration authorities may receive information about undocumented migrants; this information may subsequently be used against victims e.g. to deport migrants.¹⁰⁷

105 Vociare Synthesis report p145; https://victim-support.eu/wp-content/uploads/2021/02/VOCIARE_Synthesis_Report.pdf

106 Victim Support Europe & APAV (2019). VOciare Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 134-138.

107 PICUM (2020). Building Trust, Promoting Safe Societies; https://picum.org/wp-content/uploads/2020/02/Firewall_JUSTICE_EN_WEB.pdf

- Not all countries have media self-regulation measures and, even where they do exist, their efficacy is questionable as there are many reports of violations of victims' privacy;
- Whilst the publicity of court hearings can be restricted in most Member States, this is not possible in all.
- The implementation of privacy measures is limited in various ways. Restrictions may depend on the level of threat or risk of harm.
- The range of privacy measures available in Member States is highly variable with not all having extensive systems that include: imposition of anonymity of the victim/witness in criminal proceedings, the prohibition of broadcasting during, and video recording of trials, and the civil and criminal liability of those who infringe victims' right to privacy.

Freedom of information: the example of Sweden

In some Member States, such as Sweden, a personal registration number (such as a residence permit or passport) is required when reporting a crime, or in other official interaction with governmental authorities.

This registration number is linked to the holder's personal information which includes their full name, date of birth, registered address, and other pertinent data. Following the principle of open government, members of the public may request **access to official documents** held by a public authority.¹⁰⁸

As the police are a public authority and their case files are regarded as public documents, interested parties may request access to a victim's case file. In Sweden, individuals may access case files, unless they have been classified as 'secret' by the public authority.¹⁰⁹ As such, personal information included in a case file, linked to the victim's registration number, can become accessible not only to the parties involved in the case but also, on request, to the wider public.

As can be seen, problems may arise from the legal right to privacy; mechanisms, procedures and infrastructures ensuring information can be accessed as needed; and the attitudes of practitioners. Overall, according to professionals surveyed for the VOciare report, only 4% believed that existing measures are efficient, and another 14% found these measures to somewhat efficient. The remaining 82% believed that the measures failed victims to varying degrees.¹¹⁰

4.2.3 Measures for specific protection needs

In practice, **protection measures** offered to victims and their families appear to be inadequate.¹¹¹ In some Member States, such measures are only available for and implemented at the trial stage. In others, protection measures (determined by the police or other law enforcement authorities following the result of an individual victim's needs assessment) require the approval of a judge and/or a re-

¹⁰⁸ For instance, this is the case in the Netherlands and Sweden.

¹⁰⁹ Government Offices of Sweden (2016, April 11). The principle of public access to official documents, accessed 21 November 2022, <https://www.government.se/how-sweden-is-governed/the-principle-of-public-access-to-official-documents/>

¹¹⁰ Victim Support Europe & APAV (2019). VOciare Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 134-136.

¹¹¹ *Ibid*, 134-136.

assessment by the prosecutor at the pre-trial stage. Delays in the provision or even the withdrawal of protection measures, issued by law enforcement agencies at the pre-trial stage, are thus incurred. When effective protection measures are made available, they may restrict victims' lives – for example, the use of domestic violence shelters and police protection orders – rather than focusing on measures to manage the behaviour of the accused.¹¹²

In most Member States, court hearings are open to the public; in exceptional cases, when additional safeguards are deemed necessary, adequate, and proportional, access to hearings may be restricted, following article 21.1 VRD. In reality, however, Member States have not fully transposed this provision, leading to differing levels of protection at the national level making this both a privacy and a physical protection issue.¹¹³

4.2.4 Physical protection and protection from secondary victimisation

There are often insufficient measures or protocols in place to **protect victims from instances of intimidation or retaliation, and from instances of secondary victimisation**.¹¹⁴ As such, victims feel marginalised and unseen, even after they voice their fears to the authorities.

A victim of assault committed by a known, and violent, organised crime group testifying about the fear of retaliation testifies about the lack of security measures as follows:

*"I think they never did, they never asked me about it. And I must tell you that my family was really scared for a while. Very scared indeed. And then there were news out there saying that we had two sons and that one of them was living in the Algarve [...] even my picture was on the newspaper."*¹¹⁵

Even if such measures are available, they may not be implemented. The 2019 FRA study indicates that many victim interviewees considered the presence of the offender, during the criminal proceedings, as intimidating. The study also indicated that measures to protect victims from secondary victimisation are inadequate.¹¹⁶

The rigidity of criminal justice proceedings and the lack of sensitivity by justice officials are additional causes of secondary victimisation.¹¹⁷ The EU FRA study emphasises that 44% of the victim interviewees saw their participation in the criminal proceedings as being a reinforcement of their victimisation rather than a mitigating factor for the harm suffered following the crime.¹¹⁸

112 *Ibid*, 134-136.

113 Victim Support Europe & APAV (2019). VOIARE Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 148-149.

114 European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 96.

115 European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 96.

116 European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 91-96.

117 Victim Support Europe & APAV (2019). VOIARE Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 100.

118 European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 89-91.

A survivor of sexual assault gave a keynote speech at VSE Annual Autumn Conference on Transforming Justice Systems in 2021.¹¹⁹ She spoke of how she had been raped after being given a date rape drug, and of her experiences in reporting the crime to the police and in seeking justice. **She testified, in no uncertain terms, that her experience in dealing with the criminal justice system was worse than the rape itself.**

Some of the key problems in the implementation of protection measures, highlighted by the VOciare Report¹²⁰ are:

- victim-friendly rooms either don't exist, are limited to children, or are not available across a country.
- systemic training for all practitioners, who interview victims, is not provided in all countries. Only 11% of professionals consider that all victims needing special protection are interviewed by trained professionals.
- same-person interviewing is applied systematically in only a few States. In just 13% of cases, are vulnerable victims always interviewed by the same person, if more than one interview is required during the investigation.
- Interviews by a same sex officer is unavailable in 1/3 Member States, in the remainder of the States it is only rarely made possible.
- Whilst a range of protection measures, supporting victim participation during a trial, exist in all countries, they are rarely made available to all victims who would benefit from them. For example, in just 19% of cases are victims perceived to always be granted measures to avoid visual contact with the perpetrator, while around 17% are never or only rarely granted this measure.
- Only 15% of victims are considered to always benefit from measures to avoid visual contact between victims and offenders with 32% rarely or never benefiting.
- Only 27% of victims are considered to always receive measures to ensure that they may be heard in the courtroom, without being present, whilst 21% rarely or never do.
- Only 31% of victims are considered to always receive measures to avoid unnecessary questioning on their private life that is not related to the offence, with 12% never or rarely realising such measures.
- Only 1/3 victims are considered to always benefit from measures allowing proceedings to take place without the presence of the public, with 19% rarely or never benefiting.

The reasons or drivers for this limited provision of measures varies, but the most common reasons are:

- the lack of an adequate individual assessment;
- problems in the legal transposition of the VRD;
- the lack of formal protocols and infrastructure; and
- the lack of awareness by professionals involved in the criminal justice system about the importance of protection measures, or the lack of willingness to change, and lack of understanding of the need for such measures.

¹¹⁹ For the recording of the conference <https://www.youtube.com/watch?v=ix4gbZ1aw6Y>

¹²⁰ Victim Support Europe & APAV (2019). VOciare Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 134-138.

4.3 Helping protect victims

In adopting a victim-sensitive approach, the following approaches should be adopted to ensure that victims feel safe and that their protection needs are addressed throughout the criminal process.

4.3.1 Assessing the victim's protection needs

As has been seen from the challenges in implementing an individual needs assessment, the term does not convey the **complexity of the issues** connected to identifying and meeting victims' protection needs.

The assessment needs to be:

- **valid for any type of crime** but also adapted or adaptable to specific types of crimes and situations such that it has the best chance of identifying and addressing needs.
- **valid for a variety of situations** including in field, where officers may meet victims on site, at a police station or other more stable environments – some time after the crime took place.
- **valid for use by various actors such as police officers and prosecution officials** depending on the system that has been set up.

In other words, it must function well across different crimes, different locations, and for different actors.

Fundamentally, the assessment cannot be seen as a single act or a single form to be filled out. Rather, it is a process that has to operate or be carried out on a repeated basis for as long as proceedings are ongoing. For that reason, it is important that the system around the individual needs assessment is sufficiently structured and organised to address the different needs of victims at different stages of the proceedings.

A good example of such a comprehensive approach can be seen in Sweden.

The Swedish Police Authority has developed risk analysis guidelines for victims of violence.¹²¹

These guidelines ensure a unified, coherent, professional means of evaluating risk, aiming to describe and minimise the risk of repeat victimisation; they support crime prevention measures by identifying individuals who are at high risk of experiencing repeat victimisation or serious harassment. The risk analysis follows a step-by-step process: the initial risk assessment is conducted during the victim's first contact with the police, followed by structural and extended risk assessments at later stages.

The process to identify a victim's needs should start on first contact between appropriate authorities, usually law enforcement, and the victim. This can take place under many circumstances; for example, at the scene of the crime with frontline officers, or when a victim seeks help at a police station.

121 Rikspolisstyrelsen (2010). Riktlinjer för polisiära riskanalyser vid våld på individnivå, <https://docplayer.se/6449207-Riktlinjer-for-polisiara-riskanalyser-vid-vald-pa-individniva.html>

During the first-contact, authorities should focus on addressing, at a minimum, the immediate protection needs of and risks to the victim. These immediate needs and risks might vary depending on the type of crime and the victim's individual situation and background, and can encompass issues such as access to emergency accommodation/housing, and safety.

Other needs that support access to immediate protection needs should be taken into account, such as information and communication, translation/interpretation for non-native speakers and referrals to services. In addition to protection needs, first-contact authorities should be able to identify any immediate support needs (e.g. urgent psychological support) and to refer victims accordingly.

This approach not only addresses what is most urgent but also reflects the limitations that first-contact authorities face. At this stage, frontline personnel might not have sufficient time, resources and knowledge to conduct an in-depth needs assessment with the victim.

In-depth needs assessments can be conducted at a later stage; it may be carried out by any practitioner in the organisation or by a specialised unit e.g. a victims' unit or a person specialised in working with specific crime victims such as child abuse, human trafficking victims, etc. The in-depth assessment should reflect the variety of needs victims might have over the course of criminal proceedings.

Often, the in-depth assessment may need to be adapted, depending on the type of crime, to address the specific needs of a group – e.g. victims of human trafficking or victims of domestic violence. While law enforcement agencies should focus on assessing protection needs, the process should be conducted in close cooperation with victim support services which may assess the support needs during the course of proceedings. The assessment should be regularly reviewed and updated, at a minimum at major stages of proceedings.

On this basis, the process for developing and implementing individual needs assessments should evaluate and define:

- which actors must be involved;
- what are the needs and constraints of these actors;
- what victims' needs should be assessed; and
- what tools are required to address any victim protection needs identified.

Forms, checklists, guides, etc. should be developed to facilitate the process to ensure conformity across a country and across all services, and so that professionals know what they have to ask and record, and so that this information can be retrieved and used as required. However, they must be seen only as tools, which support engagement with victims, to establish their vulnerabilities and to determine – with the victims – how best to mitigate any risks. As a victim's needs may change over time, the assessment and protection measures should be regularly reviewed and adapted during the criminal proceedings. In addition, to ensure best victim-centric outcomes, appropriate training, for law enforcement officers and justice officials conducting such assessments, is required.

To ensure a respectful and victim-sensitive approach, individual needs assessments should follow key standards/principles¹²²:

- Holistic, i.e. cover the full range of victims' needs;
- Victim-sensitive, i.e. considering the victims' wellbeing and safety as a priority;
- Trauma-informed, i.e. based on the understanding of how trauma impacts victims;
- Empowering, i.e. through which victims are empowered to assess their own needs and steps to take;
- Timely and repeated, i.e. ensuring a tailored delivery of services and updates over time as needs evolve;
- Consistent, i.e. guarantee respect and equality for all individuals.

Ensuring the victim's right to privacy

Protecting the privacy of a victim is critical to a well-functioning justice system. Not only does protecting a victim's privacy encourage crime to be reported but it also minimises the risk of physical and emotional harm from participation in proceedings. If adequate privacy measures are not in place, this can severely impact the rule of law whilst harming some of the most vulnerable people in society.

Measures for privacy protection should have the following objectives:

- facilitate the safe reporting of crime; in particular, by avoiding use of personal data for purposes other than responding to the crime suffered by the victim;
- minimise the risk of harm by the accused;
- minimise harm from the public;
- minimise harm from the media.

4.3.1.1 Protecting personal information when reporting crime

With respect to reporting a crime, many victims may be at risk or worried about the very act of lodging a complaint. Whilst for many crimes, information about the victim will eventually be required, systems should be in place to facilitate online reporting, anonymous reporting and third party reporting.

Anonymous reporting implies being able to report a crime without revealing one's identity. This is commonly achieved through online reporting, which is available in some countries and/or for certain types of crime; however, it is not a widely used practice in EU Member States. The UK-based organisation CrimeStoppers¹²³ is an example of third-party and anonymous reporting fusion; victims can anonymously report a crime to the organisation which then reports the crime to the appropriate authorities.

In some jurisdictions, third parties may be accredited or permitted to provide the report on behalf of the victim – at least for certain types of crime. However, even though the Victims' Rights Directive states that 'measures should be put in place to enable third-party reporting, including by civil society organisations', in practice, third-party reporting is limited in use. This implies that the obligation should be reinforced together with guidance on its implementation.

¹²² Victim Support Europé (2019). How to identify victims' support needs?: Guidelines to develop an individual needs assessment, <https://victim-support.eu/wp-content/uploads/2021/02/Guidelines-final-for-print-F.pdf>

¹²³ CrimeStoppers, available at: <https://crimestoppers-uk.org/>

A critical issue for undocumented migrants is the guarantee that their information will not be passed on to immigration authorities. Separating the protection of fundamental rights from immigration law enforcement has been advocated by academics and NGOs supporting victims.¹²⁴

A number of countries have introduced the concept of a firewall system which is “the legal, technical and organisational separation between public immigration enforcement activities targeted at undocumented migrants and service provision to the same individuals, in the areas of health care, social services, education and access to the justice system”.¹²⁵ In practice, this means that law enforcement bodies are not permitted to pass on information about a person, when – as a victim – they report a crime to the police.

4.3.1.2 Protecting personal information during proceedings

Privacy by design should be a core principle when victims’ personal information is collected and stored. This should act as a balancing principle to the defence’s right to know their accused and the accusation, achieved primarily through disclosure of the case file. It also operates as a balance to freedom of information principles.

The purpose of this approach is not to prevent access, which would not be in line with the above principles. Rather, it is to ensure a system is in place whereby a victim’s personal information is only made available when it can be demonstrated that a breach of the fundamental right to privacy is essential. Secondly, the system of collection and storage should maximise protection of the data to prevent accidental or mistaken sharing of information as well as illegal access to personal information.

This could be achieved by ensuring that victims’ personal data can only be found in a specific file, marked appropriately. In this way, the general sharing of information in a case file, or even the entirety of the case file, would not risk accidental disclosure. In addition, personal data, which is obtained during proceedings for the purposes of assisting the victim, should not be contained in the case file. Finally, a review and approval mechanism should be in place to determine when it is appropriate and necessary to share personal data. In this way, the fundamental right to privacy is not made subordinate to other fundamental rights. Rather, it is recognised that a fair balance must be sought.

4.3.1.3 Protecting personal information from the media

As with the public interest criterion, freedom of the media is a fundamental aspect of democratic societies which helps ensure the transparency of justice and that due process is protected. Nevertheless, it should not operate wholly unbound so as to infringe on victims’ right to be safe and for their fundamental right to privacy to be guaranteed.

This means, in particular, moving from encouraging the media, in general terms, to adopt self-

¹²⁴ See for example: the action of PICUM (n.d.). Data protection and the “firewall”: Advancing safe reporting for people in an irregular situation.; François Crépeau & Bethany Hastie (2015). The Case for ‘Firewall’ Protections for Irregular Migrants, *European Journal of Migration and Law* 17, no. 2-3, 157-183, doi:10.1163/15718166-12342076

¹²⁵ PICUM (n.d.). Data protection and the “firewall”: Advancing safe reporting for people in an irregular situation, 2, <https://picum.org/wp-content/uploads/2020/06/Briefing-Data-Firewall-on-Safe-Reporting.pdf>

regulatory measures, to one where there are specific actions and activities, where every State's media body has adopted its own victim-focused measures, guidance and training. Ideally, these measures will be mirrored by international journalist and media federations. Such measures should be guided by the core objectives mentioned above: addressing harm, needs, recognition and a victim-sensitive approach.

For the trial of the Paris November 2015 terrorist attacks, victim support organisations came up with an easy-to-implement system to protect victims from unwanted media attention: victims attending court and happy to be approached by journalists would wear a green lanyard, victims who did not want to be approached would wear a red lanyard.¹²⁶ Apart from protecting victims from unwanted media attention, the implementation of this system also helped the journalists covering the trial and court hearings.

4.3.1.4 Enforcement when privacy is breached

Whilst the starting point to privacy should be safety by design, there will always be instances when either a decision has been incorrectly made, when a decision has an unexpected impact, or when privacy is breached by mistake or illegally.

Effective mechanisms must therefore be in place to speedily secure any personal data, to prevent the ongoing publication or dissemination of data, and to protect the victim from potential harm. This requires fast response systems so that victims may request the removal of information from the public domain, the option to use restraining orders to freeze the dissemination or availability of information pending a final decision on access, and the availability of liability remedies – both civil and criminal – which may be used by victims and authorities against those who illegally or negligently release personal data.

4.3.2 Addressing the victim's protection needs

There are several overarching approaches to ensure that victims are able to access the protection they need:

- Expand the range of measures available to victims and ensure a more extensive set of minimum measures in all States.
- Improve the system for obtaining measures, to limit the likelihood that a request will be refused;
- Alternative solutions should be applied where a measure is refused;
- Improve the framework for the operation of measures, to ensure they work as well as possible.

1) **Extend the minimum measures available to victims**

A review should be carried out as to whether the basic protection measures for all victims, and specialist measures for vulnerable victims, are sufficient – or how they could be extended – based on the risk factors, circumstances and type/ nature of the crime. EU and national legislation should guarantee the availability of these measures to protect victims from both physical and secondary victimisation. The following reflect some specific measures that are considered to be a priority:

¹²⁶ Pierre de Baudouin (2021, September 27). Procès du 13-Novembre : "Ce code couleur rouge ou vert pour les parties civiles, c'est une vraie armure", *Franceinfo*, <https://france3-regions.francetvinfo.fr/paris-ile-de-france/paris/proces-du-13-novembre-ce-code-couleur-rouge-ou-vert-pour-les-parties-civiles-c-est-une-vraie-armure-2248915.html>

- **Physical protection order: effective physical protection measures – including emergency restraining orders – whose determining criteria should be risk of harm, must be available to all victims of crime throughout criminal proceedings, irrespective of crime type or personal characteristics.** Further research and the collection of data and good practices should be carried out to better determine which measures work best in which situations and how to ensure they are adopted in a timely manner. In addition, research, which includes a focus on reducing the impact protection may have on the victims' lives, should be carried out to develop new innovative measures.¹²⁷
- **Separation of victims and accused:** Mechanisms to guarantee that victims can be separated from the accused in police stations and court rooms should be further developed. Ideally this would be achieved by having **separate waiting areas and separate or protected entrances in all relevant buildings**. All courts should also have the necessary facilities and communication tools to allow victims to speak without the offender being in court, or to testify remotely. Lack of technical solutions should not be an acceptable reason to refuse the measure. In addition, existing EU requirements that any new court building including separate waiting areas should be fully enforced.
- More **practical measures** should be available to **reduce the fear and trauma that victims experience when they actively participate in proceedings**¹²⁸ in particular through the use of **facility dogs and digital tools**.

Research has shown that the presence of a trained dog positively impacts on a victim's confidence and ability to communicate, which can result in the provision of better evidence.¹²⁹ In 2020-2022, Victim Support Europe led the Facility Dogs in Europe (FYDO) project, the first European project to train and deploy dogs to support vulnerable victims during criminal proceedings in Belgium, Italy and France. A victim supported by a FYDO dog testifies as follows:

"The dog helped me to express myself more clearly ... his presence allowed me not to be intimidated, I hardly ever looked for my words, the words came by themselves in fact ... I noticed that I cry less when she is present." Victim of domestic violence

The **broader use of digital tools** could also facilitate a victim's right to be heard, while providing necessary safeguards. Firstly, **recording a victim's testimony** at the pre-trial stage can significantly reduce the number of times victims have to repeat their story and thus relive their trauma; this may also limit potential retaliation if their testimony in court differs slightly from the statement provided by them during the evidence gathering stage. Secondly, the COVID-19 crisis has accelerated the push towards the digitalisation of justice, including the **setting up of online courts**.

127 In this context, we refer to a recent report of the POEMS project, which provides a mapping of the legislation and an assessment of the impact of Protection Orders in the European Member States: Suzan van der Aa, Johanna Niemi, Lorena Sosa, Ana Ferreira & Anna Baldry (2015). Mapping the legislation and assessing the impact of protection orders in the European Member States, (Oisterwijk: Wolf Legal Publishers), <http://poems-project.com/wp-content/uploads/2015/04/Intervict-Poems-digi-1.pdf>.

128 European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 74.

129 Victim Support Europe & APAV (2019). VOCIARE Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 102.

A recent report¹³⁰ found that virtual trials can help reduce the backlog of cases and reduce the need for victims to travel to court. It further indicated that virtual trials have a positive impact on a victim's ability to provide evidence, on the protection of victims against harm, and on the reduction of trauma experienced by the victim.

2) **Increase the frequency that measures are approved**

Action must be taken to ensure measures are achievable. In other words, the limitations and exceptions to the use of measures should be reviewed, with the aim of establishing an initial presumption that, when a measure is determined to be needed, it will be provided. Measures should only be refused under exceptional circumstances. If the refusal of a protection measure is anticipated, a victim's right to protection should be judged of equal importance to other issues, such as slowing the proceedings.

3) **Alternative measures and mitigations should be available in the case of refusal**

If a measure is refused, alternatives should be explored. In addition, States should develop mitigations to reduce the likelihood that protection measures would need to be refused. For example, if judges insist on seeing victims in person, training should be developed to help them be more comfortable with the use of video conferencing.

4) **Improve the framework for the use of measures**

Investments should be made to enhance the use of the measure. This could be through e.g.

- the provision of **mandatory training on empathy, trauma-informed and victim-sensitive approaches** for all justice and law enforcement officials, who may come into contact with victims, this is particularly necessary for measures which require behavioural changes amongst practitioners or where subconscious biases may unduly affect decisions on measures.
- **Combinations of measures** should be used to achieve overarching protection and participation objectives e.g. minimising the repetition of testimony could be achieved by allowing victims to record their statement.
- If there is a pattern of refusal of protection measures, the **way the proceedings themselves are organised should be reviewed and changed** to enable protection measures to be used more frequently. For example, if it is determined that a victim would greatly benefit from repeated contact with, interviews by, etc. the same officer, ways should be found to ensure this is possible; in particular, through knowledge exchange with countries which have a high success rate in implementing protection measures.
- Actions to increase the likelihood that victims will benefit from a protection measure **should be proactively taken** e.g. victims could be introduced to more than one professional so a relationship of trust can be built with both – in case one is not available. Fundamentally, this requires a change in thinking, whereby authorities organise their activities to maximise the likelihood measures can be complied with, rather than leaving it chance.
- Detailed **protocols, guidelines, toolkits and other supporting measures should be put in place to assist officials to implement measures**. These should be used to support the above mentioned actions to decrease bias when allocating protection measures and to improve the use of measures.

130 The Virtual Trials National Project Board (2022). Report to the Lord Justice General, Scotland, https://www.scotcourts.gov.uk/docs/default-source/default-document-library/reports-and-data/report-to-the-lord-justice-general-virtual-summary-trials-docx-final.pdf?sfvrsn=a5f62f35_4

5. ENABLING MEANINGFUL PARTICIPATION IN PROCEEDINGS

Victims face numerous challenges in exercising their rights, and in participating in a trial; the impact of a crime can significantly limit their ability to engage in proceedings. Even if trauma isn't a factor, many people have never been to a police station or a court room; they may not have the education or capacity to be able to follow proceedings and many victims have vulnerable backgrounds which significantly affect how well they can exercise, on their own, the rights they have in law.

Fundamentally, this means that:

- The victim's right to be heard and give evidence must be examined and improved;
- Victims need access to support throughout criminal proceedings;
- Victims need enhanced rights enabling their participation, in particular access to legal assistance during and within criminal proceedings.

The following sections examine these issues, to understand better how victims are able to exercise their rights, the barriers that exist, and the improvements that can be made.

5.1 Helping victims to provide evidence and to be heard

5.1.1 Conceptualising the right to be heard and to provide evidence

Following Article 10 of the VRD, States should ensure that victims may be heard during criminal proceedings and may provide evidence. The procedural rules under which victims may be heard during criminal proceedings and may provide evidence are determined by national law.

Details on what actions should be taken to ensure that victims can be heard are not provided, though recital 41 takes a very restrictive approach, stating that *"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."*

Given the lack of guidance on what should or can be covered by the right, it is helpful to first explore what the notions of evidence provision and being heard mean from the perspective of meaningful and safe participation in proceedings.

There are two core questions to be explored. Firstly, in their role as victims, **what is the objective of providing evidence and being heard.** From this, clearer boundaries for the extent of any necessary rights can be drawn. Secondly, **what rights or measures will maximise the ability of victims to exercise their rights.**

An additional layer of complexity is added to this analysis when considering that **in different States, victims have additional rights based on their role;** they may claim a role as a joint or private prosecutor, or they may be a party to proceedings; for example, in a civil claim for compensation adjoined to the criminal proceedings. In Germany, for example, victims as joint prosecutors may plead at the end of the trial (as a victim and not only as a civil party); summon witnesses to the court trial; and make motions that help the proceedings establish the truth.

On the other hand, some countries take a restrictive approach and, for example, do not allow victims to provide evidence on their own initiative, this responsibility lies with the competent authorities during the investigation and evidence gathering phase.¹³¹ Similarly, a narrow interpretation of the right to be heard allows States to permit victims to testify to competent authorities but does not oblige those authorities to record or take the testimony into account. As mentioned earlier, based on Recital 41, States can limit victims to providing statements or explanations in writing rather than orally.

The question of being heard and providing evidence is perhaps, more than any other, affected by the role that victims are afforded through procedural rules. In countries which recognise victims as parties to proceedings, their ability to be heard and provide evidence tends to be more extensive, as are supporting measures to ensure this right can be exercised.

One approach to resolving barriers to this right is to ensure all victims have the most extensive role currently envisaged. The EU FRA points that this approach – a rights-based approach – should be explored. However, this could face many obstacles and be seen as requiring a fundamental upheaval of national justice systems.

As an alternative, the aim should be to enable victims to provide evidence and be heard, and to determine what is the appropriate level of influence over proceedings that all victims should have, as compared to those who have additional roles in proceedings (understanding that parties to proceedings have a greater interest and more rights than non-parties).

This is of utmost importance since, according to FRA, for many victims this right means attending hearings, having relevant evidence considered, and being able to offer relevant input during the proceedings.¹³²

131 European Commission, Directorate-General for Justice and Consumer Protection (2013). DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 29-30; Victim Support Europe & APAV (2019). VOIARE Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 100.

132 European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 74.

Within the context of this paper, it is difficult to determine precisely what aspects of the right to be heard and provide evidence should be developed as a minimum level across all Member States. Differences in victims' status, the way proceedings are organised, and the level of discretion that the actors need to deliver justice requires significant research and analysis, and even then may only be accurately appraised at a national level.

This does not mean, however, that this complexity should prevent the EU from set out clear guiding principles – a framework as befits the objectives of EU Directives – which would help ensure that these core rights are not ignored or simply seen from the lens of how they help justice actors to determine the facts, innocence, and guilt.

Following a victim-sensitive and safe justice approach, the following recommendations are therefore made:

- 1) There must be a shift in (the understanding of) the objective of these rights to one which addresses both justice needs and victims' needs.
- 2) The EU should set out core objectives for the right to be heard and to give evidence which include:
 - Recognition of victims and their experiences;
 - Empowerment of victims to influence decisions that affect their lives;
 - Recovery of victims through recognition and empowerment, and assistance to develop and understand their own narrative;
 - Enhance the performance of the justice system, to better understand the facts of the case, find the truth, and determine innocence and guilt.

With this in mind, the mere fact that a victim's input into proceedings may not be seen as useful to justice actors is not a reason for victims to be denied these rights.

- 3) Decisions on a victim's right to be heard, to give evidence and to participate should therefore be made primarily on these victim-oriented principles, whilst taking into account wider justice principles. This should be implemented in practice through three fundamental approaches.
 - a) Firstly, on occasions and for decisions critical to victims, in particular where their personal interests are affected, a victim should have the right to be heard, independent of the view or opinion of authorities or the defence. Such a right, should not, however, prejudice defence rights. Specific occasions to consider include the release, plea, sentencing, or any parole proceedings related to the offender, while accepting that further exploration of the pros and cons of hearing victims at each of these stages is necessary.
 - b) In other cases, the presumption should be that, when a victim wishes to be heard, this will be permitted unless there are strong and reasoned grounds to the contrary.
 - c) Measures should be put in place to maximise the ability of victims to present evidence, be heard, and participate. Measures should also maximise the ability of officials to accept victims' requests and to minimise the risk of prejudice to proceedings where officials allow greater participation.

It should be noted that experts felt that all victims should have, at least, the **right to call witnesses and to request the gathering of additional evidence**, since this is fundamental to building a successful

prosecution. This of course overlaps with questions on the role of victims and whether such rights should be limited by a victim's role or should be available to all victims.

Moreover, a number of countries, such as the Netherlands allow victims to make an impact statement on any issue at stake in the criminal proceedings, either orally or in writing.¹³³ This recognises that a crime may impact a victim's life, leaving life-long emotional, psychosocial, physical, and financial scars which should be taken into account within criminal proceedings. It is therefore recommended that the right to make an **impact statement before final sentencing should be considered for European and national legislation.**

Whilst the ability to testify or be heard is essential, conversely, concerns have been raised about imposing an obligation on victims to provide a testimony, in particular in cases where the duty to testify may negatively affect the victim's protection needs, for example a situation of sexual violence that is reported to the police by a third party.¹³⁴ **It is therefore recommended that any such obligations be reviewed.**

5.1.2 Ensuring the provision of evidence in practice

Setting aside how precisely the rights are defined, in practice, victims may be prevented from providing evidence due to:

- **insensitive attitudes of justice officials**, including law enforcement officers and prosecutors, which discourage victim engagement. For example, in the 2019 FRA Study, a victim of rape testified that a police officer asked her whether she had dreamt the rape, even after physical evidence of violent sexual intercourse had already been collected¹³⁵;
- **communication barriers**: the inability to explain themselves (foreign language, age, disability, inhibition due to trauma) which not only acts as a barrier to communication but can also discourage victims from even trying;
- **environmental factors**: the location and timing of the interview, or the circumstances in which evidence, such as medical proof, is collected;
- **fear and lack of agency**: victims may be discouraged due to unfamiliar situations or concerns over having to re-live their trauma. Being subjected to a crime tends to reduce a person's confidence in themselves and their ability to speak up, which can also impact their ability to provide evidence or speak out;
- **intimidation**: external risk factors for victims and witnesses;
- **lack of knowledge about rights**: some victims may simply not know what they are allowed to do and when.

Overall, it can be seen that a combination of personal and circumstantial or environmental factors (for example, if you are traumatised, lacking in confidence, unfamiliar with justice proceedings, and faced by

¹³³ Victim Support Europe & APAV (2019). VOClARE Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 101.

¹³⁴ Victim Support Europe & APAV (2019). VOClARE Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 100.

¹³⁵ European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 73.

professionals who are confident in what they are doing) together with the structure of the proceedings and the behaviour of justice officials, tends to reduce a victim's ability and confidence to speak out or to offer new information or evidence, and insist that it is taken into account.

To minimise these barriers, the following recommendations are made:

- **Training:** To minimise the prevalence of insensitive behaviour, and to reduce traumatisation while giving evidence, all staff coming into contact with victims should, as a minimum, receive **mandatory basic training on effective communication, active listening, and trauma-informed and empathetic approaches.**
- **Support tools for interviews and other exchanges:** Those interviewing victims should also use specialist tools, and/or be supported by a trained psychologist or communications expert, depending on the needs of the victim; for instance, by using anatomical dolls as an aid for child victims. Similarly, the use of facility dogs enhances the ability of victims to communicate and positively impacts a victim's confidence.¹³⁶ The above measures should be additional to the wider communication solutions recommended in the previous chapter, including with respect to translation and interpretation.
- **Victim-sensitive evidence collection:** Environmental factors may be overcome when the **evidence collection process is organised in a way that supports the victim.** Whilst perhaps too detailed for a European Directive, the EU should develop guidance and support Member States in improving their processes and increasing consistency across the EU. Examples of victims-sensitive approaches include:
 - o Facilities where interviews are conducted, or evidence is collected, should offer a reassuring environment;
 - o consideration should be given to the layout of the room, comfortable seating, and the number of people in the room at any time.
 - o Law enforcement officers should allow sufficient time for victims to tell their story, at a time that is convenient for the victim (for instance, keeping in mind the needs of childcare, etc.).
 - o Privacy should be ensured – especially when physical examinations are conducted – the door of the room should be closed and no one should enter, or leave, the room unannounced.

Under the VRD such facilities should already be available for victims who have been identified as vulnerable and needing interviews to be carried out in premises designed or adapted for that purpose. However, as a minimum all victims should be entitled to be interviewed in premises which ensure their privacy, and which are comfortable and safe.

Additional measures for the most vulnerable victims should be in place. For example, a limitation on the number of actors physically present in an interview room. Two-way mirrors could allow for additional actors to see the interview without being present. The individual assessment

¹³⁶ Victim Support Europe & APAV (2019). VOCLARE Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 102; see chapter "Helping Victims Be Safe"

should explicitly recognise vulnerabilities related to communication so as to ensure these are addressed by specific measures.

- **Accompaniment of victims:** Victims may be anxious about being in a police station or prosecutor's office, meeting unknown people who may ask probing questions. Victims may be afraid to re-live their trauma when they tell their story. In addition to ensuring that justice practitioners have been trained in empathy, and compassionate victim-sensitive interview techniques, many victims benefit significantly from being accompanied by a support worker or by a person they trust.

In the following subchapters, the benefits of professional accompaniment and placement of specialist support workers in police stations and prosecutors' offices will be discussed. With respect to threats and violence aimed at stopping victims from providing information,¹³⁷ recommendations are discussed in the chapter on helping victims to be safe.

5.2 Helping victims to be supported

5.2.1 Availability of support

Reporting a crime can be an anxious time for many victims.¹³⁸ They may have never been to a police station before, they may be ashamed about what happened, they may be fearful of police officers. Subsequently, victims can struggle with the interview and investigation process, the very act of retelling their experience can be traumatising. They may struggle to express themselves and to understand what they are told. They may not remember what is to happen next, may feel overwhelmed by their responsibilities, and any trauma experienced may greatly reduce their ability to act in a coherent manner. Victims have many rights they can exercise during proceedings, including those related to participation and the right to be heard; however, they may struggle to exercise them.

In these circumstances, victims need help to cope, they need support to ensure their wellbeing, and they often need support in order to exercise their right to be heard and to participate.

It has been found that support services play an important role in reducing victims' anxiety and fears and ensuring their needs are addressed by justice actors, that their rights are observed and they are treated in a respectful manner.¹³⁹

Under the VRD, victims' support rights cover:

- 1) Accompaniment during first contact
- 2) Access to generic support services throughout proceedings
- 3) Access to specialist services for vulnerable victims

¹³⁷ European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 35-36.

¹³⁸ European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 75.

¹³⁹ In Portuguese only: Gabinetes de Atendimento a Vítimas de Violência de Género (GAV) (2020). Relatório Técnico-Científico Final sobre os GAV Inseridos Nos Tribunais, 20-21.

In accordance with article 3.3 VRD, victims may be accompanied by a person of their choice during their “first contact with a competent authority”, because of the impact of the crime or if the victim requires assistance to understand or to be understood. This right is not, however, established for the rest of proceedings, and accompaniment may be limited if it is deemed contrary to the interests of the victim or if the course of proceedings could be prejudiced.

According to article 8 of the VRD, **all victims of crime have the right to access support services that are confidential and free of charge** before, during and for an appropriate time after criminal proceedings. This right is extended to victims’ families, depending on their needs and the level of harm experienced.

Article 8 further stipulates that all Member States should ensure that generic support is available to all victims of crime and that specialist support is available to particularly vulnerable victims. These services must be **easily accessible and of good quality** whether they are run by the State and/or by NGOs.¹⁴⁰

The following support services should be offered to victims (Article 9 VRD):

- a) information, advice and support relevant to the rights of victims including on their role in criminal proceedings and in preparation for attendance at a 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.

It is worth noting that neither Article 8 nor 9 provide victims with a specific right to support as part of criminal proceedings. In other words, Member States may impose limitations on the way support is offered, in particular whether support service staff can accompany victims or assist victims with respect to proceedings.

In relation to accessing services, Article 8, VRD, also requires Member States to facilitate (though there is no mandatory obligation) referral of victims from the police and justice practitioners to support services.¹⁴¹

5.2.2 Challenges in supporting victims

A wide range of problems have been identified in the provision of support to victims of crime. These relate to:

- Existence of services
- Accessibility and referral to services

¹⁴⁰ Victim Support Europe & APAV (2019). VOciare Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 55-59.

¹⁴¹ *Ibid.*, 29.

- Limitations in the type of assistance offered
- Quality of services
- National co-ordination of services

In many countries, the reality is that victim support organisations don't serve all victims of crime. Each country has different specialist services which ensure certain groups of victims have access to support; however, for many others such help is not available.¹³

Even where support services exist, there are few formally established national referral systems in place to maximise access to those services; a referral system passes a victim's contact information from e.g. the police to victim services which then communicate with victims to offer assistance.

Some authorities consider the provision of information about a service to be the equivalent of referral. When victims are only provided with information, they are less likely to reach out to any support service due to their doubts about the need for support, a lack of understanding of the service's function, their belief that they don't deserve support, or other more general barriers – often deriving from the trauma they suffered which prevents victims from taking action.

Even where referral systems do exist, police officers – who have the discretion to make referrals – may not consistently refer victims to support organisations: they may be too busy, they may not understand or believe in the service or they may not think the victim needs support. Such decisions may be driven by a lack of training or personal contact between officers and support staff which inhibits trust building.

Alternatively, referrals may be locally or personally driven. Victims may be referred in some parts of the country but not in others or the referral mechanism may come to an end if the individual who drove the system leaves without permanently formalising arrangements.

Referral may depend on the police seeking the victim's consent before being able to transfer their contact details to an appropriate support service; however, consent – or lack thereof – may be influenced by how the officer provides the victim with information about the service; this often results in victims not agreeing to referral. The more that justice agencies understand support services, the better they are able to explain what they do and how they can benefit the victim, the more likely victims are to consent to referral.

The consent process, and thus the uptake in support, relies on the skill and enthusiasm of the justice practitioner rather than on the victim's genuine need. The upshot is that there is an overwhelming lack of consistency in referral policies and procedures.¹⁴²

Where consent is a legal basis for data transfer, an opt-out referral system tends to produce the best results for victims. However, in some States it is argued that such an approach is not compliant with EU data protection rules. This variable interpretation at the national level – where some accept opt-outs and others don't – has created numerous misunderstandings and limits the implementation of most effective referral systems.¹⁴³

¹³ Victim Support Europe & APAV (2019). VOciare Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 55-59.

¹⁴² *Ibid.*, 56-57.

¹⁴³ Victim Support Europe & APAV (2019). VOciare Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 57. See also, Victim Support Europe (2021). Victim Support and Data Protection: Some Concerns and Proposed Solutions for Victim Supporters, 3, <https://victim-support.eu/publications/vse-data-protection-paper/>

Even where victims have access to support services, staff are not always able to help them in relation to criminal proceedings. Recent research (2019) carried out by the Fundamental Rights Agency found that a vast number of victims claim to receive no information on the provision of accompaniment by a person they trust during the court trial. Moreover, even when victims are well informed and chose to be accompanied by a victim support worker, these practitioners are often not allowed to stay with the victim during the trial.

In addition to refusing specific individuals, justice agencies may take a broad interpretation of the risk of prejudice exemption established in the Directive, by unnecessarily refusing accompaniment e.g. refusal even when a professional support service is accompanying a victim¹⁴⁴.

It is important to note that in some countries, victims are not allowed support prior to giving testimony, it is argued that this prevents undue influence. However, many countries have developed solutions which allow for support to be provided with staff who are fully trained and who follow procedures that comply with fair trial requirements.

Restrictions may also exist with respect to the nature of support provided. In some countries, support services can help victims prepare for hearings by explaining their rights, what the process will be, arranging pre-trial orientation visits, helping them fill out forms etc., while in other countries some or all of these services may be limited.

5.2.3 Helping victims within criminal proceedings

Understanding the wide-ranging problems in delivering support for different victims in different circumstances across a single country, Victim Support Europe published a report – in 2022 – on the establishment of national comprehensive victim support frameworks¹⁴⁵, which aims to ensure that institutional structures are in place to develop services in a national, coherent, strategic and long-term manner, so that any victim who needs support can access it. The report also aims to ensure that support is co-ordinated to maximise access and choice of services – providing multiple routes to different services in accordance with the needs and wishes of the victim.

While the framework focuses on a number of issues including resilience, victims' social support network and support from wider society e.g. social services, hospitals, the private sector, for the purposes of this paper, we have focused on those aspects of support identified as being the most important for victims in criminal proceedings.

Taking different practices from around Europe, it can be seen that the most effective system is one that combines:

- support provided by professional generic and specialist services, including accompaniment;
- support provided by specialist victims units set up in law enforcement and justice agencies;

¹⁴⁴ *Ibid.*, 22-23.

¹⁴⁵ Victim Support Europe (2022). National Framework for Comprehensive Victim Support, <https://victim-support.eu/publications/national-framework-for-comprehensive-victim-support/>

- support provided by court-based support services.

In the following section, recommendations focus on victims' access to services through effective referral mechanisms, and that the above services are established and have formally recognised roles in criminal proceedings

5.2.3.1 Referral of victims

Direct police referral of victims to support services is highly effective in providing access to support for victims. However, most countries do not have a national system for referral or such systems are locally based or very limited due to misinterpretation of EU Data protection rules.

An effective referral system should maximise access to and uptake of support services through:

- self-referral (a victim contacts a support organisation independently);
- provision of information (a victim receives information on available services), and
- true referral whereby a victim's data is sent to a support organisation which then contacts the victim to offer its services.¹⁴⁶ The first two points should be addressed as part of a communications framework.

With respect to true referral, this requires the transfer of victims' personal data in a manner which must be compliant with EU Data protection rules (GDPR). These require that data is only transferred if there is a legal basis for that transfer and that rules are followed when processing any data.

With this in mind, it is commonly assumed that the victim's consent is required, a complexity that often results in a reduction in service uptake. In its 2020 data protection paper, VSE outlined GDPR-compliant strategies for processing such data given a range of legal bases rather than relying only on victim consent.¹⁴⁷ In addition to consent, data collection and processing can be governed by legitimate interest,¹⁴⁸ or where the provision of victim support is recognised as an essential service, public interest can be invoked as a legal basis.¹⁴⁹

Generally speaking, where a victim's consent is sought, an opt-out process should be adopted as this results in a much higher uptake of services.¹⁵⁰ This means that the police officer explains to a victim that their information will be passed to victim services for follow up contact unless they object. This compares with an opt-in system whereby victims must agree to their data being transferred. It has been repeatedly seen that where support services have the chance to explain their work, rather than the police, victims are more likely to take up the service.

There are a range of reasons why opt-in approaches result in poor uptake, including poor explanations

¹⁴⁶ Victim Support Europe & APAV (2020). Manual of Effective and Secure Referrals of Victims, 7–8, <https://victim-support.eu/publications/manual-of-effective-and-secure-referrals-of-victims/>

¹⁴⁷ European Commission (n.d.). How Should My Consent Be Requested?; https://ec.europa.eu/info/law/law-topic/data-protection/reform/rights-citizens/how-my-personal-data-protected/how-should-my-consent-be-requested_en

¹⁴⁸ Victim Support Europe (2021). Victim Support and Data Protection: Some Concerns and Proposed Solutions for Victim Supporters, 21.

¹⁴⁹ *Ibid.*, 14-15.

¹⁵⁰ See, for instance: Morris Altman (Ed.) (2017). Handbook of Behavioural Economics and Smart Decision-Making. Rational Decision-Making within the Bounds of Reason (Cheltenham: Edward Elgar Publishing), <https://doi.org/10.4337/9781782549598>.

of the service, a natural neurological bias to say no to such requests, the victim believing they don't need or deserve the service, the victim not understanding how the service works or how it will help them etc.¹⁵¹

Given the importance of support services, it is essential to put in place efficient referral mechanisms that help victims to understand and take up services that are genuinely helpful to them. The most effective solution is to use a non-consent legal base. However, where consent is sought, an opt-out system should be followed.

Furthermore, referral should be mandatory: that is, police officers should not have the discretion to decide which victims are referred or not, since they are poorly placed to make such decisions. The referral obligation should also be accompanied by internal guidelines, training and technological solutions for the safe transfer of data. Once data is transferred, the support organisation should be under an obligation to proactively contact victims within an agreed period to explain and offer their services.

Whether one cites legitimate interest, public interest or another justification or framework for the collection and processing of data, it is recommended that data sharing protocols, between the referring and receiving organisations, are established at the national level for reasons of legal certainty and to maximise the protection of the shared data.¹⁵²

To ensure that all victims are referred to good quality support services, the referral mechanism requires a consistent and coordinated approach at the national level. The exact approach will depend on the existing services in each country. However, as a starting point, ideally referrals will be to a single national service able to support all victims. These services may also specialise in supporting different victim groups but in any case, they should have mechanisms in place to further refer victims to relevant service providers.¹⁵³

In some countries, especially where they have several national victim support organisations, police officers may be able to refer victims to specific organisations according to clear and easy to follow rules. However, the system should not result in police officers having to decide between multiple organisations, such a situation tends to result in officers not knowing which organisation to choose and therefore not using the referral system at all.

This question of where to refer victims can be very sensitive, with different service providers potentially operating in competition with each other or feeling they have been excluded access to victims. Therefore, a co-ordinated support framework allows solutions to be agreed in a collaborative way, with the organisation and accessibility of services, and in particular the best interests of all victims, being kept in mind.

Where States introduce a national system of referral, experience has shown that access to services is increased which results in an immediate increase in uptake of those services. As such, the introduction of mandatory referral mechanisms must be implemented alongside increased resource allocation for

¹⁵¹ Victim Support Europe & APAV (2020). Manual of Effective and Secure Referrals of Victims, 9.

¹⁵² *Ibid.*, 21.

¹⁵³ Victim Support Europe et al. (2019). Best Practices in Victims' Support: Referrals, Information, Individual Assessment (VICTORIA): Research and Collection of Best European Practices, 52-69, https://victim-support.eu/wp-content/files_mf/1626336823bestpracticesreportfinal.pdf

the provision of support services.

5.2.3.2 Supporting victims within criminal proceedings

As already mentioned, whilst EU legislation requires that support is accessible before, during and after criminal proceedings, it does not explicitly provide victims with a right to receive support within criminal proceedings. Such support can help victims cope with the traumatising aspects of proceedings – such as providing testimony – and can help them understand the proceedings and their rights, as well as help them to effectively participate and to benefit from their rights.

There are three key ways in which victims should be supported in proceedings:

- Firstly, professional support organisations should be able to assist victims with respect to their rights, understanding of the proceedings and their role whilst helping to reduce the trauma of participating in proceedings, in particular by accompanying them during hearings and other criminal justice activities.
- Secondly, law enforcement and justice actors should provide general assistance and establish specialist victims' units whose role is to assist victims during criminal proceedings. These services should be complementary to and not replace the external professional support services.
- Finally, support services should be set up in courts to provide a range of assistance to victims attending court hearings.

Professional support services can provide assistance to victims during proceedings which greatly enhances their ability to understand proceedings, participate in the process and enforce their rights, raise questions and voice their position or concerns etc.

The 2021 project “With You – Accompaniment of Victims and Witnesses in the Justice System” provides a detailed description of the types of services that should be offered to victims within proceedings.¹⁵⁴ In particular, it points to:

- **Preparing and supporting victims and witnesses while in contact with the justice system.**
Examples: helping complete forms including an initial complaint; providing easy to understand information on victims' rights, practical information on how to exercise their rights and on the services/facilities available to victims; providing court familiarisation visits and explanations of what happens during proceedings; ensuring the victim does not confront the offender in court, or to otherwise prepare the victim for such an encounter; helping victims to exercise certain rights e.g. request return of property, fill out expense forms etc. by explaining how these rights relate to the individual;
- **Support victims and witnesses during hearings, examinations and in direct participation in proceedings.** The duties of victim support workers in these situations can be wide ranging. With a strong knowledge of proceedings, they can help ensure that victims' rights are upheld

¹⁵⁴ APAV (2021). Practical Guide - Accompaniment of Victims and Witnesses in the Justice System, https://apav.pt/publiproj/images/publicacoes/Guide_WithYou_EN.pdf; For more information about WITH YOU project, please visit: <https://apav.pt/publiproj/index.php/104-projeto-withyou>.

e.g. a needs assessment is carried out, victims are treated with respect, they are fully informed of their rights, that they are provided an opportunity to intervene in accordance with procedural rules, that they understand questions posed (e.g. they can ask for questions to be repeated or rephrased), ensure that questions are asked in a manner that does not reinforce trauma or reflect biases and discrimination;

- **Reduce stress and harm by protecting the victim's wellbeing** e.g. by providing emotional support and reassurance, by informing agencies of any concerns or fears, by making sure the interview space is victim friendly and protects e.g. confidentiality, by requesting pauses so victims can compose themselves.

In order for support services to operate effectively within proceedings, their role should be clearly determined in law or by procedural rules, with the general presumption being that the presence of support workers is possible, with exclusion being the exception in clearly articulated and limited circumstances.

This not only ensures that all actors respect and understand their roles, it also helps ensure that the parameters for their actions as well as mechanisms to ensure quality are established. This is particularly important where support workers may intervene in some way during interviews or hearings, since prejudice to proceedings must be avoided.

To ensure this happens, support services must have a recognised role which allows them to offer such services and in particular allows their staff to accompany victims throughout the proceedings - to all interviews, hearings and appointments connected with the ongoing proceedings, if the victim so wishes. This is particularly relevant where victims are to be interviewed or have to provide testimony in court.

Training, tools and engagement with justice actors should include a focus on the parameters of support within criminal proceedings; to build knowledge, skills and also trust between the different actors.

In Portugal, the generic victim support service, APAV, helps victims of crime prepare for trial.¹⁵⁵ Importantly, for certain vulnerable victims a witness protection law requires that an authority must designate a social worker or other professional specifically trained to accompany the witness (a VSW), if deemed necessary.

5.2.3.3 Support by law enforcement and justice officials

Whilst external professional support services are critical for many victims, others may not need such extensive help or may be reluctant to seek it. A safe justice process should ensure multiple support opportunities for victims which operate in a holistic manner. As a starting point, all justice officials, including police officers, judges and prosecutors who meet with victims should have clearly articulated duties of assistance to victims. They should receive training and tools to support these activities.

In addition, States increasingly recognise the value of having specialist victims' units within police stations and prosecutors' offices¹⁵⁶. These units employ staff who either have specialist training to work

¹⁵⁵ Infovictims, available at: https://www.infovictimas.pt/pt_en/003_Proc_crime/003_Proc_Crime.html#012

¹⁵⁶ Victim Support Europe & APAV (2019). VOIARE Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 95-

with victims or have support or psycho-therapeutic backgrounds. Their primary role is to assist victims in their engagement with support services, to ensure they are aware of and understand their rights and to connect them with other appropriate services. Whilst they may offer basic emotional support, this doesn't tend to be the primary focus of their work. However, some services are expanding their specialisms to improve this capability, understanding how addressing emotional trauma can facilitate interviewing and evidence provision.

Facility Dogs in the French Prosecution Service

In France, victim support services can be requested by the prosecutor to support a victim during criminal proceedings¹⁵⁷. In that case, there is clear mandate given by the prosecutor's office to victim support services to have a facility dog present in any space where victims need to receive support from the dog. This has proved to be an effective tool to ensure that dogs are accepted in courtrooms, police stations or other spaces.

Facility dogs are highly trained and specially chosen dogs who assist victims of crime during criminal proceedings. Research shows that the presence of these animals can help decrease a person's heart rate and blood pressure, and improve their response to stress and promote overall well-being. Worldwide projects, including pilot studies in Europe, show that victims feel, and are able to verbalise, better when they can interact with a specially trained 'facility dog' at various stages of criminal trials or even when making a complaint to the police.

In Belgium, police stations assign **designated victim care workers** to work with individual victims. After criminal proceedings have been initiated, and upon referral by the judge, this support role is taken over by court-based justice assistants. The justice assistants provide victims with emotional and practical help, to ensure the justice department and its proceedings are accessible to everyone.¹⁵⁸

Support offices for victims of domestic and gender-based violence have also recently been established within the Portuguese Public Prosecutor's office. In an evaluation report, court officials have noticed that victims seemed calmer and better prepared for the criminal proceedings and that during court hearings, victims have offered better quality testimony, and have felt more empowered.¹⁵⁹ Undoubtedly, the construction of **specialist victims' units within police stations and court offices** not only benefits victims but the entire justice system, with victims being better able to support the investigation process.

5.2.3.4 Court based-assistance

Some victims of crime may not have managed to contact support services before attending their court hearing whilst others may only feel the need for support on arriving at the court building. Moreover, even where they have availed themselves of such assistance, limited resources may prevent those

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157 Article 41 criminal procedure code https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000038311420#:~:text=Version%20en%20vigueur%20depuis%20le%2024%20d%C3%A9cembre%202021,-Modif%C3%A9%20par%20LOI&text=Le%20procureur%20de%20la%20R%C3%A9publique.le%20ressort%20de%20son%20tribunal.

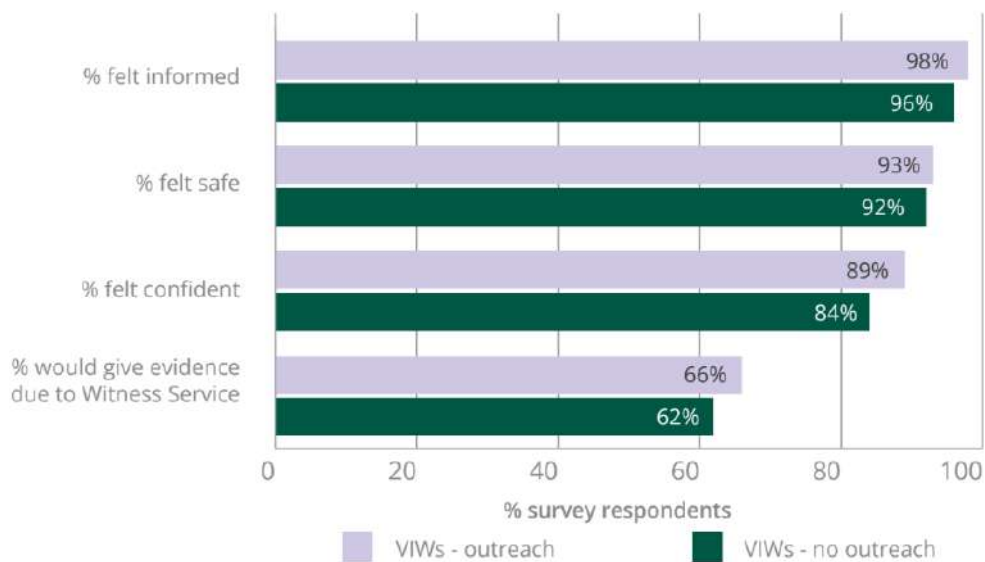
158 Kurt De Backer (2019). VOciare National Report Belgium, <https://victim-support.eu/publications/vociare-national-report-belgium-2/>

159 In Portuguese only: Gabinetes de Atendimento a Vítimas de Violência de Género (GAV) (2020). Relatório Técnico-Científico Final sobre os GAV Inseridos Nos Tribunais, 20-21.

organisations from offering support throughout all proceedings and hearings. This is why the provision of court-based support can be so important for a range of victims.

Surveys of victims and witnesses who have used such services indicate a number of benefits including being better informed, feeling safer and more confident, and being better prepared to give evidence.¹⁶⁰ Ultimately, besides reducing stresses and traumas, court based support increases the number of victims and witnesses who attend trials, with those trials tending to go ahead as planned more often where such services are used.

Witness Experience Survey for VIWs October 2016 – September 2017



Victim and Witness Impact Survey, England and Wales

Some court-based support services may provide limited assistance to victims (and witnesses who may experience similar fears to victims and have been shown to benefit from court based assistance¹⁶¹) during their attendance at hearings. For example, by providing signposting services, ensuring basic emotional support or explanations of what to do and where to go.

However, many offer more extensive assistance, such as targeted advice and setting realistic expectations as to what victims and witnesses should expect from the court hearings. They may also provide orientation visits, offering victims and witnesses the opportunity to visit the court ahead of the hearing.

A court-based support-desk offers victims' services similar to those offered by a professional who might accompany the victim throughout the proceedings. However, its delivery methods are different; support is permanently available in the court building and is normally also available to witnesses.

5.2.3.5 Co-ordinated one-stop shops

Whilst professional support services, justice and law enforcement services, and court based services will capture the needs of a large proportion of the victim population, some groups require more enhanced support through a holistic, multi-disciplinary and inter-agency approach. This is particularly

¹⁶⁰ Citizens Advice (2018). England and Wales Witness Service Impact Report: the Impact of the Witness Service, 5, <https://drive.google.com/file/d/1G67r-oDg4yB-TONPqP8oAN8-utFowLZ1/view>

¹⁶¹ Ibid, 6-10

the case for child abuse victims, victims of domestic violence and victims of large-scale terrorist attacks (though this is not an exhaustive list). Some States have set up a range of multi-agency solutions including Barnahus for child victims¹⁶², care centres for victims of sexual violence,¹⁶³ Multi-Agency Risk Assessment Centres for high-risk victims of domestic violence, and Justice Family Houses for victims of domestic violence¹⁶⁴.

A one-stop shop approach ensures cooperation by a variety of legal, practical, medical and psychosocial advice and support services. The centralisation of services improves inter-service coordination and collaboration, which not only improves efficiency but also reduces repetition and gaps, and enables a better connection between victims' needs and service delivery.

In addition, it eliminates the need for victims to contact, and visit, different organisations to receive various forms of support, which in turn reduces demands and expectations on other justice agencies, since many questions can be answered by the support service. Overall, these models tend to be most relevant where the nature of the crime, or the situation of a particular victim group requires interventions by a range of different services covering multiple aspects of a victim's life.

Justice Family Houses, Belgium

The Family Justice Center is a form of cooperation between services that work with families where there is violence. It houses several services in one place. Permanent partners are the police, the public prosecutor's office, the Center for General Welfare Work (CAW), youth protection, OCMW, etc. The core of the concept is to offer victims a better, coordinated service to stop violence and prevent further escalation.

The Center tries to offer a number of services and projects on site for clients. For example, peer support groups, resilience training, legal advice. Families come to 'The Center' after registration by a professional. For example, a social worker, doctor or police inspector who is confronted with the situation.

Setting-up multi-disciplinary victim assistance centres, to better inform and support victims and their families, is a common practice following a terrorist attack.¹⁶⁵ Recently, the National Mass Violence Victimization Resource Centre in South Carolina (USA) published a guide for establishing and running comprehensive victim assistance centres for mass victimisation or terrorist trials.

This guide provides an important overview of the various services, in the context of criminal proceedings that should be offered to victims, and how the different agencies and authorities should work together to best deliver them.¹⁶⁶ The mutual commitment of both governmental and civic agencies is required to

162 For more information, see for instance: <https://www.barnahus.eu/en/about-barnahus/>; The Council of the Baltic Sea States Secretariat (2021) In Need of Targeted Support: The role of Barnahus in identification and investigation of child trafficking and the support and assistance provided to victims, <https://childrenatrisk.cbss.org/publications/in-need-of-targeted-support/>

163 Zorgcentra na seksueel geweld: wat, voor wie, & waar?, accessed on 7 November 2022, <https://www.seksueelgeweld.be/zorgcentra-na-seksueel-geweld-wat-voor-wie-waar>

164 <https://fjc-veiligthuis.be/wat-doen-wij/>

165 EU Centre of Expertise for Victim of Terrorism (2021). EU Handbook on Victims of Terrorism, https://ec.europa.eu/info/sites/default/files/law/eu_handbook_on_victims_of_terrorism_december_2021_en.pdf

166 Alyssa A. Rheingold, Clarissa W. Whaley, Anne Seymour & Aurelia Sands Belle (2022). Planning and Implementation Guide for Comprehensive, Coordinated Victim Assistance for Mass Violence Incident Trials (Charleston: National Mass Violence Victimization Resource Center), <https://ovc.ojp.gov/library/publications/planning-and-implementation-guide-comprehensive-coordinated-victim-assistance>

ensure these centres are implemented collaboratively; numerous other factors are also necessary for them to be successful, including inter-organisational trust and clear co-ordination processes.

Given the huge impact such multi-agency centres can have, they should be recognised under national and European victims laws, and their set up should be planned as part of a broader strategy or framework for national victim support.

Combining these different types of support services is crucial to helping victims exercise their rights and safely participate in criminal proceedings. It reflects the complexity of the field in terms of the wide range of victims, the types of assistance they may need at different points of proceedings, and the various access routes to support. Importantly, the combination of these services will reduce potential gaps in support and will enable a State to provide support in the most efficient and appropriate manner, in accordance with victims' needs and circumstances.

5.3 Enabling victims' participation in proceedings

Article 1 of the VRD sets out a series of objectives which include ensuring that victims of crime are able to participate in criminal proceedings. It doesn't elaborate further on what this means, though many of the rights relating to e.g. information, protection, coverage of expenses, etc., support the ability of victims to participate.

5.3.1 Right to legal aid

Whilst the earlier recommendations focus on specific participatory rights, the reality for many victims is that on their own, they will struggle to report a crime, to provide evidence, to continue through and to understand proceedings, and to exercise their rights.

Those suffering from the most serious crimes, those who are highly traumatised and most vulnerable or in the most precarious situations, will find their self-agency and autonomy severely limited. This is why direct personal assistance, in the form of legal help and victim support, are essential, indispensable elements of safe justice. Without such support, many victims will never report the crime, will struggle to cope with proceedings, suffering further trauma as a result, and will be severely limited in their ability to actively participate.

Article 13 of the VRD sets out that victims must have access to legal aid. However, this is only available to victims who have the status of parties to the criminal proceedings. Moreover, the procedures and conditions for accessing this right are "determined by national law".

Whilst the EU Directive and EU Commission guidance documents don't provide explanations related to legal support or legal aid, the 2016 Directive on Legal Aid for Suspects and Accused persons in criminal proceedings¹⁶⁷ defines legal aid as:

"[...] funding by a Member State of the assistance of a lawyer, enabling the exercise of the right of access to a lawyer."

This definition is drafted to directly support EU Directive 2013/48/EU on Access to Lawyer which perhaps

¹⁶⁷ Directive (EU) 2016/1919 of the European Parliament and of The Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings OJ L 297, 4.11.2016, 1–8.

explains its somewhat limited definition.

With respect to civil and administrative proceedings, the Council of Europe uses a broader definition: “[...] *the provision of legal advice, assistance and/or representation by a legal aid provider at either no cost or subject to a financial contribution.*”¹⁶⁸

Notably it states that ‘legal aid is only one way to guarantee access to justice’.

For the purposes of this report, we will follow the Council of Europe approach. Importantly, the two terms – legal advice and legal representation – reflect a difference in service levels.

Legal advice, on the one hand, encompasses information provided by a professional on the rights of victims within proceedings and their role in such proceedings. This form of legal support is reflected in article 9.1 a) of the VRD and should be considered the minimum level of legal aid available, free of charge, to victims of crime across all Member States; access to such advice allows victims to better enjoy their rights.¹⁶⁹ A more enhanced form of this right and assistance is where it is provided by a legally qualified lawyer.

On the other hand, with **legal representation**, victims are provided a qualified lawyer who has the power of attorney to represent their interests during the proceedings.¹⁷⁰ The access conditions and procedures for this right are almost always stipulated in national law.¹⁷¹ In most Member States, access to free legal representation will depend on the type of crime and/or the particular circumstances of the victim. This usually means restrictions to more serious crimes or to persons with limited financial means.

Pro Bono Legal Services

According to the VOCIARE report¹⁷²

“In all Member States civil society makes different forms of free legal aid available to victims with little or no formality. Specialist organisations may offer even very complex legal support and take up high level litigation involvement in some cases, including strategic litigation. Often victim support organisations make this type of support possible by pro bono work of qualified lawyers.

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

5.3.1.1 Challenges in accessing legal support

In the 2019 FRA study, practitioners often referred to the eligibility criteria for legal aid as being extremely restrictive, affecting a victim’s enjoyment of this right in practice.¹⁷³

¹⁶⁸ Council of Europe. Legal Aid: Efficiency and effectiveness of legal aid schemes in the areas of civil and administrative law, accessed on 31 January 2023, <https://www.coe.int/en/web/cdcj/activities/free-legal-aid>.

¹⁶⁹ Victim Support Europe & APAV (2019). VOCIARE Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 109.

¹⁷⁰ *Ibid*, 109.

¹⁷¹ See also introduction to this chapter.

¹⁷² Vociare Synthesis report, P111.

¹⁷³ European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II

Even when victims fulfil the appropriate access conditions, the legal aid system may still prevent victims from being allocated a lawyer (for instance, because the pool of qualified lawyers is too small; lawyers will be paid much more for their day-to-day work by their fee-paying clients), or it prevents victims from receiving quality legal representation.

Several victims reported that they did not receive quality free legal representation, even though they met the eligibility criteria. Qualified lawyers told them that the remuneration for pro bono work was too low to provide a quality service.¹⁷⁴

It should be noted that a lack of access to legal representation by victims, who are not party to proceedings, may also impact the enjoyment of their other rights. As an example, in some Member States, only the victim's legal representative can request access to their case file, which is important if victims wish to gain insight into the case and its progress.¹⁷⁵ As such, victims, who do not have a legal representative, may be unable to receive updates on their case.

Furthermore, over 70% of victim interviewees in the 2019 FRA study indicated that they would have liked to receive more legal advice. **Because of the lack of information on their rights and on how to enjoy these rights, victims seem more discontent in countries where they have broader participatory rights**, including the right to become party to the criminal proceedings.¹⁷⁶

5.3.1.2 Helping victims to access legal support

As with a number of issues, legal support does not confer the right to access legal aid, but rather it is part of a system to maximise the ability of victims to participate and access justice.

In other words, whilst one part of the solution may be legal aid, in its formal sense, it should be coupled with e.g. government efforts to promote pro bono legal services for victims, funding of victim support services, which also offer legal advice and assistance, and the development of technical self-guidance tools for use by victims, where appropriate.

With respect to legal aid itself, as currently prescribed by the EU Victims Directive, Member States are only required to provide access to legal aid for victims with the status of parties to proceedings. This is a significant limitation, which – under national law – even excludes legal aid to victims with legal participatory rights, which may be difficult or impossible to properly exercise without the assistance of a lawyer.

The VRD establishes certain legal rights, such as the opportunity to challenge a decision to not prosecute, which require legal assistance, especially considering the challenge is against the government's own prosecution service.

As a starting point, access to legal aid should be broadened to at least situations **where it is essential**

(Luxembourg: Publications Office of the European Union), 65.

¹⁷⁴ *Ibid*, 65.

¹⁷⁵ *Ibid*, 60-61.

¹⁷⁶ European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 54-55.

for victims to fully enjoy their participatory rights, which include, as a minimum, any procedures that are legal in nature, such as a review of a decision not to prosecute. In addition, thought should be given whether to provide full access to legal aid for **all victims of serious crimes, which are likely to result in complex proceedings**.

Whilst it is recognised that criteria to access legal aid are necessary, national authorities should ensure that criteria which restrict access do not prevent victims from enjoying their full participatory rights throughout criminal proceedings.

Following the approach of the Council of Europe Guidelines, when a victim is not eligible for legal aid but cannot afford to pay for the legal services of a private lawyer, Member States should inform him or her about available alternatives (for example, pro bono legal services and legal clinics). They should also incorporate flexibility into their systems to waive means testing whenever justified.¹⁷⁷

It is recognised that further research is required to establish such a minimum standard at the EU level, keeping in mind the various legal systems and resource constraints at the national level. When such a system is created, free legal representation should be organised by compiling a pool of qualified lawyers, who act on a voluntary basis or as a requirement of their national bar association membership. The provision of this service by civil society organisations, or in close cooperation with these organisations, is also recommended.

When access to free legal representation does not restrict victims from fully enjoying their participatory rights, focus should be laid on improving the victim's access to legal aid and legal advice. This can be achieved by **setting up permanent court-based support services and the recognition of accompaniment during proceedings as an autonomous right**.¹⁷⁸

It is our understanding that this could lead to a lesser reliance on qualified lawyers providing legal advice, resulting in budgetary improvements and the creation of synergies. In the Netherlands, Slachtofferhulp, the Dutch victim support service, provides – when mandated – accompaniment, which includes legal support, for victims during the criminal justice process.¹⁷⁹ However, more research, including the collection of qualitative data from victims who have used professional accompaniment services, is required before a comprehensive cost-benefit analysis can be carried out.

5.3.2 Right to reimbursement of expenses: Addressing victims' costs due to criminal proceedings

Victims can face a number of costs both in exercising their rights as well as in participating in proceedings more generally. For cross-border victims these expenses may be even higher.

Whilst not an exhaustive list, victims' costs can broadly be split between those relating to the attendance of interviews, hearings etc. and those relating to enabling participation or exercising of rights. With

¹⁷⁷ Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law, CM(2021)36-add2final, 31 March 2021, https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a1a347

¹⁷⁸ See above.

¹⁷⁹ For more information, you can visit the website of Slachtofferhulp: <https://www.slachtofferhulp.nl/strafproces/aangifte-tot-straftrechtshulp/>

respect to the former, this can include travel and accommodation expenses, and loss of income. For the latter, this can include legal expenses, payment for translation and interpretation services when they are not provided by the State, payment for administrative documents and certificates etc. For the purposes of this section, we focus only on the costs of attendance as legal assistance and translation/interpretation expenses have been covered in their respective chapters.

According to article 14 of the VRD, victims participating in criminal proceedings are entitled to reimbursement for any expenses linked to their active participation, depending on their role within the criminal justice system. The process for this reimbursement is “determined by national law”.

The term “expenses”, in article 14 of the VRD, may be interpreted by States either restrictively, meaning e.g. only travel costs to and from the court building, or more broadly, which could include reimbursement of loss of earnings and payment for psychosocial assistance see e.g. Spain, Belgium.

However, under recital 47 of the VRD it is clear that States need only reimburse necessary expenses occurring when the victim is obliged or requested by the competent authorities to be present and to actively participate in the criminal proceedings. Article 47 also excludes any requirement to cover legal fees.

5.3.2.1 Challenges for victims in covering costs of proceedings

A detailed analysis across all EU States of the extent to which victims’ costs are reimbursed was not identified. However, some of the main challenges victims experience include:

- Some States take a restrictive approach; thus, many costs are not covered, specifically when victims wish to attend the trials but are not participating;
- Restrictions may extend to situations where victims have a participation right, but not an obligation e.g. victims may have the right to make a statement but the prosecution does not require or call on them to do so. Their participation may not be covered as a result;
- The amounts paid may be limited with respect to victims’ income levels. For cross-border victims, limits may be problematic as they incur high travel costs and have accommodation requirements. Where loss of earnings are covered, limits may not reflect the cost of living differences between countries;
- The procedures for applying for reimbursement can be complicated or confusing, and may be subject to burdensome evidentiary requirements and tight deadlines;
- Payments may be delayed or only received after the cost has been incurred by the victim. This may exclude some victims, who cannot afford to make the payment themselves, from participating in proceedings;
- Employers may impose financial and non-financial barriers to attending hearings e.g. victims may have to use their leave allocation, or employers may simply refuse permission for time-off
- Lack of clear guidance can lead to decisions on reimbursement being taken on a case-by-case basis, which creates unnecessary uncertainty for victims.

5.3.2.2 Helping cover victims' costs of participating in proceedings

There are numerous arguments for limitations on expenses relating to budgetary issues, questions over why a State should pay for a victim who is 'merely' interested in proceedings, the need to prevent fraud or misuse of the system, the operation of wider governmental systems of reimbursement which require a standardisation of approaches to achieve efficiency etc.

However, in line with the principles of Safe Justice, a victim's financial situation should not negatively impact their ability to participate in court hearings. Exposure to unplanned costs for participating in proceedings should not lead to secondary victimisation, and negatively affect the victim's **wellbeing**.¹⁸⁰ The starting point should be to determine actions to minimise the harm and costs of the crime and to address victims' needs. In this sense, expenses are a subset of the wider question of enabling participation. As such, some solutions may be resolved through payment of expenses, whilst others may be e.g. through the provision of free of charge services such as legal assistance, support and interpretation and translation. Additionally, each victim's personal circumstances should be taken into account, allowing for a more individualised approach.

Based on this and existing Member States' practices the following recommendations are proposed:

- The EU should develop a minimum list of expenses to be covered by all Member States, as well as recommendations for additional lists. As a starting point, States already cover victims' travel costs; that is travel to interviews and hearings and other obligations e.g. to attend a medical examination. The default position should be to fully cover such costs, though parameters may be required to prevent misuse e.g. only economy class travel should be covered. In addition, given that the loss of income can act as a major barrier to participation, and taking into account that 14 States already cover such costs, this should be extended to all Member States.
- Where victims wish to attend a hearing or meeting to exercise their right to participate, but their attendance is not an obligation e.g. making an impact statement, costs for attendance should be reimbursed.
- Flexibility of the reimbursement system: some level of discretionary payments should be possible for exceptional circumstances, where attendance would be of particular importance to victims e.g. to cover specific or particularly important moments in a hearing such as the testimony of the accused. Flexibility should also address other specific circumstances e.g. where maximum limits may be imposed but would prevent a victim from attending even by using the cheapest travel option.
- For attendance for other reasons, States should explore options to facilitate access e.g. public transport vouchers, use of audio-visual technologies to support online attendance.
- Advance payment: Member States should establish an advance payment system (see e.g. France, Ireland, Finland) in case of financial hardship. This would allow for payment before the cost is incurred.
- The EU should identify best practices in simplifying reimbursement procedures and develop

¹⁸⁰ Victim Support Europe & APAV (2019). VOciare Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 113.

guidance for Member States.

5.3.3 Right to return of property

Article 15 of the VRD states that any recoverable property seized in the course of criminal proceedings should be returned to victims without delay, when holding this property is no longer required for the purposes of the proceedings. The article further states that the conditions and processes for the return of property should be “determined by national law”.

In practice, victims encounter difficulties in reclaiming their personal effects. These problems arise for one of the following reasons:

- (i) difficulties in establishing ownership of the property;
- (ii) deadlines for claiming the return of property;
- (iii) lack of sensitivity by the authorities in returning the property;
- (iv) systematic delays in returning the property before the end of the criminal proceedings.¹⁸¹

Given the sentimental and emotional value held by personal effects, we suggest that common minimum standards should be established at the EU level, specifically “when” and “how” personal effects should be returned.

The immediate return of personal effects, which are not essential to the investigation, should be facilitated. For instance, a bike is stolen from a child, consideration should be given as to whether holding the bike itself is essential to the proceedings or whether a photograph would suffice. We recommend that clear logical protocols for returning seized personal effects are established at the national level. Such protocols should foresee transparent communication with victims and victims’ families concerning the reasons as to why property is withheld. This communication will manage the victims’ expectations, which may lead to a reduction in further harm. If personal effects are retained by the authorities, protocols should ensure that justice officials conduct regular reviews on their retention as evidence. Additionally, to overcome any behavioural bias, judicial officials in charge of returning personal property should receive training on victim-sensitive approaches and practices.

All property should be returned to its owners in a respectful manner. Personal effects should be properly tagged and stored from the moment they are seized by law enforcement officers. When the ownership of goods cannot be immediately established, officers should use the investigative tools at their disposal to ensure that the owner of the goods can be found. As appropriate, the victim may be involved in this process.

Furthermore, consideration should be given to the state in which the property is returned; it may be appropriate that – after certain crimes – personal effects are cleaned and packaged to mitigate further trauma. Cultural and religious sensitivities should be also considered, especially for any cross-border victims. It is therefore recommended that victims and victims’ families are consulted as to how the

¹⁸¹ Victim Support Europe & APAV (2019). VOciare Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 116-118.

property should be returned, cleaned or otherwise delivered.

Finally, the return of personal items should be coordinated with victim support services, in case victims or victims' families experience revictimisation. For instance, a victim support worker may be present when the personal effect is returned to the victim, or internal protocols may ensure that the justice official shares the victim's contact details – if the victim consents – with a victim support service, which will contact the victim after the return of their personal effects. If the property is returned by mail, a victim support information pamphlet may be included in the package.

5.3.4 Availability of remedies against decisions to not prosecute

Article 11 of the VRD establishes the right of victims to review a decision not to prosecute; the procedural rules for such a review are determined by national law. Member States must ensure that victims are notified, without unnecessary delay, of their right to review. Additionally, they should receive sufficient information to decide whether to request a review of any decision not to prosecute upon request.

The VRD establishes two important limitations to this right.

- Firstly, availability is dependent on a victim's role in the relevant criminal justice system. This indicates that some victims, if for example they only have the status of witness, or if they choose not to pursue a civil claim, will not be able to seek a review.
- As a consequence of this limitation, a second restriction is established. When, before a decision on prosecution is made, the role of the victim is not determined, only victims of serious crimes have the right to a review.

The right to review was established to support the rule of law and to identify and adjudicate against those guilty of committing crimes. The right recognises that, however well trained and professional individuals are, mistakes can be made and abuse of the system may occur: information may be missed or ignored; officials may be overwhelmed by work and miss the importance of specific evidence; corruption or personal biases may unduly influence decisions, etc.

Whilst such cases may be rare, the right aims to minimise these risks whilst considering the victim's personal interest, and wider safe justice objectives. Ultimately, it does not usurp the prosecutor's decision but, in appropriate cases, introduces another layer of checks and balances overseen by a second prosecutor or a judge. Given the importance of justice in free, democratic societies, reliant on the rule of law, the significance of this right should not be underestimated.

Examination of three key questions is helpful in this respect:

- 1) Is the right of such a fundamental nature that it should be applicable to all victims irrespective of their role?
- 2) Are there any risks to the operation of criminal proceedings, particularly where victims have different roles, that would require the right to be limited to certain victims?
- 3) What measures are necessary to maximise the ability of victims to exercise the right, where

they have it?

With respect to question one, case law has consistently demonstrated that if victims did not have this right, leaving the decision not to prosecute in place, some criminals would have been able to evade justice. Such decisions have been overturned when challenged and subsequent trials result in a guilty verdict. Whilst such cases are limited, this right is as essential to justice as the presumption of innocence, reducing the likelihood of victims suffering injustice.

As for the second question, it is not clear how allowing all victims to exercise this right could risk either the workings of the justice system or the role of the victim; it is unclear as to why the role of the victim should be relevant to the assignment of the right.

The initial registration of complaint aims to instigate a formal investigation – in line with the fundamental right to a remedy. It is therefore logical that the right to review is attached to the basic right to submit a complaint. This contrasts with the different roles allocated to victims, which tend to focus on the way in which victims can influence the proceedings. As most other rights accrue from the continuation of criminal proceedings, the denial of such proceedings can deny victims other rights. It seems, therefore, that the right to review should be an inherent right for **all victims** who have submitted a formal complaint, with additional roles and rights flowing from this.

Therefore, and taking into account – as the FRA points out – that “for victims of violent crime Article 11 of the directive is to be read in the light of Article 47 of the Charter. That grants victims of violence the right to an effective investigation capable of leading to the identification of the offender(s), and fair trial rights in the proceedings.”¹⁸² It is recommended that:

- **unless clear and overriding evidence is provided that demonstrates damage would be caused if all victims had the right to seek a review of the decision to not prosecute, this right should be available to all victims.**

With respect to the third question, a number of barriers exist to prevent victims from exercising this right:

- **strict time limits** exist as to when a review request must be submitted in some States. Such limitations can be very difficult for victims to comply with. Firstly, they must receive the decision and an adequate explanation of its contents; then they must then consider its validity, and understand whether there is a legal basis to pursue a review. Victims must then either indicate their interest to seek a review, or submit a legal basis and evidence for seeking the review. If a victim has no lawyer, this can be extremely difficult; even with a lawyer, time limits may not take into account the time it takes for the lawyer to submit a request. For cross-border victims, meeting these time limits is even more difficult.
- **insufficient explanation:** in some cases, victims are not given sufficient information as to why a decision to not prosecute was made. This inhibits their ability to determine whether they have valid reasons to seek a review. For example, if the prosecution merely writes that there is insufficient evidence for a successful prosecution, victims will not know what evidence was

¹⁸² European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 78.

taken into account; victims may be able to provide additional, relevant information which could overturn a decision not to prosecute.

- **complexity of the application:** In some countries standardised templates written in legal jargon make it difficult for victims to understand how to submit an application.¹⁸³ In addition, numerous requirements may be introduced which makes the process complex and burdensome.

The EU FRA report¹⁸⁴ gave the following example:

“Practitioners interviewed in Germany were particularly concerned that jurisprudence is placing increasing restrictions on victims’ means of challenging a decision by the public prosecutor to discontinue the proceedings.

The complaint procedure has two steps: a complaint to the attorney general, followed by a second complaint to the higher regional court. It is almost inaccessible, not least because of the extensive formalities required to file such complaints.”

- **victim’s lack of knowledge and expertise:** the right to review is a complex legal right which pits victims against the position of professional government lawyers and the entire prosecution service. In such a situation, it is very unlikely that a victim working alone will have sufficient knowledge and expertise to pursue their claim.
- **lack of access to legal aid:** the importance of legal assistance or representation in pursuing a review is highlighted when victims cannot access legal aid and cannot afford to pay for a lawyer and thus their ability to seek a review is impeded.

With these barriers in mind, the following recommendations are made:

Addressing time periods for submitting applications

- **Sufficient time** should be allowed between a notice of a decision not to prosecute and the deadline for submitting a request to seek a reasoned review. This should be determined in consultation with practitioners and victims’ lawyers, to consider the needs of victims as well as wider justice principles;
- **An extension to the deadline** for submitting a request to review should be possible, especially when victims require translation and interpretation services. However, extensions should be possible for reasonably justified requests;

Addressing communication of a decision

- Any communication regarding a decision not to prosecute should use **simple and understandable language**, avoiding as far as possible legal jargon;

¹⁸³ Victim Support Europe & APAV (2019). VOCLARE Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 104-105.

¹⁸⁴ European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 79.

- The communication should include **sufficient information on the reasons** for the decision to enable victims to determine whether they should seek a review and on what grounds. A system should be established that **enables victims to discuss the decision with the prosecution**, to ensure the victim's understanding of the decision and any review they may wish to seek. This is likely to help eliminate unfounded applications.

Enabling victims to submit an application

- **Guidance, tools and other solutions**, which help victims submit an application, should be developed and made available. Aside from formal legal aid, informal legal support e.g. through victims support services should be accessible to victims;
- Legal aid should be available to victims to help them determine whether there is the need to apply for a review and to enable victims to pursue a review of the decision before any adjudicating body.

6. HELPING VICTIMS ACHIEVE RESTORATION

The impact of crime is wide ranging and can include significant emotional and psychological harm, loss of power and belief in a safe world. It can also have extensive financial implications whether resulting directly from the crime e.g. theft or vandalism, or indirectly through costs accruing from it e.g. healthcare, increased security, loss of income.

This chapter examines the financial restoration of victims, reflects on the restoration of violations of victims' rights during formal justice processes, and explores alternatives to formal justice processes which may be better placed to address wider restoration goals. Whilst many different approaches can be examined, the focus here is on **compensation to victims, redress for violations of victims' rights and restorative justice**.

It is worth noting that the original objectives of compensation, whether provided by offender or State, were wider reaching than solely financial transactions. Non-pecuniary forms of compensation, such as an apology or carrying out services for the victim, were also possible outcomes of a compensation process – the objective being to financially restore victims as far as possible to their position before the crime.

Modern theories of State compensation reflect that it can reinstate victims financially and be used to recognise the victim and their suffering. This can be why some compensation systems e.g. Sweden, make relatively low payments and focus more on process; much of the financial harm experienced by victims in Sweden are addressed through other social welfare services.

With respect to formal justice systems, their primary goal is to identify and punish the perpetrator. The rules and procedures established to ensure this happens, while minimising the risk of mistakes, do not sufficiently consider the victim's position, including the redress of violations of victims' rights in the course of the criminal proceedings. This has resulted in processes which are not necessarily designed to achieve wider restoration goals, such as helping the victim to:

- know the full truth;
- understand what happened and why the perpetrator acted as they did; or
- receive some form of recognition or acknowledgment from the perpetrator.

Processes such as restorative justice offer victims and perpetrators alternatives to formal justice, the aim of the process itself is restoration rather than punishment. It is argued that such a process can fill important gaps in the formal justice system whilst also recognising its limitations.

6.1 Compensation for victims of crime

Societies have adopted forms of compensation from as far back as the Assyrian Code (ca. 1067 B.C.).¹⁸⁵ In the European Union, victims' compensation rights are enshrined in the 2012 Directive, establishing minimum standards on the rights, support, and protection of victims of crime¹⁸⁶ which covers offender compensation. The 2004 Directive relating to compensation to crime victims¹⁸⁷ (herein referred to as the '2004 Compensation Directive') establishes obligations with respect to State compensation. Together offender and state compensation should be seen as a single system along with other forms of reparation.

The above legislation, amongst other sources, describes compensation as a form of reparative justice serving two aims:

Firstly, it fulfils a victim's need for recognition; acting as a symbol of the State's acknowledgment of not only the occurrence of a crime, but also of its effect on the victim.

Secondly, compensation plays a reparative and restitutive role; redressing the wrong which has been done and placing the victim in a situation which resembles (as closely as possible) that which they experienced before the crime. This reparative function includes financially compensating the victim for damages, such as loss of earnings and other expenses caused by the crime and its ensuing consequences.

For victims of crime, compensation alone is not enough to redress the effects of crime, but it can be essential. **Compensation offers official acknowledgment and recognition of the victim's suffering, and seeks to hold the author of the crime responsible.** If a State has failed to prevent a crime, compensation orders against offenders and State compensation, may renew one's faith in the justice system.

6.1.1 Decision on offender compensation

According to Article 16 of the VRD, Member States should ensure that victims are entitled to obtain a decision on compensation by the offender during criminal proceedings. This decision should be made within a reasonable time. However, the VRD provides an exception where national law provides for such a decision to be made in other legal proceedings e.g. civil proceedings. In addition, Member States are required to promote measures to encourage offenders to provide adequate compensation to victims.

Benefits of Offender Compensation during Criminal Proceedings

¹⁸⁵ Morris Jastrow (1921). An Assyrian Law Code. *Journal of the American Oriental Society*, 41, no. 1, doi:10.2307/593702.

¹⁸⁶ Victims' Rights Directive.

¹⁸⁷ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L 261/15, 06.08.2004, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0080>.

Depending on the way the right is implemented, benefits can be significant, including:

- no court fees;
- possibility to pursue multiple interests in a single legal procedure – thus reducing burdens and secondary victimisation;
- speedier decisions;
- greater support and protection in criminal versus civil proceedings;
- removal or reduction in costs;
- lower evidentiary standard;
- state enforcement.

Fundamentally, this means that the burden on victims can be decreased thus supporting their recovery and helping to reduce secondary victimisation.

Nevertheless, based on the VOciare Synthesis Report¹⁸⁸ and the Milquet Report¹⁸⁹, a number of problems may impede victims' access to offender compensation:

- 1) The decision is not made in criminal proceedings;
- 2) Complexity of the application and evidence provision process;
- 3) Limitation of eligible costs;
- 4) Size of compensation does not fully cover damages;
- 5) Decisions are delayed or arrive too late;
- 6) Payments in increments limit usefulness of the compensation;

1) **Decision not made in criminal proceedings - referral to civil courts**

It is not uncommon for decisions on compensation to be referred to civil courts. Different reasons are given for this, including the complexity of the claim or the risk of undue delay or burden on the criminal proceedings.

However, there are wide disparities between States on how often criminal court judges transfer the decision to the civil courts. It seems that in some countries criminal court judges are far less willing to consider compensation claims than in others. This in turn implies that some countries have better organised their proceedings to be able to make compensation decisions. More detailed research is required to identify the precise practices which increase the ability and likelihood of criminal court judges to make compensation decisions.

The decision to transfer the claim means that victims have to go through two proceedings. It also

¹⁸⁸ Victim Support Europe & APAV (2019). VOciare Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe, 120.

¹⁸⁹ Milquet (2019). Report on Strengthening Victims' Rights: from Compensation to Reparation; https://victim-support.eu/wp-content/files_mf/1663231390strengthening_victims_rights_from_compensation_to_reparation_rev.pdf

means that victims may need to present evidence themselves (while in criminal proceedings this can be, at least to a large extent, done by the prosecution), they may be expected to repeat the testimony they have made in criminal court and they may be examined in the presence or even by the perpetrator. All without the safeguards that have been established under the VRD.

2) **Procedural burdens**

Depending on the jurisdiction, victims may face heavy procedural burdens, including with respect to evidence gathering, to pursue their compensation claim in the criminal proceedings. They may have more or less assistance in this regard and whilst in some States they may be provided with a legal representative, in others they may not, or legal aid may be limited e.g. based on income.

Depending on the responsibilities of the victim, the way the process is organised, and access to free legal assistance, victims may struggle to submit a competent claim. Without appropriate assistance, this can ultimately dissuade some victims from ever applying whilst limiting the success of other applications.

3) **Decisions are delayed or come too late**

Although the VRD states that decisions should be made in a reasonable time, there is no definition or detailed guidance on what this means. This has enabled wide variances in timings of decisions and little incentive to adjust the organisation of proceedings and compensation decisions to minimise delays.

The European Court of Human rights has made numerous rulings on the issue – primarily with respect to the right to a fair trial but also in relation to remedies – with detailed guidance developed by the Council of Europe.¹⁹⁰ This shows that the Court has been consistent in its position that reasonable time must be determined based on the circumstances of the case and what is at stake in the proceedings for the applicant – covering both pecuniary and non-pecuniary issues.

Notably, the Court has indicated that special or particular diligence should be taken by States in cases involving victims of road traffic accidents and victims of violence. In simple terms, States should look to make speedier decisions where delays will particularly impact on those seeking compensation.

Besides delays based on the complexity of the case or due to the decision of the judge to delay their decision until the criminal proceedings are complete, delays also occur due to the transfer of the decision to civil courts. Not only may the decision to transfer be slow, the civil proceedings will then need to start at which point it is not uncommon that civil courts suspend their decision whilst awaiting the outcome of criminal proceedings.

The impact of all these delays should not be underestimated. It can mean that victims may not receive compensation in time to help them during their greatest time of need. In the immediate aftermath and the short term, victims can face numerous health expenses, they may have reduced or lost income, they may have to adapt to the loss of income where a loved one is murdered. They may have funeral expenses, repatriation costs and many other expenses linked to the criminal proceedings. **Speedy compensation payments must therefore be considered as essential to the good functioning of any compensation system.**

¹⁹⁰ Frédéric Edel (2007). The length of civil and criminal proceedings in the case-law of the European Court of Human Rights, Council of Europe Publishing, [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-16\(2007\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-16(2007).pdf).

4) **Eligible costs and limited payments**

States take different approaches as to what damages should be compensated. This means that in some countries all forms of material and moral damage e.g. emotional and psychological damages, can be taken into account in any decision. In others, eligibility may be limited to material damages.

Equally, due to considerations such as ability to pay, the compensation payment may be significantly lower than the damages incurred by victim. Such an approach may encourage perpetrators to hide or disburse their income and savings to avoid making payments. In some jurisdictions, this may also mean that victims are better compensated depending on whether the perpetrator is wealthy, thus creating disparities between victims.

Small, incremental payments

Linked to the above point, even when a decision is made, the timeframe of payments can negatively impact the value and use of the compensation, especially where a payment is split over months or years. This can be the case if the perpetrator is only required to make very small weekly or monthly payments e.g. several euros per week. This effectively negates the value of such compensation from being used to cover high upfront costs such as funeral expenses or medical fees.

Victims responsible for enforcing the decision

Even where a decision on the award of a decision on offender compensation is taken by the criminal courts, the offender may not actually make any payments. This forces victims to seek enforcement through civil courts or to contact the offender directly.

This can be highly detrimental to victims who will incur further additional costs, and administrative and legal burdens. They may also be forced to meet the perpetrator and may consequently be exposed to further crime or to coercive behaviours such as conditioning payments on seeing the victim or accessing children, even where a court order prohibits it. This is particularly relevant in domestic violence cases but other crimes in which coercion is used are also relevant e.g. human trafficking, crimes against victims in institutions, crimes against migrants.

The lack of clear obligations for States to establish a system which maximises the likelihood that victims receive offender compensation has resulted in weak mechanisms. Coupled with the fact that many countries require victims to seek offender compensation before they can claim State compensation, the system is highly detrimental to most victims. It not only leaves them without the financial assistance and recognition they desperately need, it also forces them to go through painful, burdensome, and harmful procedures which may put victims at risk of further crime from the perpetrator.

6.1.2 Helping victims to access compensation safely

Victims face numerous challenges in obtaining a timely decision on adequate compensation. Yet this is only one half of the story. Victims of intentional violent crime also have the right to State Compensation in accordance with the 2014 EU Compensation Directive (recognised that national compensation schemes potentially covering more than only violent crimes).

In practice, States have established strong interrelationships with offender and State compensation. A core principle is that State compensation schemes are a last resort for the victim. This is usually translated into an obligation on victims to seek offender compensation first; because of the difficulties involved, this requirement can be a major barrier to exercising the right to State compensation.

The many challenges and obstacles victims must overcome to obtain State compensation are outlined in VSE's report, *A Journey from Crime to Compensation*¹⁹¹, as well as in the 2019 report from the Special Advisor to the European Commission, *Strengthening victims' rights: from compensation to reparation*¹⁹².

These reports have found that compensation for victims requires that State and offender compensation is co-ordinated within a coherent and integrated system. As set out in the VSE report, a model compensation system should be:

- 1) strategic and interconnected with wider social systems, integrated into the national framework for comprehensive victim support;
- 2) inclusive;
- 3) easily understood by victims and professionals alike;
- 4) accessible;
- 5) victim centric, fair and appropriate.

With respect to offender compensation, which follows Safe Justice principles, the ideal solution is one where victims can receive a decision in criminal proceedings. However, such a solution should be combined with State action to minimise harm and ensure speedy decisions and payments.

The best approaches to compensation are already well identified, though further research is required on what measures maximise the ability of criminal court judges to make speedy decisions on compensation.

191 Victim Support Europe (2019). *A Journey from Crime to Compensation: An Analysis of Victims' Access to Compensation in the EU*.

192 Joëlle Milquet (2019). Report of the Special Adviser, J. Milquet, to the President of the European Commission, Jean-Claude Juncker.

Strengthening victims' rights: from compensation to reparation: For a new EU Victims' rights strategy 2020-2025, [strengthening_victims_rights_-_from_compensation_to_reparation.pdf](https://european-council.europa.eu/media/en/press-communications/infographic/infographic-strengthening-victims-rights-from-compensation-to-reparation.pdf) (europa.eu)

Offender compensation in the Netherlands

The Dutch system of offender compensation already includes these principles to some extent. In the Netherlands, a decision on offender compensation is rendered during the criminal justice proceedings, on request.¹⁹³ The public prosecutor or other justice officer must enforce this decision; they will inform the offender of the decision and payment conditions, as well as ensuring full payment to the victim.

If a victim is not paid in full within 8 months of the decision, victims are alerted by the authorities of their right to receive partial payment from the State.¹⁹⁴ The State will then deduct the payment from the offender: in the Dutch system, the State is usually able to reclaim approximately 88 % of the payment from the offender, as it has the power to directly deduct this claim from the offender's income or replacement income.

The following recommendations are based on practices established in different Member States:

Addressing urgent financial needs

The starting point is to ensure that those victims who need urgent financial assistance, are able to receive emergency payments from the State. Such payments can be part of the compensation system and taken into account where any final award is made, or they can be gratuitous payments as part of a wider welfare scheme for victims.

In line with countries such as the Netherlands, victims should be able to seek and receive a decision on State compensation even before criminal proceedings begin, and without having to wait for a trial against a perpetrator. This would ensure that victims quickly receive full payment (as opposed to incremental payments). The system can retain the principle that State compensation is subsidiary to offender compensation by allowing the State to recoup any compensation ordered against the offender.

Increasing the frequency of compensation decisions in criminal proceedings and reducing delays

In line with the EU Commission's proposed Directive on Combatting Violence against Women and Domestic Violence¹⁹⁵, the right to a decision on compensation in criminal proceedings should be enhanced. For the purposes of this report, we have not fully examined potential consequences, risks and barriers to guaranteeing all the circumstances that a decision can be made in criminal proceedings.

As such, whilst we support the European Commission's position, if research or discussions reveal risks or insurmountable barriers, at the very least, the right should be strengthened to ensure that decisions are made in the vast majority of cases with only limited exceptions allowed. This is necessary to push States to review how and whether criminal proceedings can be adjusted to accommodate compensation decisions (the Safe Justice approach), rather than simply concluding in most cases that a decision will

¹⁹³ Rijksoverheid (n.d.). Heb ik als slachtoffer recht op schadevergoeding?, accessed 21 November 2022, <https://www.rijksoverheid.nl/onderwerpen/slachtofferbeleid/vraag-en-antwoord/schadevergoeding-slachtoffer#:~:text=Schadevergoeding%20tijdens%20strafzaak,materi%C3%ABle%20als%20immateri%C3%ABle%20schade%20zijn>

¹⁹⁴ Centraal Justitiele Incassobureau (n.d.). Voorschotregeling, accessed 21 November 2022, <https://www.cjib.nl/voorschotregeling>

¹⁹⁵ Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, COM/2022/105 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0105>

delay proceedings or is too difficult.

To maximise the frequency, quality and ease of compensation decisions, specialist training and guidance should be available to the judiciary to support their decision making process, to facilitate the handling of complex cases, to reduce delays in decisions and to ensure victims are treated in an appropriate manner.

Improving the ability of victims to seek compensation

In accordance with European Commission Guidance on the implementation of the VRD, Member States should review their current procedures for seeking offender compensation to identify opportunities to simplify the process and minimise burdens or harm from the evidentiary process. The EU Commission provides the example of “one single ‘access point’ for victims at the legal aid administration or Ministry of Justice etc.”

Linked to improving the ability of victims to successfully seek compensation and the right to be heard and participate, victims should be provided with support and legal assistance to pursue any compensation claim. It is always difficult to achieve a good balance between ensuring that a process is simple enough that victims can pursue the matter without a lawyer, versus recognising that some rights are extremely difficult for the majority of victims to exercise without legal assistance.

Nevertheless, taking into account the impact of crime and how this affects victims, and the general objective to minimise harm and burden on victims, a combination of simplification and assistance will maximise victim’s access to compensation. Indeed, this approach is already recognised under the EU Human Trafficking Directive (Article 12 and 15) and the EU Combating Terrorism Directive (Article 24). For further details on these points, please consult the chapter “Enabling meaningful participation of victims”.

Increasing the frequency and amounts of payments by the offender

Whether the State pays compensation to victims and recoups this from the offender, or the victim obtains payment directly from the offender, it is in the best interests of all if offender payments are maximised.

States should therefore improve the procedures and techniques used to obtain payments. States should explore combinations of enforcement techniques including through e.g. direct withdrawal of agreed amounts from salaries, sanction based techniques e.g. fines or other punishments for failure to pay, and incentives e.g. payments taken into account in probation or other hearings. When developing solutions, care should be taken to ensure that incentives are not misused or do not disadvantage victims. To help address this, victims should be included in such decisions.

Removing the need for victims to enforce compensation decisions

To support the payment process and to remove the burden on the victim of pursuing payments, the State should take over this role. As has been seen in the Netherlands, this approach increases the proportion of overall payments by offenders and removes the risk of harm to victims. Notably, if this is combined with the State making up front payments to victims, the time frame of payments to the State can be spread without causing harm to the victim.

Protection of victims in civil proceedings

Finally, where there is no other option than to transfer the claim to civil proceedings, appropriate protection measures should be in place to minimise risk and to help address victims' needs. This should form part of a wider review of how victims can be better protected in proceedings outside of the criminal justice system.

6.2 Addressing the harm beyond the formal criminal justice process

Within a safe justice approach, victims' needs that extend beyond the formal justice system should be addressed as well, *inter alia* through the provision of restorative justice (RJ) processes.

At the same time, it is important to recognise that RJ processes may not be appropriate for all victims and that a process which brings together victim and offender contains inherent risks which require proper safeguards.

6.2.1 Definition of Restorative Justice

In article 2.1 (d) VRD, restorative justice processes are defined as “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”.

This definition is not necessarily the most suitable as it does not cover harm, which is an integral part of RJ, nor the importance of proper training of the impartial facilitator (third party). As an alternative, the European Forum on Restorative Justice, suggests¹⁹⁶:

“Restorative Justice is an inclusive approach of addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired, relationships maintained, and justice achieved.”

6.2.2 Victims' rights to Restorative Justice

Article 12 VRD states that Member States should take measures to safeguard victims of crime from further victimisation and from intimidation or relation in the context of RJ processes. These measures include that access to RJ services for victims is:

- based on their free, informed consent;
- only available, if it is in their interest;

¹⁹⁶ Tim Chapman, Anneke van Hoek & Annemieke Wolthuis (2018). The Road Less Travelled. More Humane Approaches to Addressing the Harm of Criminal Behaviour (Amsterdam: Restorative Justice Nederland), 34, <https://www.euforumrj.org/sites/default/files/2020-01/the-road-less-travelled-2018.pdf>

- conditioned on them receiving full and unbiased information before the start of RJ process;
- dependent on offender’s acknowledgement of basic facts of the case;
- confidential, unless there is agreement by parties or an “overriding public interest”.

According to article 12, Member States should further facilitate the referral of cases to RJ services, by establishing the necessary procedures and guidelines. Notably, the Directive does not establish an obligation on Member States to ensure that victims can access RJ services. In part, this was due to different views within the RJ community but also victim policy/support community on the value, risks and methods of RJ Services. With insufficient consensus, it was difficult for the EU Commission to determine what would be the best course of action for all Member States.

However, in the 13 years since the EU Commission analysed and consulted on the matter, the RJ field has witnessed a growing consensus of the European and international community for a general applicability and accessibility of RJ in criminal matters and beyond.

Although concerns remain as to whether the way RJ is organised and delivered ensures the safety of victims, in 2018, the Council of Europe adopted the landmark Recommendation on Restorative Justice in Criminal Matters (CM/Rec(2018)8). The unanimous adoption of the Council of Europe’s Declaration on the Role of Restorative Justice in Criminal Matters in December 2021 further demonstrates the willingness of Ministries of Justice across Europe to develop restorative justice in line with this Recommendation.

Unlike formal criminal justice systems, **victims have more control throughout the restorative justice process**. Victims are invited to actively contribute to the design of the process, which may include the layout of the room, whether the victim and the offender will meet in person, the number of people to be present during the meetings, the time required for meetings, the aim and content of any communication between the parties, etc.¹⁹⁷

The basic premise thereby differs from the criminal justice process, which is primarily an adversarial process between the state and the offender. The process of restorative justice is driven by **the harm caused to the victim**, which is accepted by the offender. As such, the two parties are recognised as not having an equal standing, additional safeguards must be put in place to protect the victim from further harm, where needed, and risk assessments will be ongoing throughout the process.¹⁹⁸

Any confrontation with the offender in the RJ process can be traumatic. However, through communication with the offender, the victim may be able to tell their story, express how the victimisation affects their life and ask the offender questions. This supports victims to take back control of their life - to **feel empowered** – and recover from the harm done to them. After facing the offender, the process may result in validation for the victim, who may move on from the feeling of shame that can occur after

197 Tim Chapman, Anneke van Hoek & Annemieke Wolthuis (2018). *The Road Less Travelled. More Humane Approaches to Addressing the Harm of Criminal Behaviour* (Amsterdam: Restorative Justice Nederland), 34.

198 European Forum for Restorative Justice (2021). *Manual on Restorative Justice Values and Standards for Practice*, <https://www.euforumrj.org/en/manuals-and-guidelines>

experiencing trauma.¹⁹⁹

6.2.3 Challenges in developing Restorative Justice services

A number of challenges prevent victims from accessing high-quality restorative justice services:

- **RJ services do not exist in all States or are not easily accessible for all victims**

Since there are no EU obligations to ensure access to RJ, such services are not necessarily available in all countries, and even if they are, they may not be accessible to all victims. This may be due to the distance of service from the victim, it may be because it is only provided through one type of organisation e.g. probation services, which means many victims will not know about or have the opportunity to seek RJ through such a service. In addition, RJ may only be available at certain points in criminal proceedings, rather than throughout, and may be completely disconnected to proceedings. These can also act as barriers to accessing the services. Two other major limitations are exemptions and knowledge of the service.

- **The type of crime or the characteristics of the offender as exemption criteria**

In some countries, RJ services are not available with respect to certain crimes or based on the characteristics of the offender. For instance, RJ is often prohibited in cases of domestic and sexual violence. This is because the nature of the crime, where control, abuse and severe trauma may be involved, is considered to limit the likelihood of a safe or successful process. Rather, there is concern that it could further traumatise victims.

Recidivism is also used as an exemption criterion, since it is argued that repeat offenders are not able to truly recognise the harm caused by them. This means that victims of crime committed by a repeat offender may be prevented from accessing restorative justice, without having a choice in the matter.

However, the use of such blanket exemptions does not follow the Safe Justice principles for an individualised, targeted and empowering approach which gives victims choice. The organisation “Why me?” published a paper on “Using restorative approaches for domestic and sexual abuse: A personal choice”. In this paper, victims of domestic and sexual abuse testify of their wishes to contact or meet the offender and their difficulties in accessing restorative justice services, since they did not receive information on any available restorative justice services or since police officers and other justice actors thought that a restorative justice process was not a good idea.²⁰⁰ Whilst many successful examples exist, this does not mean that RJ in such circumstances should not be subjected to enhanced safety rules. Risks are heightened and careful, specialised procedures must be in place to mitigate any risks. Thus, RJ may not be suitable for some victims RJ, while for others it may be – along with appropriate precautions.

¹⁹⁹ Tim Chapman, Anneke van Hoek & Annemieke Wolthuis (2018). *The Road Less Travelled. More Humane Approaches to Addressing the Harm of Criminal Behaviour* (Amsterdam: Restorative Justice Nederland).

²⁰⁰ Why me? (2021). *Using restorative approaches for domestic and sexual abuse: A personal choice*, <https://why-me.org/wp-content/uploads/2021/09/Why-Me-RJ-Domestic-Sexual-Abuse-2021-v3-1.pdf>.

- **No access to information or referral procedures**

Victims are often unaware of the existence of RJ services, due to a lack of communication about all available services, as well as the lack of coordination and referral between court services, victim support services and police services. Restricted access routes and types of organisations offering RJ, also hampers contact.

- **Measures to ensure well-being and safety of victims throughout the RJ process can be deficient**

Any confrontation with the offender can be a traumatic experience for victims. In many States, RJ services are not legally bound by uniform quality standards or certification and accreditation procedures. As such, the quality of RJ processes can vary significantly, depending on the attitudes of individual RJ facilitators. This dramatically increases the chances of RJ processes that are badly organised, that do not provide safeguards, and, as a result, harm victims and leave them traumatised.

- **RJ discourse mainly taken up by offender-focused organisations.**

Historically, RJ services are usually provided by offender-focused organisations, such as the probation and prison services, and have been developed from the viewpoint of these organisations, as a way to e.g. reduce recidivism or help offenders reintegrate into society. Though RJ is founded on the basis of neutrality, EU rules require that services address offenders' issues thus the process will be organised in such a way that there is a strong risk of unconscious bias both individual from the RJ facilitator and at the institutional level of the service provider as well as at the systemic level, where victims tend to be hear about RJ when introduced to it by the offender. The system can therefore become more geared towards offenders, who will receive information about RJ services during their parole process.

6.2.4 Solutions for high-quality, effective and safe Restorative Justice services

Whilst numerous concerns may be raised about RJ services, where these are carried out well, there is extensive evidence of their benefit to victims. Data shows that the majority of victims reflect positively on their participation in criminal justice processes and say that they would take part in future restorative justice processes.²⁰¹ Making such services generally available to victims should therefore form part of a country's wider victim support framework priorities.

Nevertheless, where prioritisation decisions must be made between different types of services e.g. with respect to funding of those services, careful analysis should be carried out to determine the scale of the population that any given service is likely to benefit, the range of services that can be offered, and the benefit of such services over the short, medium and long term.

In VSE's view, on this basis, the ideal situation is one where both victim support services and RJ are available to those victims who need and seek it. However, victim support services offer emotional, practical, legal, and other support to all victims of crime. They are therefore of greater relevance to a greater proportion of the victim population, operating both within and as part of criminal proceedings.

²⁰¹ Daniela Bolívar, Ivo Aertsen & Inge Vanfraechem (2014). Victims and Restorative Justice: Country Reports, *European Forum for Restorative Justice*, https://www.euforumrj.org/sites/default/files/2019-11/report_victimsandrij-2.pdf

As such, they should be considered essential in each country and a priority.

Taking that into consideration, the ideal situation would be one where barriers to RJ are removed as much as possible.

Removing access barriers

Following the core principle of victim **empowerment**, RJ services should be accessible to all victims of crime who freely wish to participate in a RJ process. It is our understanding that a **victim-sensitive and individualised approach should be adopted to enable victims' participation as they wish, when it is safe for them to do so**. This means that any criteria for restricting access to RJ services should be applied on a case-by-case basis, in accordance with the specific needs of victims. As such, blanket exemptions based on the type of crime or characteristics of the offender should be removed. Where specific crimes or situations involve higher risks or vulnerabilities, specific and targeted measures, and decision making processes should be in place to minimise any risks.

Furthermore, victims' rights to information on available RJ services should be strengthened in accordance with the recommendations in the chapter on helping victims to be informed. To ensure that victims can access RJ services, they should be available through **multiple entry points**. Referral of cases to restorative justice services should be possible not only by judicial authorities, but also by the parties themselves (i.e. self-referrals) and by services that come into contact with victims (such as victim support services). The feasibility of making RJ services available throughout criminal proceedings should be carefully examined with the aim to maximise access.

Adopting common standards, values and accreditation processes for RJ services

Following the core principle of **safety and well-being of victims**, national and ideally EU standards should be established for the operation of services and to ensure adequate safeguards for victims. The standards for high quality service delivery set out in the European Forum for Restorative Justice's "Manual on Restorative Justice Values and Standards for Practice"²⁰² could be seen as a basis for EU-wide standards. In particular, RJ services should be co-ordinated with victim support services to ensure that those victims who need or want support can access it.

Careful monitoring of compliance with standards should be in place. Given that RJ services involve bringing offender and victims together in some way (even if at a distance), it should be considered whether RJ services should be subjected to accreditation. In many countries these services are offered by recognised organisations. In others, they are offered by individual, independent practitioners. Safeguards should be in place to ensure that all operate to national established qualifications and standards.

As mentioned earlier, specific safeguards and enhanced procedures should be in place when working with victims that are considered vulnerable, such as those of domestic violence. For instance, facilitators (e.g. restorative justice practitioners) should receive advanced training before delivering restorative justice in sensitive, complex or serious cases.

²⁰² European Forum for Restorative Justice (2021). Manual on Restorative Justice Values and Standards for Practice, https://www.euforumrj.org/sites/default/files/2021-11/EFRJ_Manual_on_Restorative_Justice_Values_and_Standards_for_Practice.pdf

Neutrality of RJ services

Restorative justice should ensure a balanced approach towards victims and offenders. Where such services are only or predominantly provided by one type of organisation, focused on the welfare of offenders, the system risks being biased or limiting access.

In developing a national system of restorative justice, Member States should promote its delivery by different types of organisation including independent (neutral) organisations, those directly working with victims e.g. victim support, and those working with offenders. Where the process is offered or run by an organisation working with either the offender or the victim, procedural safeguards should be in place to ensure the neutrality of the process. This approach will maximise access whilst helping reduce bias risks.

RJ services as a part of integrated framework of victim support: complementarity and collaboration

It is our understanding that the further development of RJ services should take place in a coherent, integrated system of service provision at national level, which does not create competition between victim support services and RJ services. The **complementarity of victim support services and restorative justice services**, based on a multi-agency approach, can guarantee a more comprehensive support and protection framework for victims, facilitated through **effective cooperation, coordination and referral mechanisms**. **VSE recommends that all States establish a national victim support framework which incorporates RJ into its priorities.**

6.3 Ensuring enforceable victims' rights

The effective enforcement of victims' rights depends on remedies to redress their violation by means of criminal proceedings.

The 2019 FRA report and the 2016 VOIARE report found that effective remedies to redress violations of the rights of victims are generally lacking in all Member States.²⁰³ This lack of sanctions regularly result in victims' participatory rights in criminal proceedings being regarded by practitioners as suggestions, rather than legally binding obligations. As such, victims' rights may become obsolete.

As the FRA pointed out, researchers from Germany felt that 'many aspects of victims' participation rights are perceived as informal options reliant on the assessment, good-will and capacities of the institutions or individual practitioners responsible, rather than concrete rights guaranteed to victims, the research indicated.' As a Dutch lawyer stated "The [criminal] justice system is the last bubble that needs to be burst. [...] As it is now, a victim has rights, but no remedies."

This absence of effective remedies may further negatively impact a victim's recovery; victims may believe their ability to achieve justice and their right to the truth is being denied. For instance, a court clerk misinformed a victim of domestic violence about the consequences of signing a certain form she

²⁰³ European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 79; Victim Support Europe & APAV (2019). VOIARE Synthesis Report: Victims of Crime Implementation Analysis of Rights in Europe.

had received; on signing the paper, she was prevented from testifying and her case was dismissed.²⁰⁴

Effective remedies for violations of victims' rights in the context of criminal proceedings should be made available in various forms. Given that the solution offered to the defence – of dismissal of the case – will not usually be the best outcome for victims, a range of innovative options should be in place. Initially, robust appeals and organisational complaints procedures should support victims to seek redress in a timely manner which would resolve breaches of rights. This can be particularly helpful where no harm has yet occurred or where it is reversible.

External, formal remedies should also be in place to overturn ongoing breaches of rights including through court orders. To address systemic breaches, ideally independent monitoring systems with enforcement capabilities should be in place. In line with VSE's proposal for a national victim support framework a victims' commissioner or ombudsperson should have powers to press for changes to systems as well as to review individual cases.

Ultimately, where the harm causes cannot be overturned, victims should have access to damages. For many situations, the factor that may lead to the greatest change is where organisations in breach have to pay for those damages. Moreover, remedies could be legal or extralegal in nature, for instance ensuring reparation under RJ processes.

Given that victims may struggle to seek redress, legal aid should be available to pursue claims for remedies, and claims should be possible on an individual or class action basis.

²⁰⁴ European Union Agency for Fundamental Rights (2019). Proceedings that do justice. Justice for victims of violent crime: Part II (Luxembourg: Publications Office of the European Union), 57.

CONCLUSION

For over forty years, there has been a progressive adoption of victims' rights. From the first international instrument in 1985 – the UN Basic Principles of Justice for Victims of Crime and Abuse of Power, through to the Conventions and Recommendations of the Council of Europe and a series of EU Directives – we have seen a major transformation in the legal landscape for victims.

States have committed to ensuring that victims can access justice, receive information, be protected and supported, obtain compensation, etc. Yet today, across Europe, millions of victims remain marginalised and voiceless, never reporting crimes carried out against them, unable to access support. Rights are either not implemented or not implemented well, with barriers layered upon each other, preventing victims from exercising the very rights designed to help them.

After decades of commitment and laws, it is undeniable that we have seen wide ranging progress. Yet, endemic, intractable problems require a shift in thinking and approach. Justice systems have been developed over many centuries, while core principles and fair trial rights have shaped the organisation of criminal proceedings. To expect that victims' rights will be implemented in practice, only if they conform with pre-existing processes, is naïve and doomed to further failure.

To ensure the commitments made by governments and international organisations become a reality, **justice must evolve along with the objectives that guide it – success must include victim protection and wellbeing**. Proceedings must be organised with victims' rights and interests at the heart of the system, in tandem with the rights of the defense. This evolution must recognise victims as having rights – as holders of fundamental human rights.

Change is urgently required. Every day victims are denied justice or are traumatised when they seek it. Fifteen percent of our populations are impacted by serious crime every year, many more people suffer lesser crimes, and this may only be the tip of the iceberg. Change could benefit millions upon millions of people, potentially saving our economies billions of euros.

Now is the time for action. **A review of existing victims' laws** is taking place at both international and European Union levels. The **European Commission has committed to publishing not only an amended** Victims' Rights Directive in Spring 2023 but also the Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, later in the same year. A Directive on combatting Violence against Women and Domestic Violence and a Regulation laying down rules to Prevent and Combat Child Sexual Abuse are also being discussed. At the same time, the **Council of Europe** is looking to adopt a Recommendation on the rights, services and support for victims, which provides a more comprehensive approach than its 2006 Recommendation on Victims of a Crime. These reviews and the subsequent implementation by national governments must reflect a new way of thinking.

This Safe Justice paper aims to provide a starting point for change. At its heart is the realisation that **the treatment and safety of victims must be a clearly stated objective of justice** – a measurement of its success – equal in importance to other principles of justice including the right to a fair trial.

The concept of Safe Justice starts from the position **that strategies, laws, rights, policies and practices for victims in criminal justice should be designed to address harm experienced by victims and to meet their needs.** To achieve this, **it must be victim-sensitive – following core principles of recognition, respectful treatment, empowerment, well-being and safety.** These actions may then be adjusted to balance with other principles of justice, such as fair trial rights, impartiality, due process, non-discrimination, equality of arms, as well as feasibility.

This is an **integrated, victim-sensitive approach to justice; thus** achieving Safe Justice requires an **integrated response, connected to a comprehensive framework of victim support and communication at the national level.** It requires action by international and European institutions, by States, and by services and actors within justice systems: updating legislation, reviewing the functionality of national justice systems, addressing bias and inappropriate attitudes.

This paper aims to influence amendments to current international, EU and national victims' laws. At the same time, the paper aims to provide guidance to the Council of Europe, the European Union and its Member States on how to conduct a **systemic and strategic review of their justice systems from a victim's perspective.**

Victims' rights should be a critical part of the design of the current justice landscape, rather than layered on top of existing systems. Structural change on legal, operational and personal levels is required. Fundamentally, victims' rights will be presumed to be applicable and only denied as an exception where solid reasoning necessitates it.

Further to these principles, and the research identifying some of the barriers preventing the implementation of victims' rights,

this Safe Justice paper provides the **following key recommendations:**



HELPING VICTIMS TO REPORT CRIME

- Diversify ways to submit a report
- Professional accompaniment when reporting
- Protect victim's personal data
- Training on empathy and trauma-informed approaches
- Public awareness-raising on reporting crime



HELPING VICTIMS TO BE INFORMED

- Shift from information rights to communication frameworks
- Standards for information provision: accessible, accurate, easy to understand, timely & repeated, actionable, adapted to individual needs, available in various formats
- Increased infrastructure, e.g. case management systems
- Two-tier translation and interpretation system: qualified interpreters & linguistic assistance



ENABLING MEANINGFUL PARTICIPATION OF VICTIMS

- Professional accompaniment for support and legal needs throughout proceedings
- Increased access to lawyers, free of charge, to fully enjoy rights
- Enhanced right to be heard and to provide evidence, e.g. victim impact statement as a minimum
- Court-based support services and specialist victim units in justice and law enforcement agencies
- Innovative practices to facilitate participation, e.g. facility dogs
- Coordination and referral between services



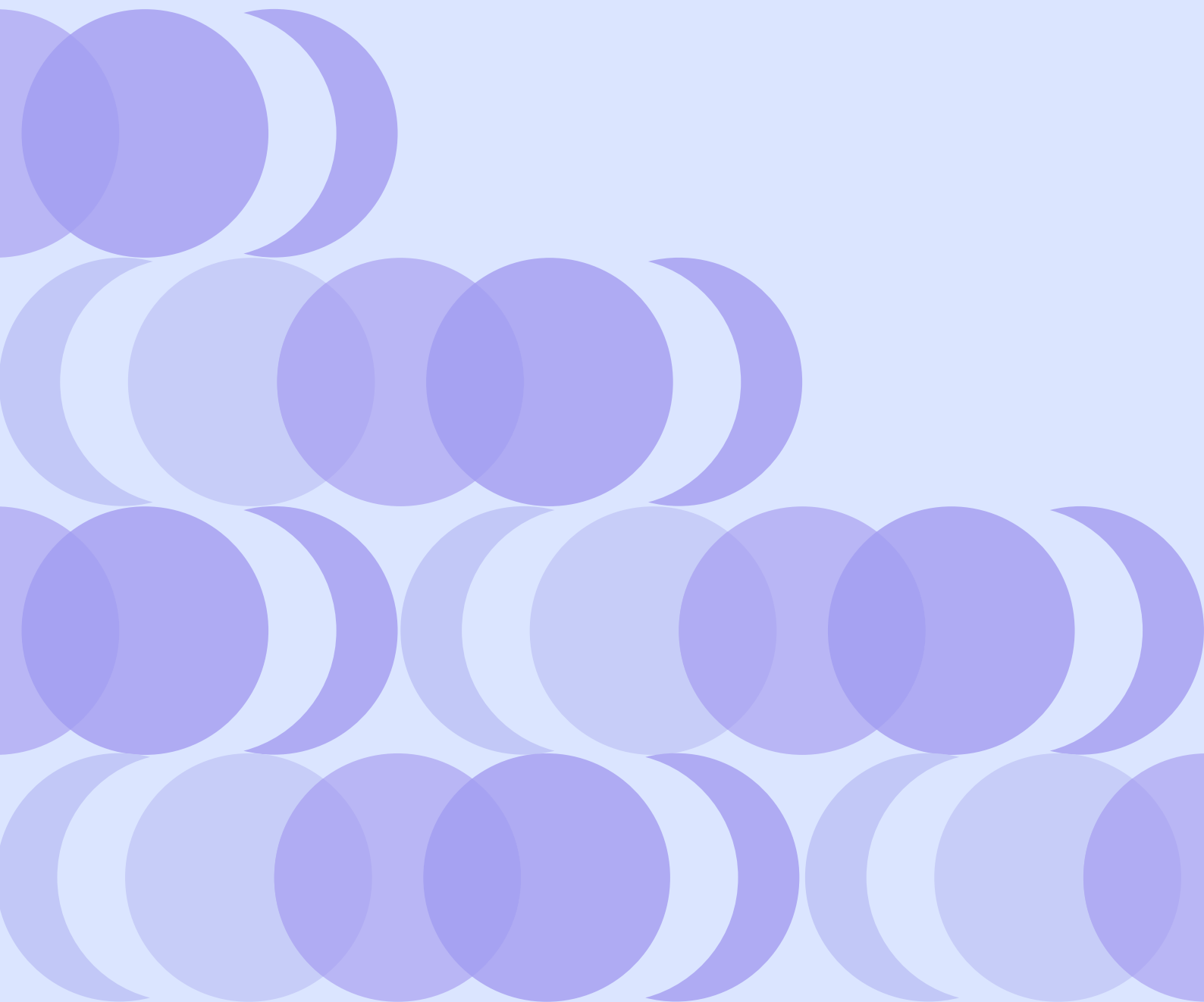
HELPING VICTIMS TO BE SAFE

- Enhanced assessments of specific protection needs: holistic, trauma-informed, timely & repeated, consistent
- Protection of victim's privacy: safety by design, victim files, self-regulation of media
- Improved access to protection measures: availability, decision-making, operation
- Innovative practices to reduce fear and trauma, e.g. digital tools



HELPING VICTIMS ACHIEVE RESTORATION

- Reimbursement of expenses: common list for minimal coverage
- Co-ordination of state and offender compensation in single framework
- Decisions on offender compensation in criminal proceedings by default
- Enforcement of offender compensation decisions by State
- Availability of high-quality restorative justice services
- Effective remedies, legal and other, for victims' rights violations





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